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, 2020

OR

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

For the transition period from to

Commission File Number 001-35366

FORTRESS BIOTECH, INC.

(Exact name of registrant as specified in its charter)

Delaware	**20-5157386**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

2 Gansevoort Street, 9th Floor
New York, New York 10014
(Address including zip code of principal executive offices)

(781) 652-4500
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Class	Trading Symbol(s)	Exchange Name
Common Stock	FBIO	Nasdaq Capital Market
9.375% Series A Cumulative Redeemable Perpetual Preferred Stock	FBIOP	Nasdaq Capital Market

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

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

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

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

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

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

Class of Stock	Outstanding Shares as of November 5, 2020
Common Stock, $0.001 par value	93,702,861
9.375% Series A Cumulative Redeemable Perpetual Preferred Stock, $0.001 par value	3,427,138

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Quarterly Report on Form 10-Q

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PART I. FINANCIAL INFORMATION

Item 1. Unaudited Condensed Consolidated Financial Statements

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
($ in thousands except for share and per share amounts)

	September 30, 2020 (Unaudited)	December 31, 2019
ASSETS		
Current assets		
Cash and cash equivalents	$ 218,389	$ 136,858
Accounts receivable (net of allowance for doubtful accounts of $ 147 and $ 100 at September 30, 2020 and December 31, 2019, respectively)	15,653	13,539
Inventory	1,052	857
Other receivables - related party	939	865
Prepaid expenses and other current assets	1,704	4,133
Total current assets	237,737	156,252
Property and equipment, net	12,114	12,433
Operating lease right-of-use asset, net	20,265	21,480
Restricted cash	1,645	16,574
Long-term investment, at fair value	11,723	11,148
Intangible asset, net	11,039	7,377
Other assets	1,356	1,158
Total assets	**$ 295,879**	**$ 226,422**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable and accrued expenses	$ 32,542	$ 35,451
Accounts payable and accrued expenses - related party	19	—
Interest payable	23	1,042
Interest payable - related party	—	92
Notes payable, short-term	—	7,220
Operating lease liabilities – short-term	1,697	1,784
Derivative warrant liability	—	27
Other current liabilities	3,000	—
Total current liabilities	37,281	45,616
Notes payable, long-term (net of debt discount of $ 8,607 and $ 5,086 at September 30, 2020 and December 31, 2019, respectively)	51,393	77,436
Operating lease liabilities – long-term	22,855	23,712
Other long-term liabilities	8,205	7,126
Total liabilities	**119,734**	**153,890**

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
($ in thousands except for share and per share amounts)

	September 30, 2020 (Unaudited)	December 31, 2019
Commitments and contingencies		
Stockholders' equity		
Preferred stock, $.001 par value, 15,000,000 authorized, 5,000,000 designated Series A shares, 3,427,138 and 1,341,167 shares issued and outstanding as of September 30, 2020 and December 31, 2019, respectively; liquidation value of $25.00 per share	3	1
Common stock, $.001 par value, 150,000,000 shares authorized, 93,748,374 and 74,027,425 shares issued and outstanding as of September 30, 2020 and December 31, 2019, respectively	94	74
Common stock issuable, 5,451 and 251,337 shares as of September 30, 2020 and December 31, 2019, respectively	18	500
Additional paid-in-capital	574,461	461,874
Accumulated deficit	(477,465)	(436,234)
Total stockholders' equity attributed to the Company	97,111	26,215
Non-controlling interests	79,034	46,317
Total stockholders' equity	176,145	72,532
Total liabilities and stockholders' equity	**$ 295,879**	**$ 226,422**

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations
($ in thousands except for share and per share amounts)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue				
Product revenue, net	$ 9,447	$ 9,492	$ 30,808	$ 23,816
Revenue - related party	28	280	1,042	1,683
Net revenue	9,475	9,772	31,850	25,499
Operating expenses				
Cost of goods sold - product revenue	3,379	2,702	10,313	6,972
Research and development	13,298	14,571	43,868	56,355
Research and development - licenses acquired	458	700	2,278	1,350
General and administrative	15,383	14,339	45,358	41,260
Total operating expenses	32,518	32,312	101,817	105,937
Loss from operations	(23,043)	(22,540)	(69,967)	(80,438)
Other income (expense)				
Interest income	265	738	1,228	1,955
Interest expense and financing fee	(6,958)	(3,168)	(13,142)	(8,743)
Change in fair value of derivative liability	(803)	—	(1,189)	—
Change in fair value of investments	575	—	575	—
Gain on deconsolidation of Caelum	—	—	—	18,521
Total other income (expense)	(6,921)	(2,430)	(12,528)	11,733
Net loss	**(29,964)**	**(24,970)**	**(82,495)**	**(68,705)**
Less: net loss attributable to non-controlling interests	14,417	12,208	41,264	44,237
Net loss attributable to common stockholders	**$ (15,547)**	**$ (12,762)**	**$ (41,231)**	**$ (24,468)**
Net loss per common share - basic and diluted	$ (0.39)	$ (0.44)	$ (1.19)	$ (1.29)
Net loss per common share attributable to non - controlling interests - basic and diluted	$ (0.19)	$ (0.21)	$ (0.59)	$ (0.83)
Net loss per common share attributable to common stockholders - basic and diluted	$ (0.20)	$ (0.22)	$ (0.59)	$ (0.46)
Weighted average common shares outstanding - basic and diluted	76,093,211	56,856,821	69,404,499	53,060,565

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statement of Changes in Stockholders' Equity
($ in thousands)
(Unaudited)

For the Three Months Ended September 30, 2020

	Series A Preferred Stock		Common Stock		Shares Issuable	Treasury Stock	Paid-In Capital	Accumulated Deficit	Non-Controlling Interests	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount						
Balance at June 30, 2020	**2,693,806**	**$ 3**	**86,113,331**	**$ 86**	**$ 813**	**$ —**	**$ 521,493**	**$ (461,918)**	**$ 56,381**	**$ 116,858**
Stock-based compensation expense	—	—	—	—	—	—	3,171	—	—	3,171
Issuance of common stock related to equity plans	—	—	268,800	—	—	—	—	—	—	—
Issuance of common stock for at-the-market offering, net	—	—	7,064,214	7	—	—	21,110	—	—	21,117
Preferred A dividends declared and paid	—	—	—	—	—	—	(1,719)	—	—	(1,719)
Issuance of Series A preferred stock for cash, net	733,332	—	—	—	—	—	11,965	—	—	11,965
Partner company's offering, net	—	—	—	—	—	—	18,774	—	—	18,774
Partner company's at-the-market offering, net	—	—	—	—	—	—	23,053	—	—	23,053
Partner company's preferred stock offering, net	—	—	—	—	—	—	7,088	—	—	7,088
Issuance of common stock under partner company's ESPP	—	—	—	—	—	—	180	—	—	180
Partner company's dividends declared and paid	—	—	—	—	—	—	(50)	—	—	(50)
Reclass partner company's warrants from liability to equity	—	—	—	—	—	—	1,216	—	—	1,216
Issuance of partner company's common shares for research and development expenses	—	—	—	—	—	—	21	—	—	21
Common shares issued for 2017 Subordinated Note Financing interest expense	—	—	302,029	1	(500)	—	810	—	—	311
Write off common shares issuable for 2019 Notes interest expense	—	—	—	—	(313)	—	—	—	—	(313)
Common shares issuable for service	—	—	—	—	18	—	—	—	—	18
Issuance of warrants in conjunction with Oaktree Note	—	—	—	—	—	—	4,419	—	—	4,419
Non-controlling interest in partner companies	—	—	—	—	—	—	(37,070)	—	37,070	—
Net loss attributable to non-controlling interest	—	—	—	—	—	—	—	—	(14,417)	(14,417)
Net loss attributable to common stockholders	—	—	—	—	—	—	—	(15,547)	—	(15,547)
Balance at September 30, 2020	**3,427,138**	**$ 3**	**93,748,374**	**$ 94**	**$ 18**	**$ —**	**$ 574,461**	**$ (477,465)**	**$ 79,034**	**$ 176,145**

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statement of Changes in Stockholders' Equity
($ in thousands)
(Unaudited)

For the Three Months Ended September 30, 2019

	Series A Preferred Stock		Common Stock		Shares Issuable	Paid-In Capital	Accumulated Deficit	Non-Controlling Interests	Total Stockholders' Equity
	Shares	Amount	Shares	Amount					
Balance at June 30, 2019	**1,000,000**	**$ 1**	**68,138,203**	**$ 68**	**$ 490**	**$ 439,295**	**$ (407,980)**	**$ 57,946**	**$ 89,820**
Stock-based compensation expense	—	—	—	—	—	3,741	—	—	3,741
Issuance of restricted stock	—	—	177,292	—	—	—	—	—	—
Issuance of common stock for at-the-market offering, net	—	—	1,213,643	1	—	1,930	—	—	1,931
Issuance of preferred A for at-the-market offering, net	26,111	—	—	—	—	523	—		523
Preferred A dividends declared and paid	—	—	—	—	—	(601)	—	—	(601)
Partner company's offering, net	—	—	—	—	—	52	—	—	52
Partner company's at-the-market offering, net	—	—	—	—	—	3,341	—	—	3,341
Common shares issuable for 2017 Subordinated Note Financing interest expense	—	—	—	—	500	—	—	—	500
Common shares issued for 2017 Subordinated Note Financing interest expense	—	—	317,804	1	(490)	489	—	—	—
Common shares issued for 2019 Notes interest expense	—	—	91,767	—	—	165	—	—	165
Common shares issued for 2019 Notes debt repayment	—	—	396,825	—	—	500	—	—	500
Non-controlling interest in subsidiaries	—	—	—	—	—	(3,467)	—	3,467	—
Write off of partner company note receivable	—	—	—	—	—	(2)	—	—	(2)
Net loss attributable to non-controlling interest	—	—	—	—	—	—	—	(12,208)	(12,208)
Net loss attributable to common stockholders	—	—	—	—	—	—	(12,762)	—	(12,762)
Balance at September 30, 2019	**1,026,111**	**$ 1**	**70,335,534**	**$ 70**	**$ 500**	**$ 445,966**	**$ (420,742)**	**$ 49,205**	**$ 75,000**

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statement of Changes in Stockholders' Equity
($ in thousands)
(Unaudited)

For the Nine Months Ended September 30, 2020

	Series A Preferred Stock		Common Stock		Shares Issuable	Treasury Stock	Paid-In Capital	Accumulated Deficit	Non-Controlling Interests	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount						
Balance at December 31, 2019	**1,341,167**	**$ 1**	**74,027,425**	**$ 74**	**$ 500**	**$ —**	**$ 461,874**	**$ (436,234)**	**$ 46,317**	**$ 72,532**
Stock-based compensation expense	—	—	—	—	—	—	10,319	—	—	10,319
Issuance of common stock related to equity plans	—	—	2,307,231	2	—	—	(2)	—	—	—
Issuance of common stock under ESPP	—	—	53,268	—	—	—	90	—	—	90
Issuance of common stock for at-the-market offering, net	—	—	16,378,234	17	—	—	43,183	—	—	43,200
Preferred A dividends declared and paid	—	—	—	—	—	—	(4,507)	—	—	(4,507)
Repurchase of Series A preferred stock, net	(5,000)	—	—	—	—	(70)	(2)	—	—	(72)
Retirement of Series A preferred stock	—	—	—	—	—	70	(70)	—	—	—
Issuance of Series A preferred stock for cash, net	2,090,971	2	—	—	—	—	35,466	—	—	35,468
Partner company's offering, net	—	—	—	—	—	—	53,698	—	—	53,698
Partner companies' at-the-market offering, net	—	—	—	—	—	—	33,500	—	—	33,500
Partner company's preferred stock offering, net	—	—	—	—	—	—	7,088	—	—	7,088
Issuance of common stock under partner company's ESPP	—	—	—	—	—	—	349	—	—	349
Partner company's dividends declared and paid	—	—	—	—	—	—	(50)	—	—	(50)
Partner company's exercise of warrants for cash	—	—	—	—	—	—	13	—	—	13
Reclass partner company's warrants from liability to equity	—	—	—	—	—	—	1,216	—	—	1,216
Issuance of partner company's common shares for research and development expenses	—	—	—	—	—	—	42	—	—	42
Common shares issued for 2017 Subordinated Note Financing interest expense	—	—	982,216	1	(500)	—	1,816	—	—	1,317
Common shares issuable for service	—	—	—	—	18	—	—	—	—	18
Issuance of warrants in conjunction with Oaktree Note	—	—	—	—	—	—	4,419	—	—	4,419
Non-controlling interest in partner companies	—	—	—	—	—	—	(73,981)	—	73,981	—
Net loss attributable to non-controlling interest	—	—	—	—	—	—	—	—	(41,264)	(41,264)
Net loss attributable to common stockholders	—	—	—	—	—	—	—	(41,231)	—	(41,231)
Balance at September 30, 2020	**3,427,138**	**$ 3**	**93,748,374**	**$ 94**	**$ 18**	**$ —**	**$ 574,461**	**$ (477,465)**	**$ 79,034**	**$ 176,145**

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statement of Changes in Stockholders' Equity
($ in thousands)
(Unaudited)

For the Nine Months Ended September 30, 2019

	Series A Preferred Stock		Common Stock		Common Shares Issuable	Additional Paid-In Capital	Accumulated Deficit	Non-Controlling Interests	Total Stockholders' Equity
	Shares	Amount	Shares	Amount					
Balance at December 31, 2018	**1,000,000**	**$ 1**	**57,845,447**	**$ 58**	**$ 659**	**$ 397,408**	**$ (396,274)**	**$ 17,891**	**$ 19,743**
Stock-based compensation expense	—	—	—	—	—	10,423	—	—	10,423
Issuance of restricted stock	—	—	1,842,034	2	—	(2)	—	—	—
Issuance of common stock under ESPP	—	—	54,221	—	—	60	—	—	60
Issuance of subsidiaries' common shares for license expenses	—	—	—	—	(164)	164	—	—	—
Issuance of common stock for at-the-market offering, net	—	—	8,604,469	9	—	15,789	—	—	15,798
Issuance of Series A preferred stock for at-the-market offering, net	26,111	—	—	—	—	523	—	—	523
Preferred A dividends declared and paid	—	—	—	—	—	(1,773)	—	—	(1,773)
Partner company's offering, net	—	—	—	—	—	61,036	—	—	61,036
Partner company's at-the-market offering, net	—	—	—	—	—	29,680	—	—	29,680
Issuance of partner company warrants in conjunction with Horizon Notes	—	—	—	—	—	888	—	—	888
Common shares issuable for 2017 Subordinated Note Financing interest expense	—	—	—	—	500	—	—	—	500
Common shares issued for 2017 Subordinated Note Financing interest expense	—	—	1,330,450	1	(495)	1,468	—	—	974
Common shares issuable for 2019 Notes interest expense	—	—	—	—	281	—	—	—	281
Common shares issued for 2019 Notes interest expense	—	—	262,088	—	(281)	506	—	—	225
Common shares issued for 2019 Notes debt repayment	—	—	396,825	—	—	500	—	—	500
Non-controlling interest in subsidiaries	—	—	—	—	—	(70,702)	—	70,702	—
Write off of partner company note receivable	—	—	—	—	—	(2)	—	—	(2)
Deconsolidation of Caelum non-controlling interest	—	—	—	—	—	—	—	4,849	4,849
Net loss attributable to non-controlling interest	—	—	—	—	—	—	—	(44,237)	(44,237)
Net loss attributable to common stockholders	—	—	—	—	—	—	(24,468)	—	(24,468)
Balance at September 30, 2019	**1,026,111**	**$ 1**	**70,335,534**	**$ 70**	**$ 500**	**$ 445,966**	**$ (420,742)**	**$ 49,205**	**$ 75,000**

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
($ in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2020	2019
Cash Flows from Operating Activities:		
Net loss	$ (82,495)	$ (68,705)
Reconciliation of net loss to net cash used in operating activities:		
Depreciation expense	1,676	1,414
Bad debt expense	47	250
Amortization of debt discount	5,319	2,459
Non-cash interest	492	—
Amortization of product revenue license fee	1,065	820
Amortization of operating lease right-of-use assets	1,214	1,150
Stock-based compensation expense	10,319	10,423
Issuance of partner company's common shares for research and development expenses	42	—
Common shares issuable for 2017 Subordinated Note Financing interest expense	—	500
Common shares issued for 2017 Subordinated Note Financing interest expense	1,317	974
Common shares issuable for 2019 Notes interest expense	—	281
Common shares issued for 2019 Notes interest expense	—	225
Common shares issuable for service	18	—
Change in fair value of derivative liability	1,189	—
Change in fair value of investment	(575)	—
Gain on deconsolidation of Caelum	—	(18,521)
Research and development-licenses acquired, expense	2,236	1,350
Increase (decrease) in cash and cash equivalents resulting from changes in operating assets and liabilities:		
Accounts receivable	(2,161)	111
Inventory	(195)	(263)
Other receivables - related party	(74)	852
Prepaid expenses and other current assets	2,429	1,812
Other assets	(198)	(903)
Accounts payable and accrued expenses	(2,686)	(3,841)
Accounts payable and accrued expenses - related party	19	(149)
Interest payable	(1,019)	5
Interest payable - related party	(92)	(8)
Lease liabilities	(943)	(940)
Other long-term liabilities	(140)	795
Net cash used in operating activities	(63,196)	(69,909)
Cash Flows from Investing Activities:		
Purchase of research and development licenses	(3,369)	(850)
Purchase of property and equipment	(1,228)	(1,455)
Purchase of intangible asset	(1,000)	(2,400)
Purchase of short-term investment (certificates of deposit)	—	(5,000)
Redemption of short-term investment (certificates of deposit)	—	17,604
Deconsolidation of Caelum	—	(1,201)
Net cash provided by (used in) continuing investing activities	(5,597)	6,698
Net cash provided by discontinued investing activities	—	13,089
Net cash provided by (used in) investing activities	(5,597)	19,787

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
($ in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2020	**2019**
Cash Flows from Financing Activities:		
Payment of Series A preferred stock dividends	$ (4,507)	$ (1,773)
Purchase of treasury stock	(70)	—
Payment of costs related to purchase of treasury stock	(2)	—
Proceeds from issuance of Series A preferred stock	39,075	—
Payment of costs related to issuance of Series A preferred stock	(3,407)	—
Proceeds from issuance of common stock for at-the-market offering	44,796	16,099
Payment of costs related to issuance of common stock for at-the-market offering	(1,506)	(301)
Proceeds from issuance of Series A preferred stock for at-the-market offering	—	539
Payment of costs related to issuance of Series A preferred stock for at-the-market offering	—	(16)
Proceeds from issuance of common stock under ESPP	90	60
Proceeds from partner companies' ESPP	349	—
Partner company’s dividends declared and paid	(50)	—
Proceeds from partner companies' sale of stock	57,729	66,623
Payment of costs related to partner companies' sale of stock	(3,642)	(4,754)
Proceeds from partner companies' at-the-market offering	34,254	30,419
Payment of costs related to partner companies' at-the-market offering	(754)	(739)
Proceeds from partner company's preferred stock offering	8,000	—
Payment of costs related to partner company's preferred stock offering	(912)	—
Proceeds from exercise of partner company’s warrants	13	—
Payment of debt issuance costs associated with 2017 Subordinated Note Financing	(93)	(79)
Payment of debt issuance costs associated with 2018 Venture Notes	(58)	(126)
Proceeds from partner company's Horizon Notes	—	15,000
Payment of debt issuance costs associated with partner company's Horizon Notes	—	(1,393)
Proceeds from Oaktree Note	60,000	—
Payment of debt issuance costs associated with Oaktree Note	(4,239)	—
Repayment of 2017 Subordinated Note Financing	(28,356)	—
Repayment of 2018 Venture Notes	(21,707)	—
Repayment of 2019 Notes	(9,000)	—
Repayment of partner company's Horizon Notes	(15,750)	—
Repayment of IDB Note	(14,858)	—
Net cash provided by financing activities	135,395	119,559
Net increase in cash and cash equivalents and restricted cash	66,602	69,437
Cash and cash equivalents and restricted cash at beginning of period	153,432	81,582
Cash and cash equivalents and restricted cash at end of period	$ 220,034	$ 151,019
Supplemental disclosure of cash flow information:		
Cash paid for interest	$ 6,669	$ 3,976
Cash paid for interest - related party	$ 463	$ 342

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
($ in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2020	**2019**
Supplemental disclosure of non-cash financing and investing activities:		
Settlement of restricted stock units into common stock	$ 2	$ 2
Common shares issuable for license acquired	$ —	$ 164
Issuance of partner company warrants in conjunction with Horizon Notes	$ —	$ 888
Issuance of warrants in conjunction with Oaktree Note	$ 4,419	$ —
Common shares issued from 2017 Subordinated Note Financing interest expense	$ 500	$ —
Common shares issued for 2019 Notes	$ —	$ 500
Unpaid fixed assets	$ 317	$ 288
Partner company's previous paid offering cost	$ —	$ 833
Partner company's unpaid intangible assets	$ 3,727	$ 4,734
Reclass partner company's warrants from liability to equity	$ 1,216	$ —
Unpaid debt offering cost	$ 57	$ —
Unpaid at-the-market offering cost	$ 96	$ —
Unpaid partner company’s offering cost	$ 457	$ —
Unpaid Series A preferred stock offering cost	$ 203	$ —
Unpaid research and development licenses acquired	$ 117	$ —
Retirement of Series A preferred stock	$ 70	$ —

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Organization and Description of Business

Fortress Biotech, Inc. ("Fortress" or the "Company") is a biopharmaceutical company dedicated to acquiring, developing and commercializing pharmaceutical and biotechnology products and product candidates, which the Company does at the Fortress level, at its majority-owned and majority-controlled subsidiaries and joint ventures, and at entities the Company founded and in which it maintains significant minority ownership positions. Fortress has a talented and experienced business development team, comprising scientists, doctors and finance professionals, who identify and evaluate promising products and product candidates for potential acquisition by new or existing partner companies. Fortress through its partner companies has executed such arrangements in partnership with some of the world's foremost universities, research institutes and pharmaceutical companies, including City of Hope National Medical Center, Fred Hutchinson Cancer Research Center, St. Jude Children's Research Hospital, Dana-Farber Cancer Institute, Nationwide Children's Hospital, Cincinnati Children's Hospital Medical Center, Columbia University, the University of Pennsylvania, and AstraZeneca plc.

Following the exclusive license or other acquisition of the intellectual property underpinning a product or product candidate, Fortress leverages its business, scientific, regulatory, legal and finance expertise to help the partners achieve their goals. Partner companies then assess a broad range of strategic arrangements to accelerate and provide additional funding to support research and development, including joint ventures, partnerships, out-licensings, and public and private financings; to date, three partner companies are publicly-traded, and two have consummated strategic partnerships with industry leaders Alexion Pharmaceuticals, Inc. and InvaGen Pharmaceuticals, Inc. ("InvaGen")(a subsidiary of Cipla Limited).

Several of our partner companies possess licenses to product candidate intellectual property, including Aevitas Therapeutics, Inc. ("Aevitas"), Avenue Therapeutics, Inc. ("Avenue"), Baergic Bio, Inc. ("Baergic"), Caelum Biosciences, Inc. ("Caelum"), Cellvation, Inc. ("Cellvation"), Checkpoint Therapeutics, Inc. ("Checkpoint"), Cyprium Therapeutics, Inc. ("Cyprium"), Helocyte, Inc. ("Helocyte"), Journey Medical Corporation ("Journey" or "JMC"), Mustang Bio, Inc. ("Mustang") and Oncogenuity, Inc. ("Oncogenuity").

Liquidity and Capital Resources

Since inception, the Company's operations have been financed primarily through the sale of equity and debt securities, from the sale of partner companies, and the proceeds from the exercise of warrants and stock options. The Company has incurred losses from operations and negative cash flows from operating activities since inception and expects to continue to incur substantial losses for the next several years as it continues to fully develop and prepare regulatory filings and obtain regulatory approvals for its existing and new product candidates. The Company's current cash and cash equivalents are sufficient to fund operations for at least the next 12 months. However, the Company will need to raise additional funding through strategic relationships, public or private equity or debt financings, sale of a partner company, grants or other arrangements to fully develop and prepare regulatory filings and obtain regulatory approvals for the existing and new product candidates, fund operating losses, and, if deemed appropriate, establish or secure through third parties manufacturing for the potential products, sales and marketing capabilities. If such funding is not available or not available on terms acceptable to the Company, the Company's current development plan and plans for expansion of its general and administrative infrastructure may be curtailed. The Company also has the ability, subject to limitations imposed by Rule 144 of the Securities Act of 1933 and other applicable laws and regulations, to raise money from the sale of common stock of the public companies in which it has ownership positions. In addition to the foregoing, the Company does not expect any material impact on its development timelines, revenue levels and its liquidity due to the worldwide spread of COVID-19 (except as may be implicated by the Material Adverse Effect claimed by InvaGen in connection with their agreement with Avenue). However, the Company is continuing to assess the impact the spread of COVID-19 may have on its operations. Avenue will also continue to assess the alleged Material Adverse Effect claimed by InvaGen.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited)

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, the unaudited interim condensed consolidated financial statements reflect all adjustments, which include only normal recurring adjustments necessary for the fair statement of the balances and results for the periods presented. Certain information and footnote disclosures normally included in the Company's annual financial statements prepared in accordance with GAAP have been condensed or omitted. These condensed consolidated financial statement results are not necessarily indicative of results to be expected for the full fiscal year or any future period.

The unaudited condensed consolidated financial statements and related disclosures have been prepared with the presumption that users of the unaudited condensed consolidated financial statements have read or have access to the audited financial statements for the preceding fiscal year for each of the companies: Avenue, Checkpoint and Mustang. Accordingly, these unaudited condensed consolidated financial statements should be read in conjunction with the Company's Form 10-K, which was filed with the United States Securities and Exchange Commission ("SEC") on March 16, 2020, from which the Company derived the balance sheet data at December 31, 2019, as well as Checkpoint's Form 10-K, filed with the SEC on March 11, 2020, Mustang's Form 10-K, filed with the SEC on March 16, 2020, and Avenue's Form 10-K, filed with the SEC on March 30, 2020.

The Company's unaudited condensed consolidated financial statements include the accounts of the Company's subsidiaries. For consolidated entities where the Company owns less than 100% of the subsidiary, the Company records net loss attributable to non-controlling interests in its consolidated statements of operations equal to the percentage of the economic or ownership interest retained in such entities by the respective non-controlling parties. The Company also consolidates subsidiaries in which it owns less than 50% of the subsidiary but maintains voting control. The Company continually assesses whether changes to existing relationships or future transactions may result in the consolidation or deconsolidation of partner companies.

The preparation of the Company's unaudited condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the unaudited condensed consolidated financial statements and the reported amounts of expenses during the reporting period.

Use of Estimates

The Company's unaudited condensed consolidated financial statements include certain amounts that are based on management's best estimates and judgments. The Company's significant estimates include, but are not limited to, useful lives assigned to long-lived assets, fair value of stock options and warrants, stock-based compensation, common stock issued to acquire licenses, investments, accrued expenses, provisions for income taxes and contingencies. Due to the uncertainty inherent in such estimates, actual results may differ from these estimates.

Significant Accounting Policies

There have been no material changes in the Company's significant accounting policies to those previously disclosed in the 2019 Annual Report.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
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Recently Adopted Accounting Pronouncements

In August 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2018-13, *Fair Value Measurement (Topic 820), - Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement*, which makes a number of changes meant to add, modify or remove certain disclosure requirements associated with the movement amongst or hierarchy associated with Level 1, Level 2 and Level 3 fair value measurements. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. On January 1, 2020, the Company's adoption of this guidance to did not have a material impact on its condensed consolidated financial statements.

Recently Issued Accounting Pronouncements

In August 2020, the FASB issued ASU No. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20)*("ASU 470-20") *and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* ("ASU 815-40"), which simplifies accounting for convertible instruments by removing major separation models required under current GAAP. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception and it also simplifies the diluted earnings per share calculation in certain areas. The ASU is effective for public business entities that meet the definition of a Securities and Exchange Commission (SEC) filer and will be effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years, for the Company as it is a smaller reporting company. Early adoption will be permitted. The Company is currently evaluating the impact of this standard on its condensed consolidated financial statements and related disclosures.

In June 2016, the FASB issued ASU 2016-13, *"Financial Instruments – Credit Losses"*. The ASU sets forth a "current expected credit loss" (CECL) model which requires the Company to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions, and reasonable supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial assets measured at amortized cost and applies to some off-balance sheet credit exposures. This ASU is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years, with early adoption permitted. Recently, the FASB issued the final ASU to delay adoption for smaller reporting companies to calendar year 2023. The Company is currently assessing the impact of the adoption of this ASU on its condensed consolidated financial statements.

In December 2019, the FASB issued ASU No. 2019-12, *"Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*("ASU 2019-12"), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating the impact of this standard on its consolidated financial statements and related disclosures.

3. Discontinued Operations

The table below depicts the cash flows from the sale of the Company's investment in National Holdings Corporation, a diversified independent brokerage company (together with its subsidiaries, herein referred to as "NHLD" or "National") for the nine months ended September 30, 2019:

($ in thousands)	**For the Nine Months Ended September 30, 2019**
Investing activities	
Proceeds from sale of National	$ 13,089
Total cash provided by discontinued investing activities	$ 13,089

At September 30, 2020 and 2019, the Company had no ownership interest in National.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited)

4. Collaboration and Stock Purchase Agreements

Caelum

Agreement with Alexion

In January 2019, Caelum entered into a Development, Option and Stock Purchase Agreement (the "DOSPA") and related documents by and among Caelum, Alexion Therapeutics, Inc. ("Alexion"), the Company and Caelum security holders as parties thereto (such security holders, including Fortress, the "Sellers"). Under the terms of the agreement, Alexion purchased a 19.9% minority equity interest in Caelum for $30 million. Additionally, Alexion has agreed to make potential payments to Caelum upon the achievement of certain developmental milestones, in exchange for which Alexion obtained a contingent exclusive option to acquire the remaining equity in Caelum. The agreement also provides for potential additional payments, in the event Alexion exercises the purchase option, for up to $500 million, which includes an upfront option exercise payment and potential regulatory and commercial milestone payments.

In December 2019, following the U.S. Food and Drug Administration ("FDA") feedback which resulted in the redesign and expansion of Caelum's planned clinical development program for its lead product candidate, CAEL-101, Caelum entered into an Amended and Restated DOSPA, which amended the terms of the existing agreement with Alexion. The amendment modified the terms of Alexion's option to acquire the remaining equity in Caelum based on data from the expanded Phase 2/3 trials. The amendment also modified the development-related milestone events associated with the initial $30 million in contingent payments, provided for an additional $20 million in upfront funding, as well as funding of $60 million in exchange for an additional equity interest in Caelum at fair value upon achievement of a specific development-related milestone event.

In September 2020, following its Phase 2 open-label dose escalation study, Caelum announced the initiation of its Cardiac Amyloid Reaching for Extended Survival ("CARES") Phase 3 clinical program to evaluate CAEL-101 a first-in-class amyloid fibril targeted therapy, in combination with standard-of-care (SoC) therapy in AL amyloidosis. The CARES clinical program includes two parallel Phase 3 studies – one in patients with Mayo stage 3a disease and one in patients with Mayo stage 3b disease – and will collectively enroll approximately 370 patients globally. Enrollment is underway in both studies. The primary objective of the clinical program is to assess overall survival. The Phase 2 program continues with the addition of a study arm to evaluate CAEL-101 in combination with SoC therapy plus daratumumab.

Avenue

Agreement with InvaGen

On November 12, 2018, the Company's partner company, Avenue, entered into a Stock Purchase and Merger Agreement ("Avenue SPMA") with InvaGen Pharmaceuticals Inc. ("InvaGen") and Madison Pharmaceuticals Inc., a newly formed, wholly-owned subsidiary of InvaGen. Pursuant to the Avenue SPMA, and following approval by Avenue's stockholders on February 8, 2019, InvaGen purchased a number of shares of Avenue common stock representing 33.3% of Avenue's fully diluted capital stock for net proceeds to Avenue of $ 31.5 million (after deducting fees and other offering-related costs).

Upon the achievement of certain closing conditions (including most notably FDA approval for IV Tramadol, Avenue's product candidate), InvaGen will be obligated to acquire Avenue via reverse subsidiary merger (the "Merger Transaction"). Under the Merger Transaction, InvaGen will pay $180 million (subject to certain potential reductions) to the holders of Avenue's capital stock (other than InvaGen itself). In October 2020, InvaGen communicated to Avenue that it believes a Material Adverse Effect (as defined in the Avenue SPMA) has occurred, due to the COVID-19 pandemic, which means that it is possible that InvaGen is attempting to avoid their obligations to consummate the second stage closing under the Avenue SPMA. Avenue disagrees with InvaGen's assertion that a Material Adverse Effect has occurred, and Avenue has advised InvaGen of this position.

Subject to the terms and conditions described in the Avenue SPMA, InvaGen may also provide interim financing to Avenue in an amount of up to $7.0 million during the time period between February 8, 2019 and the Merger Transaction. Any amounts drawn on the interim financing will be deducted from the aggregate consideration payable to Company stockholders by virtue of the Merger Transaction.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
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Prior to the closing of the Merger Transaction, Avenue will enter into a Contingent Value Rights Agreement (the "CVR Agreement") with a trust company as rights agent, pursuant to which holders of common shares of Avenue, other than InvaGen (each, a "Holder"), will be entitled to receive on Contingent Value Right ("CVR") for each share held immediately prior to the Merger Transaction.

Each CVR represents the right of its holder to receive a contingent cash payment pursuant to the CVR Agreement upon the achievement of certain milestones. If, during the period commencing on the day following the closing of the Merger Transaction until December 31, 2028, IV Tramadol generates at least $325 million or more in Net Sales (as defined in the CVR Agreement) in a calendar year, each Holder shall be entitled to receive their pro rata share of (i) if the product generated less than $400 million in Net Sales during such calendar year, 10% of Gross Profit (as defined in the CVR Agreement), (ii) if the product generated between $400 million and $500 million in Net Sales during such calendar year, 12.5% of Gross Profit, or (iii) if the product generated more than $500 million in Net Sales during such calendar year, 15% of Gross Profit. Additionally, at any time beginning on January 1, 2029 that IV Tramadol has generated at least $1.5 billion in aggregate Net Sales, then with respect to each calendar year in which IV Tramadol generates $100 million or more in Net Sales, each Holder shall be entitled to receive their pro rata share of an amount equal to 20% of the Gross Profit generated by IV Tramadol. These additional payments will terminate on the earlier of December 31, 2036 and the date (which may be extended by up to 6 months) that any person has received approval from the FDA for an Abbreviated New Drug Application ("NDA") or an FDA AP-rated 505(b)(2) NDA using IV Tramadol.

On October 12, 2020, Avenue announced that it had received a Complete Response Letter ("CRL") from the FDA regarding Avenue's NDA for IV Tramadol. The CRL cited deficiencies related to the terminal sterilization validation and stated that IV Tramadol, intended to treat patients in acute pain who require an opioid, is not safe for the intended patient population. Avenue requested a meeting with the FDA to resolve the issues described in the CRL and the meeting has been scheduled for the fourth quarter of 2020.

Also in October 2020, InvaGen Pharmaceuticals Inc. ("InvaGen") communicated to Avenue that it believes a Material Adverse Effect (as defined in the Stock Purchase and Merger Agreement ("Avenue SPMA")) has occurred, due to the COVID-19 pandemic, which means that it is possible that InvaGen is attempting to avoid their obligations to consummate the second stage closing under the Avenue SPMA. Avenue disagrees with InvaGen's assertion that a Material Adverse Effect has occurred, and Avenue has advised InvaGen of this position.

5. Property and Equipment

Fortress' property and equipment consisted of the following:

($ in thousands)	Useful Life (Years)	September 30, 2020 (Unaudited)	December 31, 2019
Computer equipment	3	$ 662	$ 648
Furniture and fixtures	5	1,199	1,162
Machinery & equipment	5	5,014	4,594
Leasehold improvements	5-15	10,580	9,358
Construction in progress [1]	N/A	821	1,157
Total property and equipment		18,276	16,919
Less: Accumulated depreciation		(6,162)	(4,486)
Property and equipment, net		$ 12,114	$ 12,433

Note 1: Relates to the Mustang cell processing facility.

Fortress' depreciation expense for the three months ended September 30, 2020 and 2019 was approximately$0.6 million and $0.5 million, respectively, and was recorded in both research and development expense and general and administrative expense in the condensed consolidated statements of operations.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
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(Unaudited)

Fortress' depreciation expense for the nine months ended September 30, 2020 and 2019 was approximately $1.7 million and $1.4 million, respectively, and was recorded in both research and development expense and general and administrative expense in the condensed consolidated statements of operations.

6. Fair Value Measurements

Certain of the Company's financial instruments are not measured at fair value on a recurring basis but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as accounts payable, accrued expenses and other current liabilities.

Fair Value of Caelum

As of September 30, 2020, the Company valued its investment in Caelum in accordance with ASC Topic 820,*Fair Value Measurements and Disclosures*, and estimated the fair value to be $11.7 million based on a per share value of $1.62. As of September 30, 2020, the following inputs were utilized to derive the value: risk free rate of return of 0.12%, volatility of 70% and a discount for lack of marketability of 28.6%.

As of December 31, 2019, the Company valued its investment in Caelum in accordance with ASC Topic 820,*Fair Value Measurements and Disclosures*, and estimated the fair value to be $11.1 million based on a per share value of $1.54. As of December 31, 2019, the following inputs were utilized to derive the value: risk free rate of return of 1.6%, volatility of 70% and a discount for lack of marketability of 28.7%.

Cyprium Warrant Liability

During the quarter ended September 30, 2020, Cyprium raised approximately $8.0 million in Perpetual Preferred Shares ("Cyprium Offering," see Note 14). The Cyprium Offering coupled with the repayment of the 2018 Venture Debt (see Note 10), triggered the issuance of the Cyprium Warrant, in that a price per share could be established. As such these events resulted in Cyprium recording the Cyprium Warrant as issued rather than contingently issuable.

The fair value of the Cyprium Warrants in connection with the 2018 Venture Debt was determined by applying management's estimate of the probability of issuance of the Contingently Issuable Warrants together with an option-pricing model, with the following key assumptions:

	September 30, 2020	December 31, 2019
Risk-free interest rate	0.69 %	1.92 %
Expected dividend yield	—	—
Expected term in years	10.0	10.0
Expected volatility	85 %	93 %
Probability of issuance of the warrant	100 %	5 %

($ in thousands)	Cyprium Contingently Issuable Warrant Liability
Beginning balance at January 1, 2020	$ 27
Change in fair value	1,189
Reclass partner company's warrants from liability to equity	(1,216)
Ending balance at September 30, 2020	$ -

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited)

The following tables classify into the fair value hierarchy of Fortress' financial instruments, measured at fair value as of September 30, 2020 and December 31, 2019:

	Fair Value Measurement as of September 30, 2020			
($ in thousands)	Level 1	Level 2	Level 3	Total
Assets				
Fair value of investment in Caelum	$ —	$ —	$ 11,723	$ 11,723
Total	$ —	$ —	$ 11,723	$ 11,723

	Fair Value Measurement as of December 31, 2019			
($ in thousands)	Level 1	Level 2	Level 3	Total
Assets				
Fair value of investment in Caelum	$ —	$ —	$ 11,148	$ 11,148
Total	$ —	$ —	$ 11,148	$ 11,148

	Fair Value Measurement as of December 31, 2019			
($ in thousands)	Level 1	Level 2	Level 3	Total
Liabilities				
Warrant liabilities	$ —	$ —	$ 27	$ 27
Total	$ —	$ —	$ 27	$ 27

The table below provides a roll-forward of the changes in fair value of Level 3 financial instruments as of September 30, 2020:

($ in thousands)	Investment in Caelum	Warrant Liabilities	Total
Balance at December 31, 2019	$ 11,148	$ 27	$ 11,175
Change in fair value	—	1,189	1,189
Reclass partner company's warrants from liability to equity	—	(1,216)	(1,216)
Change in fair value of investments	575	—	575
Balance at September 30, 2020	$ 11,723	$ —	$ 11,723

As of September 30, 2020, no transfers occurred between Level 1, Level 2 and Level 3 instruments.

7. Licenses Acquired

In accordance with ASC 730-10-25-1, *Research and Development*, costs incurred in obtaining technology licenses are charged to research and development expense if the technology licensed has not reached technological feasibility and has no alternative future use. The licenses purchased by Fortress and its partner companies require substantial completion of research and development, and regulatory and marketing approval efforts in order to reach technological feasibility. As such, for the three and nine months ended September 30, 2020 and 2019, the purchase price of licenses acquired was classified as research and development-licenses acquired in the condensed consolidated Statements of operations as reflected in the table below:

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited)

($ in thousands)	Three Months Ended September 30, 2020	Three Months Ended September 30, 2019	Nine Months Ended September 30, 2020	Nine Months Ended September 30, 2019
Partner companies:				
Mustang	$ 287	$ 700	$ 1,837	$ 1,350
Aevitas	162	—	162	—
Baergic	8	—	8	—
Oncogenuity	1	—	271	—
Total	$ 458	$ 700	$ 2,278	$ 1,350

Mustang

SIRION Biotech GmbH - LentiBOOST™ (MB-207)

On September 30, 2020, Mustang entered into an exclusive, worldwide licensing agreement with SIRION Biotech ("SIRION") for the rights to SIRION's LentiBOOST™ technology for the development of MB-207, Mustang's lentiviral gene therapy for the treatment of previously transplanted patients with X-linked severe combined immunodeficiency (the "SIRION Technology License"). Pursuant to the SIRION Technology License, which requires payment in Euro, the Company paid SIRION a one-time upfront fee of $0.1 million (€0.1 million) during the three and nine months ended September 30, 2020. In addition, five future development milestone payments totaling up to approximately $5.6 million (€4.7 million) in the aggregate are due upon achievement of certain milestones. Additional milestone payments totaling up to $4.1 million (€3.5 million) in the aggregate are due in connection with the achievement of three commercial milestones and low- to mid-single digit royalties are due on aggregate cumulative worldwide net sales of licensed products.

For the three and nine months ended September 30, 2020 and 2019, Mustang recorded the following expense in research and development for licenses acquired:

($ in thousands)	For the Three Months Ended September 30, 2020	For the Three Months Ended September 30, 2019	For the Nine Months Ended September 30, 2020	For the Nine Months Ended September 30, 2019
City of Hope National Medical Center				
CD123 (MB-102)[3]	$ —	$ —	$ 334	$ 250
IL13Rα2 (MB-101)[3]	—	—	333	—
HER2 (MB-103)[1]	—	—	250	—
CS1 (MB-104)	—	—	—	200
PSCA (Spacer)[3]	—	200	333	200
Fred Hutch - CD20 (MB-106)[2]	—	—	300	—
Nationwide Children's Hospital - C134 (MB-108)	—	—	—	200
CSL Behring (Calimmune)	170	200	170	200
UCLA	—	300	—	300
SIRION LentiBOOST™	117	—	117	—
Total	$ 287	$ 700	$ 1,837	$ 1,350

Note 1: Represents a non-refundable milestone payment in connection with the twelth patient treated in the Phase 1 clinical study of MB-103 at COH, for the nine months ended September 30, 2020.

Note 2: Represents a non-refundable milestone payment in connection with the twelth patient treated in the Phase 1 clinical study of MB-106 at Fred Hutch, for the nine months ended September 30, 2020.

Note 3: Represents a milestone payment to COH in connection with Mustang's public underwritten offerings, for the nine months ended September 30, 2020.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
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Oncogenuity

Effective May 6, 2020, Oncogenuity entered into a license agreement with the Trustees of Columbia University in the City of New York ("Columbia") to develop novel oligonucleotides for the treatment of genetically driven cancers (the "Columbia License"). The proprietary platform produces oligomers, known as "ONCOlogues."

As consideration for the Columbia License, Oncogenuity paid an upfront fee of $0.3 million, and Fortress transferred to Columbia 1,000,000 shares of Oncogenuity common stock, representing 10.00% ownership of Oncogenuity. In connection with the share transfer, Oncogenuity also provided Columbia with limited anti-dilution protection. Oncogenuity valued the stock grant to Columbia utilizing a discounted cash flow model to determine the weighted market value of invested capital, discounted by a lack of marketability of 41.7%, weighted average cost of capital of 20.5%, and net of debt utilized, resulting in a value of $0.021 per share or $21,000 for the three and nine months ended September 30, 2020. Since a portion of the acquisition of the license was settled through the transfer of shares of Oncogenuity's common stock, this transaction fell within the scope of *ASC Topic 718, Compensation-Stock Compensation*, since equity was transferred in exchange for goods (the license). Specifically, Oncogenuity recorded the cost of the license as a non-employee share based payment, measured at the grant date fair value of the common stock. The common shares were equity-classified. The anti-dilution provision was concluded to represent a performance condition tied to a future liquidity event, which was not considered as probable to occur at September 30, 2020, because it was deemed outside of Oncogenuity's control.

Development milestone payments totaling up to approximately $18.0 million in the aggregate are due upon achievement of certain milestones in connection with the initial indication. Additional milestone payments totaling up to $15.3 million in the aggregate are due in connection with product development milestones for subsequent indications. A $15.0 million sales milestone is due upon the achievement of a licensed product sales threshold, and low- to mid-single digit royalties are due on aggregate cumulative worldwide net sales of licensed products.

For the three and nine months ended September 30, 2020, Oncogenuity recorded expense of nil and $0.3 million in research and development - licenses acquired in the Company's condensed consolidated statements of operations.

8. Sponsored Research and Clinical Trial Agreements

Aevitas

For the three and nine months ended September 30, 2020 and 2019, Aevitas recorded the following expense in connection with its sponsored research and clinical trial agreements:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
($ in thousands)	**2020**	**2019**	**2020**	**2019**
UMass - adeno-associated virus ("AAV")	163	—	218	—
UPenn - AAV	—	255	567	755
Duke - AAV	—	17	—	17
Total	$ 163	$ 272	$ 785	$ 772

Cellvation

For the three and nine months ended September 30, 2020 no expenses were incurred. For the three and nine months ended September 30 2019, Cellvation recorded expense of $0.1 million, in connection with its sponsored research arrangement with the University of Texas. The expense was recorded in research and development expense in the Company's condensed consolidated statements of operations.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
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Mustang

CS1(MB-104) Clinical Research and Support Agreement with COH

In June 2020, Mustang entered into a clinical research and support agreement with COH in connection with an Investigator-sponsored study conducted under an Institutional Review Board-approved, investigator-initiated protocol entitled: "Phase I Study to Evaluate Cellular Immunotherapy Using Memory-Enriched T Cells Lentivirally Transduced to Express a CS1-Targeting, Hinge-Optimized, 41BB-Costimulatory Chimeric Antigen Receptor and a Truncated EGFR Following Lymphodepleting Chemotherapy in Adult Patients with CS1+ Multiple Myeloma." The CAR T being studied under this protocol has been designated by Mustang as MB-104. Under the terms of the agreement Mustang paid COH $0.8 million during the three months ended September 30, 2020 for costs incurred and will reimburse COH for costs associated with this trial, when incurred, not to exceed $2.4 million. The agreement will expire upon the delivery of the final study report or earlier. Expense of $0.1 million an $0.8 million was incurred for the three and nine months ended September 30, 2020.

XSCID (MB-107) Data Transfer Agreement with St. Jude

In June 2020, Mustang entered into a Data Transfer Agreement with St. Jude under which Mustang will reimburse St. Jude for costs associated with St. Jude's clinical trial for the treatment of infants with X-linked Severe Combined Immunodeficiency ("XSCID"). Pursuant to the terms of this agreement Mustang paid an upfront fee of $1.1 million on July 1, 2020 and will continue to reimburse St. Jude for costs incurred in connection with this trial.

For the three and nine months ended September 30, 2020 and 2019, Mustang recorded the following expense in research and development for sponsored research and clinical trial agreements:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
($ in thousands)	2020	2019	2020	2019
City of Hope National Medical Center	$ —	$ 500	$ 500	$ 1,500
CD123 (MB-102)	48	269	344	1,028
IL13Rα2 (MB-101)	96	244	422	811
Manufacturing	—	114	—	343
CS1 (MB-104)	65	—	835	—
Beth Israel Deaconess Medical Center - CRISPR	—	—	—	69
St. Jude Children's Research Hospital - XSCID (MB-107)	107	—	1,665	—
Fred Hutchinson Cancer Research Center - CD20 (MB-106)	418	49	1,134	690
Total	$ 734	$ 1,176	$ 4,900	$ 4,441

Oncogenuity

Pursuant to the terms of the Columbia License, Oncogenuity will pay up to $4.8 million to Columbia semiannually for five years ending in November 2024.

For the three and nine months ended September 30, 2020, Oncogenuity recorded expense of $0.2 million and $0.3 million, respectively, in research and development in the Company's condensed consolidated statements of operations. No expense was recorded in 2019.

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9. Intangibles, net

On July 29, 2020 Journey entered into a license and supply agreement with a third party for an oral acne treatment. Pursuant to the terms and conditions of the License and Supply Agreement ("LSA"), Journey agreed to pay $5.0 million, comprised of an upfront payment of $1.0 million paid upon execution with remaining payments due as follows: $1.0 million upon achievement of two marketing milestones and $3.0 million due in $1.0 million installments, commencing on the 18-month anniversary, the 24-month anniversary and the 36-month anniversary of execution of the LSA. Three additional milestone payments totaling $17.0 million are due upon the achievement of certain net sales milestones. Royalties in the mid, single digits based on net sales, subject to specified reductions are also due.

In accordance with ASU 2017-01, *Business Combinations (Topic 805): Clarifying the Definition of a Business*, Journey determined the conditions of the LSA did not constitute the purchase of a business, and therefore recorded the consideration as an asset, to be amortized over the expected life of the product, which is deemed to be five years. In addition, Journey determined pursuant to ASC 450, *Contingencies,* that royalty payments in connection with the LSA will be recorded when they become payable with a corresponding charge to cost of goods sold.

In accordance with the installment payment terms of the LSA, Journey recorded a discount for imputed interest per ASC 835-30 *Interest-Imputed Interest* of $0.3 million. As of September 30, 2020, Journey recorded a net intangible asset related to this transaction of $4.7 million which was recorded on the Company's condensed consolidated balance sheet.

The table below provides a summary of the Journey intangible assets as of September 30, 2020 and December 31, 2019, respectively:

($ in thousands)	Estimated Useful Lives (Years)	September 30, 2020 (Unaudited)	December 31, 2019
Total Intangible assets – asset purchases	3 to 7	$ 14,661	$ 9,934
Accumulated amortization		(3,622)	(2,557)
Net intangible assets		$ 11,039	$ 7,377

The table below provides a summary for the nine months ended September 30, 2020, of Journey's recognized expense related to its product licenses, which was recorded in costs of goods sold on the condensed consolidated statement of operations:

($ in thousands)	Intangible Assets, Net
Beginning balance at January 1, 2020	$ 7,377
Additions:	
Oral acne treatment license acquisition[1]	4,727
Amortization expense	(1,065)
Ending balance at September 30, 2020	$ 11,039

Note 1: As of September 30, 2020, this asset has not yet been placed in service, therefore no amortization expense was recognized on this asset for the quarter ended September 30, 2020. The Company expects the asset to be placed in service in the first half of 2021. Once the asset is placed in service the Company will amortize the asset over five years, which represents its expected useful life.

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The future amortization of these intangible assets is as follows:

($ in thousands)	Ximino®	Exelderm®	Total Amortization
Three Months Ended December 31, 2020	$ 254	$ 100	$ 354
Year Ended December 31, 2021	1,019	267	1,286
Year Ended December 31, 2022	1,019	—	1,019
Year Ended December 31, 2023	1,019	—	1,019
Year Ended December 31, 2024	1,019	—	1,019
Thereafter	1,615	—	1,615
Sub-total	$ 5,945	$ 367	$ 6,312
Asset not yet placed in service			4,727
Total	$ 5,945	$ 367	$ 11,039

10. Debt and Interest

Debt

During the quarter ended September 30, 2020 the Company entered into a new credit facility with Oaktree Fund Administration, LLC, as the administrative agent (in such capacity, the "Agent"), and the lenders from time to time party thereto (each a "Lender" or "Oaktree" and collectively, the "Lenders"), as described below (the "Oaktree Note"). The Company utilized the proceeds from the Oaktree Note to repay the 2017 Subordinated Notes, the 2018 Venture Notes and the 2019 Notes. The Company also repaid the IDB Note utilizing the cash collateral securing the IDB Note, which was classified as restricted cash on the Company's consolidated condensed balance sheet. In addition, on September 30, 2020 Mustang repaid the Mustang Horizon Notes.

Total debt consists of the following as of September 30, 2020 and December 31, 2019:

($ in thousands)	September 30, 2020	December 31, 2019	Interest rate	Maturity
IDB Note	$ —	$ 14,929	2.25 %	Aug - 2021
2017 Subordinated Note Financing[3]	—	3,254	8.00 %	March - 2022
2017 Subordinated Note Financing[3]	—	13,893	8.00 %	May - 2022
2017 Subordinated Note Financing[3]	—	1,820	8.00 %	June - 2022
2017 Subordinated Note Financing[3]	—	3,018	8.00 %	August - 2022
2017 Subordinated Note Financing	—	6,371	8.00 %	September - 2022
2018 Venture Notes[4]	—	6,517	8.00 %	August - 2021
2018 Venture Notes[4]	—	15,190	8.00 %	September - 2021
2019 Notes[1]	—	9,000	12.00 %	September - 2021
Mustang Horizon Notes[2]	—	15,750	9.00 %	October - 2022
Oaktree Note	60,000	—	11.00 %	August - 2025
Total notes payable	60,000	89,742		
Less: Discount on notes payable	8,607	5,086		
Total notes payable	$ 51,393	$ 84,656		

Note 1: Formerly the Opus Credit Facility (see Note 16.)
Note 2: Interest rate was 9.0% plus one-month LIBOR Rate in excess of 2.5%.
Note 3: As a result of a one-year maturity date extension effective 2020, the interest rate increased by1% to 9.0%.
Note 4: At December 31, 2019, $6.0 million is included in Notes payable, short-term on the condensed consolidated balance sheet.

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Interest Expense

The following table shows the details of interest expense for all debt arrangements during the periods presented. Interest expense includes contractual interest; fees include amortization of the debt discount and amortization of fees associated with loan transaction costs, amortized over the life of the loan:

	Three Months Ended September 30,					
	2020			2019		
($ in thousands)	*Interest*	*Fees*	Total	*Interest*	*Fees*	Total
IDB Note	$ 77	$ —	$ 77	$ 86	$ —	$ 86
2017 Subordinated Note Financing[1]	694	1,374	2,068	1,072	326	1,398
2019 Notes	172	—	172	275	104	379
2018 Venture Notes[1]	387	638	1,025	438	166	604
LOC Fees	14	—	14	14	—	14
Mustang Horizon Notes[1,3]	895	1,792	2,687	345	234	579
Oaktree Note[1]	624	108	732	—	—	—
Note Payable[2]	187	—	187	—	108	108
Other	(4)	—	(4)	—	—	—
Total Interest Expense and Financing Fee	$ 3,046	$ 3,912	$ 6,958	$ 2,230	$ 938	$ 3,168

	Nine Months Ended September 30,					
	2020			2019		
($ in thousands)	*Interest*	*Fees*	Total	*Interest*	*Fees*	Total
IDB Note	$ 246	$ —	$ 246	$ 254	$ -	$ 254
2017 Subordinated Note Financing[1]	2,870	1,890	4,760	3,148	1,081	4,229
2019 Notes	710	—	710	840	336	1,176
2018 Venture Notes[1]	1,253	1,000	2,253	1,299	468	1,767
LOC Fees	45	—	45	45	—	45
Mustang Horizon Notes[1,3]	1,585	2,321	3,906	698	466	1,164
Oaktree Note[1]	624	108	732	—	—	—
Note Payable[2]	492	—	492	—	108	108
Other	(2)	—	(2)	—	—	—
Total Interest Expense and Financing Fee	$ 7,823	$ 5,319	$ 13,142	$ 6,284	$ 2,459	$ 8,743

Note 1: For the three and nine months ended September 30, 2020, $1.2 million expense of unamortized debt discount fees for the 2017 Subordinated Note Financing, $0.3 million for the 2018 Venture Notes and $1.8 million for the Mustang Horizon Notes.
Note 2: Imputed interest expense related to Journey's agreements for Ximino and oral acne treatment.
Note 3: Included in interest expense for the three and nine months ended September 30, 2020 was $0.6 million of prepayment penalties included in interest expense for the Mustang Horizon Notes.

Oaktree Note

On August 27, 2020 (the "Closing Date"), Fortress, as borrower, entered into a $60.0 million senior secured credit agreement (the "Agreement") with Oaktree. The Company borrowed the full $60.0 million in connection with the terms of the Oaktree Note on the Closing Date and used the bulk of the proceeds to repay its outstanding debt to other lenders (2017 Subordinated Notes, 2018 Venture Notes and 2019 Notes (previously the "Opus Credit Facility")).

The Oaktree Note bears interest at a fixed annual rate of11.0%, payable quarterly and maturing on the fifth anniversary of the Closing Date, August 27, 2025, the ("Maturity Date"). The Company is required to make quarterly interest-only payments until the Maturity Date, at which point the outstanding principal amount is due. The Company may voluntarily prepay the Oaktree Note at any time subject to a Prepayment Fee as defined in the Terms section. The Company is required to make mandatory prepayments of the Oaktree Note under various circumstances as defined in the Terms section. No amounts paid or prepaid may be reborrowed without Oaktree consent.

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The Agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of permitted indebtedness, and dividends and other distributions, subject to certain exceptions. In addition, the Agreement contains certain financial covenants, including, among other things, (i) maintenance of minimum liquidity by the Company, and (ii) a minimum revenue test that is subject to certain exclusions. Failure by the Company to comply with the financial covenants will result in an event of default, subject to certain cure rights of the Company.

The Agreement contains customary events of default, in certain circumstances subject to customary cure periods. Following an event of default and any cure period, if applicable, the Agent will have the right upon notice to accelerate all amounts outstanding under the Agreement, in addition to other remedies available to the lenders as secured creditors of the Company. The Agreement grants a security interest in favor of the Agent, for the benefit of the lenders, in substantially all of the Company's assets as collateral securing the Company's obligations under the Agreement, except for: (i) certain interests in controlled foreign corporation subsidiaries of the Company; (ii) the Company's holdings in Avenue; and (iii) those portions of the Company's holdings in certain subsidiaries (plus Caelum) that are encumbered by pre-existing equity pledges to certain of the Company's officers.

Pursuant to the terms of the Agreement on the Closing Date the Company paid Oaktree an upfront commitment fee equal to 3% of the $60.0 million, or $1.8 million. In addition, the Company paid a $35,000 Agency fee to the Agent which was due on the Closing Date and will be due annually, together with fees of $2.5 million directly to third parties involved in the transaction.

In connection with the Oaktree Note, the Company issued warrants to Oaktree and certain of its affiliates to purchase up to 1,749,450 shares of common stock (see Note 14) with a relative fair value of $4.4 million.

As of September 30, 2020, the Company recorded the fees totaling $8.7 million ($1.8 million to Oaktree, $2.5 million of expenses paid to third-parties and $4.4 million representing the relative fair value of the Oaktree Warrants) to debt discount. These costs will be amortized over the term of the Oaktree Note.

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11. Accrued Liabilities and other Long-Term Liabilities

Accrued expenses and other long-term liabilities consisted of the following:

($ in thousands)	September 30, 2020	December 31, 2019
Accrued expenses:		
Professional fees	$ 1,672	$ 1,153
Salaries, bonus and related benefits	5,677	6,683
Accrued expense - related party	19	—
Research and development	4,604	4,215
Research and development - manufacturing	—	1,017
Research and development - license maintenance fees	629	361
Research and development - milestones	600	—
Accrued royalties payable	1,908	2,320
Accrued coupon expense	5,476	8,391
Other	547	1,259
Total accrued expenses	$ 21,132	$ 25,399
Other long-term liabilities:		
Deferred rent and long-term lease abandonment charge[1]	$ 1,996	$ 2,136
Long-term notes payable, net (Journey)		
Ximino agreement[2]	3,456	4,990
Oral acne treatment agreement[3]	2,753	—
Total other long-term liabilities	$ 8,205	$ 7,126

Note 1: As of September 30, 2020, and December 31, 2019, the balance consists of deferred charges related to build-out of the New York facility.

Note 2: As of September 30, 2020, and December 31, 2019, the imputed interest discount was $1.5 million and $2.0 million, respectively, in connection with its acquisition of Ximino in July 2019. Amortization of interest discount was $0.5 million for the nine months ended September 30, 2020, and $0.1 million for the nine months ended September 30, 2019. As of September 30, 2020, $2.0 million of note payable was classified as short-term.

Note 3: As of September 30, 2020, the imputed discount balance was $0.2 million. The imputed interest discount was calculated utilizing a 4.00% effective rate, which represents the market rate for an asset-backed three year loan, secured by receivables. As of September 30, 2020, $1.0 million of note payable was classified as short-term.

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12. Non-Controlling Interests

Non-controlling interests in consolidated entities are as follows:

($ in thousands)	As of September 30, 2020 NCI equity share	For the nine months ended September 30, 2020 Net loss attributable to non-controlling interests	As of September 30, 2020 Non-controlling interests in consolidated entities	Non-controlling ownership
Aevitas	$ (2,297)	(680)	(2,977)	39.0 %
Avenue [2]	5,709	(3,206)	2,503	77.4 %
Baergic	(1,605)	(68)	(1,673)	40.0 %
Cellvation	(1,072)	(145)	(1,217)	22.6 %
Checkpoint [1]	37,963	(9,000)	28,963	80.0 %
Coronado SO	(290)	—	(290)	13.0 %
Cyprium	784	(843)	(59)	28.4 %
Helocyte	(4,890)	(236)	(5,126)	18.8 %
JMC	123	257	380	6.9 %
Mustang [2]	86,572	(27,035)	59,537	77.9 %
Oncogenuity	(47)	(268)	(315)	25.3 %
Tamid	(652)	(40)	(692)	22.8 %
Total	$ 120,298	$ (41,264)	$ 79,034	

($ in thousands)	As of December 31, 2019 NCI equity share	For the twelve months ended December 31, 2019 Net loss attributable to non-controlling interests	As of December 31, 2019 Non-controlling interests in consolidated entities	Non-controlling ownership
Aevitas	$ (1,249)	$ (694)	$ (1,943)	35.8 %
Avenue [2]	24,269	(19,011)	5,258	77.3 %
Baergic	23	(1,162)	(1,139)	33.0 %
Cellvation	(732)	(158)	(890)	20.6 %
Checkpoint [1]	29,389	(14,687)	14,702	78.0 %
Coronado SO	(290)	—	(290)	13.0 %
Cyprium	(320)	(99)	(419)	10.6 %
Helocyte	(4,322)	(402)	(4,724)	19.3 %
JMC	(211)	325	114	6.9 %
Mustang [2]	62,025	(25,727)	36,298	70.3 %
Tamid	(565)	(85)	(650)	22.8 %
Total	$ 108,017	$ (61,700)	$ 46,317	

Note 1: Checkpoint is consolidated with Fortress' operations because Fortress maintains voting control through its ownership of Checkpoint's Class A Common Shares which provide super-majority voting rights.

Note 2: Avenue and Mustang are consolidated with Fortress' operations because Fortress maintains voting control through its ownership of Preferred Class A Shares which provide super-majority voting rights.

13. Net Loss per Common Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of shares of Common Stock outstanding during the period, without consideration for Common Stock equivalents. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of Common Stock and Common Stock equivalents outstanding for the period.

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The following shares of potentially dilutive securities have been excluded from the computation of diluted weighted average shares outstanding, as the effect of including such securities would be anti-dilutive for the nine months ended September 30, 2020:

	Nine Months Ended September 30,	
	2020	2019
Warrants to purchase Common Stock	3,026,693	2,745,364
Options to purchase Common Stock	1,187,600	1,169,293
Unvested Restricted Stock	14,305,949	12,622,881
Unvested Restricted Stock Units	434,215	791,610
Total	18,954,457	17,329,148

14. Stockholders' Equity

Common Stock

At the Company's 2020 Annual Meeting of Stockholders held on June 17, 2020, its stockholders approved an amendment to its certificate of incorporation to increase the number of authorized shares of common stock available to issue by 50,000,000 to 150,000,000 with a par value of $0.001 per share. The amendment was filed with the Secretary of State of the State of Delaware on June 18, 2020.

Stock-based Compensation

The following table summarizes the stock-based compensation expense from stock option, employee stock purchase programs and restricted Common Stock awards and warrants for the three and nine months ended September 30, 2020 and 2019:

	Three Months Ended September 30,		Nine Months Ended September 30,	
($ in thousands)	2020	2019	2020	2019
Employee awards	$ 1,200	$ 936	$ 3,732	$ 2,791
Executive awards of Fortress Companies' stock	369	358	1,136	1,065
Non-employee awards	31	15	136	84
Warrants	32	97	97	97
Partner Companies:				
Avenue	161	298	592	1,585
Checkpoint	725	833	2,095	2,444
Mustang	606	1,120	2,368	2,174
Other	47	84	163	183
Total stock-based compensation expense	$ 3,171	$ 3,741	$ 10,319	$ 10,423

For the three months ended September 30, 2020 and 2019, approximately $0.7 million and $1.2 million, respectively, of stock-based compensation expense was included in research and development expenses in connection with equity grants made to employees and consultants and approximately $2.5 million and $2.5 million, respectively, was included in general and administrative expenses in connection with grants made to employees, members of the board of directors and consultants.

For the nine months ended September 30, 2020 and 2019, approximately $2.5 million and $2.6 million, respectively, of stock-based compensation expense was included in research and development expenses in connection with equity grants made to employees and consultants and approximately $7.8 million and $7.8 million, respectively, was included in general and administrative expenses in connection with grants made to employees, members of the board of directors and consultants.

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Equity Compensation Plans

At the Company's 2020 Annual Meeting on June 30, 2020, the Company's shareholders approved an amendment to the Company's 2013 Stock Incentive Plan, as amended ("Stock Plan") to increase common shares issuable under the Stock Plan by 3.0 million to 13.0 million. For the nine months ended September 30, 2020, 4.2 million shares remain to be issued under the Stock Plan.

Stock Options

The following table summarizes Fortress stock option activities excluding activity related to Fortress partner companies:

	Number of shares	Weighted average exercise price	Total weighted average intrinsic value	Weighted average remaining contractual life (years)
Options vested and expected to vest at December 31, 2019	1,410,501	$ 4.30	$ 684,752	2.33
Exercised	(100,000)	1.18	—	—
Forfeited	(247,011)	2.55	—	—
Options vested and expected to vest at September 30, 2020	1,063,490	$ 5.00	$ 1,044,218	2.87

As of September 30, 2020, Fortress had no unrecognized stock-based compensation expense related to options.

Restricted Stock and Restricted Stock Units

The following table summarizes Fortress restricted stock awards and restricted stock units activities, excluding activities related to Fortress Companies:

	Number of shares	Weighted average grant price
Unvested balance at December 31, 2019	13,768,014	$ 2.46
Restricted stock granted	1,873,072	2.57
Restricted stock vested	(1,549,564)	2.69
Restricted stock units granted	630,126	3.82
Restricted stock units forfeited	(106,250)	2.71
Restricted stock units vested	(368,290)	3.13
Unvested balance at September 30, 2020	14,247,108	$ 2.49

As of September 30, 2020 and 2019, the Company had unrecognized stock-based compensation expense related to restricted stock and restricted stock unit awards of approximately $17.5 million and $12.7 million, respectively, which is expected to be recognized over the remaining weighted-average vesting period of 3.9 years and 5.0 years, respectively.

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Warrants

The following table summarizes Fortress warrant activities, excluding activities related to Fortress Companies:

	Number of shares	Weighted average exercise price	Total weighted average intrinsic value	Weighted average remaining contractual life (years)
Outstanding as of December 31, 2019	2,741,180	$ 3.19	$ 111,000	2.73
Granted	1,849,450	3.14	1,657,538	—
Forfeited	(9)	3.00	—	—
Outstanding as of September 30, 2020	4,590,621	$ 3.17	$ 4,111,018	5.10
Exercisable as of September 30, 2020	4,430,621	$ 3.21	$ 3,816,818	5.05

In connection with the Oaktree Note (see Note 10), the Company issued warrants to Oaktree and certain of its affiliates to purchase up to 1,749,450 shares of common stock at a purchase price of $3.20 per share (the "Oaktree Warrants"). Oaktree is entitled to additional warrants if at any time prior to the expiration of the Oaktree Warrants in event the Company issues equity, warrants or convertible notes (collectively known as "Security Instruments") at a price that is less than 95% of the market price of the Company's Common Stock on the trading day prior to the issuance of the Security Instruments. The Warrants expire on August 27, 2030 and may be net exercised at the holder's election. The Company also agreed to file a registration statement on Form S-3 to register for resale the shares of common stock issuable upon exercise of the Warrants.

The Company evaluated the accounting treatment of the Oaktree Warrants and determined that the Oaktree warrants met the scope exception of *ASC 815-10-15-74(a) Derivatives and Hedging* and therefore the warrants should be classified in stockholders' equity. As such the Company used a Black-Scholes model to value the Oaktree Warrants. Utilizing the following inputs: term of 10 years, volatility of 86.8%, risk-free rate of return of 0.74% yielding a value of $4.8 million. *ASC 470-20-25-2 Debt – Debt with Conversion and Other Options* dictates that debt or stock issued with detachable warrants requires the proceeds to be allocated to the two instruments based on their relative fair values. The relative fair value of the warrants was determined to be $4.4 million and was recorded as a component of Stockholders' Equity in the Company's condensed consolidated balance sheet at September 30, 2020.

Employee Stock Purchase Plan

Eligible employees can purchase the Company's Common Stock at the end of a predetermined offering period at 85% of the lower of the fair market value at the beginning or end of the offering period. The ESPP is compensatory and results in stock-based compensation expense.

As of September 30, 2020, 507,783 shares have been purchased and 492,217 shares are available for future sale under the Company's ESPP. Share-based compensation expense recorded was approximately $38,000 and $18,000, respectively, for the three months ended September 30, 2020 and 2019, and approximately $0.1 million and $0.1 million, respectively, for the nine months ended September 30, 2020 and 2019.

Capital Raises

9.375% Series A Cumulative Redeemable Perpetual Preferred Stock Offering

On August 26, 2020, the Company closed on an underwritten public offering whereby it sold 666,666 shares of its 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock (Nasdaq: FBIOP) (the "Preferred Stock"), (plus a 45-day option to purchase up to an additional 66,666 shares, which was exercised in August 2020) at a price of $18.00 per share for gross proceeds of approximately $13.2 million, before deducting underwriting discounts and commissions and offering expenses of approximately $1.1 million.

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On May 29, 2020, the Company closed on an underwritten public offering whereby it sold 555,556 shares of its 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock (Nasdaq: FBIOP) (the "Preferred Stock"), (plus a 45-day option to purchase up to an additional 83,333 shares, which was exercised in May 2020) at a price of $18.00 per share for gross proceeds of approximately $11.5 million, before deducting underwriting discounts and commissions and offering expenses of approximately $1.1 million.

On February 14, 2020, the Company announced the closing of an underwritten public offering, whereby it sold 625,000 shares of its Preferred Stock, (plus a 45-day option to purchase up to an additional 93,750 shares, which was exercised in February 2020) at a price of $20.00 per share for gross proceeds of approximately $14.4 million, before deducting underwriting discounts and commissions and offering expenses of approximately $1.3 million.

Cyprium 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock Offering

On August 28, 2020, Cyprium closed on an underwritten public offering whereby it sold 255,400 shares of its 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock ("Cyprium Perpetual Preferred Stock" or "Cyprium PPS"), plus an overallotment of an additional 64,600 shares, which was exercised on September 18, 2020, at a price of $25.00 per share for gross proceeds of $8.0 million, before deducting underwriting discounts and commissions and offering expenses of approximately $0.9 million (the "Cyprium Offering").

Pursuant to the terms of the Cyprium PPS, shareholders on the record date are entitled to receive a monthly cash dividend of $0.19531 per share which yields an annual dividend of $2.34375 per share. The Cyprium PPS will automatically be redeemed upon the first (and only the first) bona fide, arm's-length sale of a Priority Review Voucher (a "***PRV***") issued by the FDA in connection with the approval of CUTX-101, Cyprium's lead product candidate. Upon the P RV Sale, each share of Cyprium PPS will be automatically redeemed in exchange for a payment equal to twice (2x) the $25.00 liquidation preference, *plus* accumulated and unpaid dividends to, but excluding, the redemption date.

An optional exchange to Company Preferred Stock is available after 24 months from the issuance date so long as a sale of the PRV has not occurred. Additionally, if a PRV Sale has not occurred by September 30, 2024 the Cyprium PPS is either automatically exchanged for Company Preferred Stock or cash at the discretion of Fortress. The Cyprium PPS is fully and unconditionally guaranteed by Fortress.

Cyprium paid an initial dividend of $49,883 ($0.19531 per share) to shareholders of record on September 30, 2020.

Checkpoint Underwritten Offering

In September 2020, Checkpoint completed an underwritten public offering in which it sold 7,321,429 shares of its common stock at a price of $2.80 per share for gross proceeds of approximately $20.5 million. Total net proceeds from the offering were approximately $18.9 million, net of underwriting discounts and offering expenses of approximately $1.6 million. The shares were sold under a shelf registration statement on Form S-3 that Checkpoint filed in November 2017 and was declared effective in December 2017 ("the Checkpoint S-3").

Mustang Underwritten Offering

In June 2020, Mustang completed an underwritten public offering in which it sold 11,455,604 shares of its common stock at a price of $3.25 per share for gross proceeds of approximately $37.2 million. Total net proceeds from the offering were approximately $34.9 million, net of underwriting discounts and offering expenses of approximately $2.3 million. The shares were sold under Mustang's S-3.

At-the-Market Offering

On June 28, 2019, the Company entered into an At Market Issuance Sales Agreement ("2019 Common ATM"), with Cantor Fitzgerald & Co., Oppenheimer & Co., Inc., H.C. Wainwright & Co. Inc., Jones Trading Institutional Services LLC and B. Riley, as selling agents, governing potential sales of the Company's common stock.

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The shares of common stock were sold under the Company's shelf registration statement on Form S-3 originally filed on July 6, 2018 and declared effective July 23, 2019 (the "2019 Shelf") through May 27, 2020.

On May 18, 2020, the Company filed a new shelf registration statement on Form S-3, which was declared effective on May 26, 2020 (the "2020 Shelf"). In connection with the 2020 Shelf, the Company entered into an At Market Issuance Sales Agreement ("2020 Common ATM"), with Cantor Fitzgerald & Co., Oppenheimer & Co., Inc., H.C. Wainwright & Co. Inc., B. Riley and Dawson James Securities, Inc., as selling agents, governing potential sales of the Company's common stock. ATM sales commencing on June 1, 2020 were made under the 2020 Shelf.

For the nine-month period ended September 30, 2020, the Company issued approximately16.4 million shares of common stock at an average price of $2.74 per share for gross proceeds of $44.8 million. In connection with these sales, the Company paid aggregate fees of approximately $1.6 million. Approximately $29.5 million of securities remain available for sale under the 2020 Shelf at September 30, 2020.

Mustang At-the-Market Offering

On July 13, 2018, Mustang filed a shelf registration statement No. 333-226175 on Form S-3, as amended on July 20, 2018 (the "2018 Mustang S-3"), which was declared effective in August 2018. Under the 2018 Mustang S-3, Mustang may sell up to a total of $75.0 million of its securities. In connection with the 2018 Mustang S-3, Mustang entered into an At-the-Market Issuance Sales Agreement (the "Mustang ATM") with B. Riley FBR, Inc., Cantor Fitzgerald & Co., National Securities Corporation, and Oppenheimer & Co. Inc. (each an "Agent" and collectively, the "Agents"), relating to the sale of shares of common stock. Under the Mustang ATM, Mustang pays the Agents a commission rate of up to 3.0% of the gross proceeds from the sale of any shares of Mustang common stock.

On August 16, 2019, Mustang filed a shelf registration statement No. 333-233350 on Form S-3, (the "2019 Mustang S-3"), which was declared effective on September 30, 2019. Under the 2019 Mustang S-3, Mustang may sell up to a total of $75.0 million of its securities. On July 20, 2020, Mustang entered into Amendment No. 1 to the Mustang ATM with the Agents to reflect the new registration statement.

During the nine months ended September 30, 2020, Mustang issued approximately7.2 million shares of common stock at an average price of $3.56 per share for gross proceeds of $25.6 million under the Mustang ATM. In connection with these sales, Mustang paid aggregate fees of approximately $0.5 million for net proceeds of approximately $25.1 million. During the nine months ended September 30, 2019, Mustang issued approximately3.5 million shares of common stock at an average price of $6.42 per share for gross proceeds of $22.5 million under the Mustang ATM. In connection with these sales, Mustang paid aggregate fees of approximately $0.5 million for net proceeds of approximately $22.0 million. Pursuant to the Founders Agreement, Mustang issued 117,405 shares of common stock to Fortress at a weighted average price of $3.56 per share for the nine months ended September 30, 2020 for the Mustang ATM offering noted above. During the nine months ended September 30, 2019, Mustang issued 87,656 shares of common stock to Fortress at a weighted average price of $6.42 per share in connection with the Mustang ATM.

Approximately $32.6 million of the Mustang shelf remains available for sale under the 2019 Mustang S-3, following the offerings noted above. As of September 30, 2020, the 2018 Mustang S-3 is no longer available for sales of securities.

Checkpoint At-the-Market Offering

Under the Checkpoint S-3, Checkpoint may sell up to a total of $100 million of its securities. In connection with the Checkpoint S-3, Checkpoint entered into an At-the-Market Issuance Sales Agreement (the "Checkpoint ATM") with Cantor Fitzgerald & Co., Ladenburg Thalmann & Co. Inc. and H.C. Wainwright & Co., LLC (each a "Checkpoint Agent" and collectively, the "Checkpoint Agents"), relating to the sale of shares of common stock. Under the Checkpoint ATM, Checkpoint pays the Checkpoint Agents a commission rate of up to 3.0% of the gross proceeds from the sale of any shares of Checkpoint common stock.

During the nine months ended September 30, 2020, Checkpoint sold a total of3,614,344 shares of common stock under the Checkpoint ATM for aggregate total gross proceeds of approximately $8.7 million at an average selling price of $2.40 per share, resulting in net proceeds of approximately $8.4 million after deducting commissions and other transaction costs.

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Pursuant to the Founders Agreement, Checkpoint issued 273,379 shares of common stock to Fortress at a weighted average price of $2.92 per share for the Checkpoint ATM offerings and the Checkpoint Underwritten Offering, both noted above.

Approximately $12.3 million of the Checkpoint shelf remains available for sale under the Checkpoint S-3, following the offerings noted above.

Share Repurchase Program

On March 23, 2020, the Company announced that its Board of Directors had approved a share repurchase program of the Company's outstanding Preferred Stock in an aggregate amount of up to $5.0 million. Repurchases under the program were made in the open market or through privately-negotiated transactions until the earlier to occur of the repurchase of $5.0 million of the Company's Preferred Stock or the close of trading on May 31, 2020, subject to applicable laws and regulations. The program did not commit the Company to repurchase any shares of Preferred Stock. As of September 30, 2020, 5,000 Preferred Stock shares were repurchased and retired under this program for total consideration of $0.1 million, net of fees of approximately $2,000.

15. Commitments and Contingencies

Most of the Company's lease liabilities result from the lease of its New York City, NY office, which expires in 2031, and Mustang's Worcester, MA cell processing facility lease, which expires in 2026. Such leases do not require any contingent rental payments, impose any financial restrictions, or contain any residual value guarantees. Certain of the Company's leases include renewal options and escalation clauses; renewal options have not been included in the calculation of the lease liabilities and right of use assets as the Company is not reasonably certain to exercise the options. The Company does not act as a lessor or have any leases classified as financing leases. On September 30, 2020, the Company had operating lease liabilities of $24.6 million and right of use assets of $20.3 million, which were included in the Condensed Consolidated Balance Sheet.

During the three and nine months ended September 30, 2020 and 2019, the Company recorded the following as lease expense, which was recorded in general and administrative expense on the Company's Condensed Consolidated Statement of Operations:

	Three Months Ended September 30,		Nine Months Ended September 30,	
($in thousands)	**2020**	**2019**	**2020**	**2019**
Lease Cost				
Operating lease cost	$ 816	$ 798	$ 2,436	$ 2,397
Shared lease costs	(469)	(479)	(1,409)	(1,408)
Variable lease cost	178	160	411	575
Total lease expense	$ 525	$ 479	$ 1,438	$ 1,564

The following tables summarize quantitative information about the Company's operating leases, under the adoption of *Topic 842, Leases*:

	Nine Months Ended September 30,	
($in thousands)	**2020**	**2019**
Operating cash flows from operating leases	$ (2,127)	$ (2,185)
Weighted-average remaining lease term – operating leases (years)	5.9	6.4
Weighted-average discount rate – operating leases	6.2 %	6.2 %

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($ in thousands)	Future Lease Liability
Three Months Ended December 31, 2020	$ 839
Year Ended December 31, 2021	3,114
Year Ended December 31, 2022	3,084
Year Ended December 31, 2023	3,137
Year Ended December 31, 2024	3,190
Other	20,273
Total operating lease liabilities	33,637
Less: present value discount	(9,085)
Net operating lease liabilities, short-term and long-term	$ 24,552

Indemnification

In accordance with its certificate of incorporation, bylaws and indemnification agreements, the Company has indemnification obligations to its officers and directors for certain events or occurrences, subject to certain limits, while they are serving at the Company's request in such capacity. There have been no claims to date, and the Company has director and officer insurance to address such claims. Pursuant to agreements with clinical trial sites, the Company provides indemnification to such sites in certain conditions.

Legal Proceedings

In the ordinary course of business, the Company may be subject to both insured and uninsured litigation. Suits and claims may be brought against the Company by customers, suppliers, partners and/or third parties (including tort claims for personal injury arising from clinical trials of the Company's product candidates and property damage) alleging deficiencies in performance, breach of contract, etc., and seeking resulting alleged damages.

16. Related Party Transactions

The Company's Chairman, President and Chief Executive Officer, individually and through certain trusts over which he has voting and dispositive control, beneficially owned approximately 10.1% of the Company's issued and outstanding Common Stock as of September 30, 2020. The Company's Executive Vice Chairman, Strategic Development owns approximately 10.9% of the Company's issued and outstanding Common Stock as of September 30, 2020.

Shared Services Agreement with TG Therapeutics, Inc

TG Therapeutics, Inc. ("TGTX") and the Company entered into an arrangement to share the cost of certain research and development employees. The Company's Executive Vice Chairman, Strategic Development, is also the Executive Chairman and Chief Executive Officer of TGTX. Under the terms of the Agreement, TGTX will reimburse the Company for the salary and benefit costs associated with these employees based upon actual hours worked on TGTX related projects. For the three months ended September 30, 2020 and 2019, the Company invoiced TGTX $0.1 million and $0.1 million, respectively. For the nine months ended September 30, 2020 and 2019, the Company invoiced TGTX $0.3 million and $0.3 million, respectively. On September 30, 2020, the amount due from TGTX related to this arrangement approximated $69,000.

Desk Space Agreements with TGTX and OPPM

In connection with the Company's Desk Space Agreements with TGTX and Opus Point Partners Management, LLC ("OPPM"), for the three months ended September 30, 2020 and 2019, the Company had paid $0.7 million and $0.7 million in rent under the Desk Space Agreements. For the three months ended September 30, 2020 and 2019, the Company invoiced TGTX approximately $0.4 million and $0.4 million, respectively, and invoiced OPPM nil and approximately $24,000, respectively, for their prorated share of the rent base. On September 30, 2020, the amount due related to this arrangement from TGTX was nil and the amount due from OPPM approximated $0.4 million.

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2019 Notes (formerly the Opus Credit Facility)

On September 13, 2019, the Company and Opus Point Healthcare Innovations Fund, LP ("OPHIF") extended the maturity date of the 2019 Notes (formerly the "A&R Opus Credit Facility) from September 14, 2019 by two years to September 14, 2021. Terms of the 2019 Notes allows for the Company to make portions of interest and principal repayments in the form of shares of the Company's common stock and/or in common stock of the Company's publicly-traded subsidiaries, subject to certain conditions. Fortress retained the ability to prepay the Notes at any time without penalty. The notes payable under the A&R Opus Credit Facility bear interest at 12% per annum.

Effective December 31, 2019, OPHIF dissolved and distributed it assets among its limited partners. Following the distribution, the $9.0 million facility comprised of separate notes (collectively, the "2019 Notes") held by DAK Capital Inc. ($3.8 million); Fortress' Chairman, President and Chief Executive Officer Lindsay A. Rosenwald, M.D. ($0.3 million); Fortress's Executive Vice President, Strategic Development Michael S. Weiss ($2.0 million); and various entities and individuals affiliated with Dr. Rosenwald and Mr. Weiss ($ 2.9 million). The terms of the 2019 Notes did not change in connection with such reallocations.

During the quarter ended September 30, 2020, the Company used certain proceeds from the Oaktree Note to pay off the $9.0 million balance previously outstanding under the 2019 Notes (see Note 10).

For the nine months ended September 30, 2020, in connection with the 2019 Notes, the Company paid $0.5 million in interest on the portion of the 2019 Notes held by the Company's Chairman, President and Chief Executive Officer and the Company's Executive Vice President, Strategic Development. For the nine months ended September 30, 2019, the Company paid $0.2 million in common stock consisting of 91,767 shares at $1.80 per share.

Avenue Credit Facility Agreement

On June 12, 2020, Avenue, the Company and InvaGen entered into a Facility Agreement ("Avenue Facility Agreement"), under which, beginning on October 1, 2020, Avenue may borrow up to $ 2 million collectively from the Company and InvaGen, subject to certain conditions set forth therein. The Company's commitment amount is $ 0.8 million, and InvaGen's is $ 1.2 million , and a 7% per annum interest rate applies (payable on the last day of each fiscal quarter). Repayment of the loan is due upon the earliest to occur of: (i) the Second Stage Closing Date, as defined in the SPMA; (ii) April 29, 2021; and (iii) the date that is 30 days following the termination of the Avenue SPMA. As of September 30, 2020, there have been no amounts drawn by Avenue on the Avenue Facility Agreement.

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Founders Agreements

The Company has entered into Founders Agreements and, in some cases, Exchange Agreements with certain of its subsidiaries as described in the Company's Form 10-K for the year ended December 31, 2019, filed with the SEC on March 16, 2020. The following table summarizes, by partner company, the effective date of the Founders Agreements and PIK dividend or equity fee payable to the Company in accordance with the terms of the Founders Agreements, Exchange Agreements, and the subsidiaries' certificates of incorporation:

Fortress Partner Company	Effective Date [1]	PIK Dividend as a % of fully diluted outstanding capitalization	Class of Stock Issued
Helocyte	March 20, 2015	2.5 %	Common Stock
Avenue	February 17, 2015	0.0 %[2]	Common Stock
Mustang	March 13, 2015	2.5 %	Common Stock
Checkpoint	March 17, 2015	0.0 %[3]	Common Stock
Cellvation	October 31, 2016	2.5 %	Common Stock
Caelum	January 1, 2017	0.0 %[4]	Common Stock
Baergic	December 17, 2019[5]	2.5 %	Common Stock
Cyprium	March 13, 2017	2.5 %	Common Stock
Aevitas	July 28, 2017	2.5 %	Common Stock
Oncogenuity	April 22, 2020 [5]	2.5 %	Common Stock

Note 1: Represents the effective date of each subsidiary's Founders Agreement. Each PIK dividend and equity fee is payable on the annual anniversary of the effective date of the original Founders Agreement or has since been amended to January 1 of each calendar year.

Note 2: Concurrently with the execution and delivery of the Stock Purchase and Merger Agreement ("Avenue SPMA") entered into between, Avenue, the Company and InvaGen Pharmaceuticals Inc. ("InvaGen") (together, the " SPMA Parties"), the SPMA Parties entered into a waiver agreement (the "Waiver Agreement"), pursuant to which the Company irrevocably waived its right to receive the annual dividend of Avenue's common shares under the terms of the Class A preferred stock and any fees, payments, reimbursements or other distributions under the management services agreement between the Company and Avenue and the Founders Agreement, for the period from the effective date of the Waiver Agreement to the termination of InvaGen's rights under the Avenue SPMA. Pursuant to the Waiver Agreement, immediately prior to the closing of the Merger Transaction contemplated under the Avenue SPMA, the Company will convert all of its preferred shares into common shares pursuant to the terms of the certificate of incorporation of Avenue, as amended from time to time.

Note 3: Instead of a PIK dividend, Checkpoint pays the Company an annual equity fee in shares of Checkpoint's common stock equal to2.5% of Checkpoint's fully diluted outstanding capitalization.

Note 4: Effective January 31, 2019 the Caelum Founders Agreement and MSA with Fortress were terminated in conjunction with the execution of the DOSPA between Caelum and Alexion (See Note 4).

Note 5: Represents the Trigger Date, the date that the Fortress partner company first acquires, whether by license or otherwise, ownership rights in a product.

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Management Services Agreements

The Company has entered in Management Services Agreements (the "MSAs") with certain of its partner companies as described in the Company's Form 10-K for the year ended December 31, 2019, filed with the SEC on March 16, 2020. The following table summarizes the effective date of the MSA and the annual consulting fee payable by the partner company to the Company in quarterly installments:

Fortress partner company	Effective Date	Annual MSA Fee (Income)/Expense
Helocyte	March 20, 2015	$ 500
Avenue [1]	February 17, 2015	—
Mustang	March 13, 2015	500
Checkpoint	March 17, 2015	500
Cellvation	October 31, 2016	500
Baergic	March 9, 2017	500
Cyprium	March 13, 2017	500
Aevitas	July 28, 2017	500
Oncogenuity	February 10, 2017	500
Fortress		(4,000)
Consolidated (Income)/Expense		$ —

Note 1: Concurrently with the execution and delivery of the Avenue SPMA entered into among, Avenue, the Company and InvaGen Pharmaceuticals Inc. ("InvaGen") (together, the "SPMA Parties"), the SPMA Parties entered into a waiver agreement (the "Waiver Agreement"), pursuant to which the Company irrevocably waived its right to receive the annual dividend of Avenue's common shares under the terms of the Class A preferred stock and any fees, payments, reimbursements or other distributions under the management services agreement between the Company and Avenue and the Founders Agreement, for the period from the effective date of the Waiver Agreement to the termination of InvaGen's rights under the Avenue SPMA. Pursuant to the Waiver Agreement, immediately prior to the closing of the Merger Transaction contemplated under the Avenue SPMA, the Company will convert all of its preferred shares into common shares pursuant to the terms of the certificate of incorporation of Avenue, as amended from time to time. (See Note 4).

17. Segment Information

The Company operates in two reportable segments, Dermatology Product Sales and Pharmaceutical and Biotechnology Product Development. The accounting policies of the Company's segments are the same as those described in Note 2. The following tables summarize, for the periods indicated, operating results from continued operations by reportable segment:

($in thousands) Three Months Ended September 30, 2020	Dermatology Products Sales	Pharmaceutical and Biotechnology Product Development	Consolidated
Net revenue	$ 9,447	$ 28	$ 9,475
Direct cost of goods	(3,379)	—	(3,379)
Sales and marketing costs	(4,649)	—	(4,649)
Research and development	—	(13,756)	(13,756)
General and administrative	(1,254)	(9,480)	(10,734)
Other expense	(113)	(6,808)	(6,921)
Segment income (loss)	$ 52	(30,016)	$ (29,964)
Segment assets			
Intangible assets, net	11,039	—	11,039
Tangible assets	21,108	263,732	284,840
Total segment assets	$ 32,147	$ 263,732	$ 295,879

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($ in thousands) **Three Months Ended September 30, 2019**	**Dermatology Products Sales**	**Pharmaceutical and Biotechnology Product Development**	**Consolidated**
Net revenue	$ 9,492	$ 280	$ 9,772
Direct cost of goods	(2,702)	—	(2,702)
Sales and marketing costs	(4,370)	—	(4,370)
Research and development	—	(15,271)	(15,271)
General and administrative	(669)	(9,300)	(9,969)
Other expense	(108)	(2,322)	(2,430)
Segment income (loss)	$ 1,643	$ (26,613)	$ (24,970)
Segment assets			
Intangible assets, net	7,731	—	7,731
Tangible assets	10,966	202,891	213,857
Total segment assets	$ 18,697	$ 202,891	$ 221,588

($in thousands) **Nine Months Ended September 30, 2020**	**Dermatology Products Sales**	**Pharmaceutical and Biotechnology Product Development**	**Consolidated**
Net revenue	$ 30,808	$ 1,042	$ 31,850
Direct cost of goods	(10,313)	—	(10,313)
Sales and marketing costs	(12,728)	—	(12,728)
Research and development	—	(46,146)	(46,146)
General and administrative	(3,556)	(29,074)	(32,630)
Other expense	(492)	(12,036)	(12,528)
Segment income (loss)	$ 3,719	(86,214)	$ (82,495)
Segment assets			
Intangible assets, net	11,039	—	11,039
Tangible assets	21,108	263,732	284,840
Total segment assets	$ 32,147	$ 263,732	$ 295,879

($in thousands) **Nine Months Ended September 30, 2019**	**Dermatology Products Sales**	**Pharmaceutical and Biotechnology Product Development**	**Consolidated**
Net revenue	$ 23,816	$ 1,683	$ 25,499
Direct cost of goods	(6,972)	—	(6,972)
Sales and marketing costs	(12,064)	—	(12,064)
Research and development	—	(57,705)	(57,705)
General and administrative	(1,808)	(27,388)	(29,196)
Other expense	(108)	11,841	11,733
Segment income (loss)	$ 2,864	$ (71,569)	$ (68,705)
Segment assets			
Intangible assets, net	7,731	—	7,731
Tangible assets	10,966	202,891	213,857
Total segment assets	$ 18,697	$ 202,891	$ 221,588

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18. Revenues from Contracts and Significant Customers

Disaggregation of Total Revenue

Product revenue is comprised of Journey's five marketed products: Targadox®, Luxamend®, Ceracade®, Exelderm® and Ximino®. Substantially all of the product revenue is recorded in the U.S. The Company's related party revenue is from Checkpoint's collaboration with TGTX. The table below summarizes the Company's revenue for the three and nine months ending September 30, 2020 and 2019:

	Three months ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue				
Product revenue, net	$ 9,447	$ 9,492	$ 30,808	$ 23,816
Revenue – related party	28	280	1,042	1,683
Net revenue	$ 9,475	$ 9,772	$ 31,850	$ 25,499

Significant Customers

For the three months ended September 30, 2020, none of the Company's Dermatology Products customers accounted for more than 10% of its total gross product revenue.

For the nine months ended September 30, 2020, one of the Company's Dermatology Products customers accounted for more than 10% of its total gross product revenue.

For the three and nine months ended September 30, 2019, gross product revenue under the 3PL Title Model accounted for approximately 60% and 76%, respectively.

At September 30, 2020, one of the Company's Dermatology Products customers accounted for more than 10% of its total accounts receivable balance at 14.5%.

At September 30, 2019, two of the Company's Dermatology Products customers accounted for more than 10% of its total accounts balance in the amounts of $3.5 million and $2.8 million.

19. Income taxes

In response to the COVID-19 pandemic, the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was signed into law on March 27, 2020. The CARES Act, among other things, includes tax provisions relating to refundable payroll tax credits, deferment of employer's social security payments, net operating loss utilization and carryback periods and modifications to the net interest deduction limitations. At this time, the Company does not believe that the CARES Act will have a material impact on its income tax provision for 2020. The Company will continue to evaluate the impact of the CARES Act on its financial position, results of operations and cash flows.

The Company and its subsidiaries are subject to US federal and state income taxes. Income tax expense is the total of the current year income tax due or refundable and the change in deferred tax assets and liabilities. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Deferred tax assets are reduced by a valuation allowance when, in the opinion of Management, it is more likely than not that some portion, or all, of the deferred tax asset will not be realized.

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The Company files a consolidated income tax return with subsidiaries for which the Company has an 80% or greater ownership interest. Subsidiaries for which the Company does not have an 80% or more ownership are not included in the Company's consolidated income tax group and file their own separate income tax return. As a result, certain corporate entities included in these financial statements are not able to combine or offset their taxable income or losses with other entities' tax attributes.

Income tax expense for the three and nine months ended September 30, 2020 and 2019 is based on the estimated annual effective tax rate.

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

Forward-Looking Statements

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our consolidated financial statements and the related notes included elsewhere in this Form 10-Q. Our consolidated financial statements have been prepared in accordance with U.S. GAAP. The following discussion and analysis contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 (the "Exchange Act"), including, without limitation, statements regarding our expectations, beliefs, intentions or future strategies that are signified by the words "expect," "anticipate," "intend," "believe," "may," "plan", "seek" or similar language. All forward-looking statements included in this document are based on information available to us on the date hereof and we assume no obligation to update any such forward-looking statements. For such forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Our business and financial performance are subject to substantial risks and uncertainties. Actual results could differ materially, from those projected in the forward-looking statements. In evaluating our business, you should carefully consider the information set forth under the heading "Risk Factors" herein and in our Annual Report on Form 10-K for the year ended December 31, 2019.

Overview

We are a biopharmaceutical company dedicated to acquiring, developing and commercializing pharmaceutical and biotechnology products and product candidates, which we do at the Fortress level, at our majority-owned and majority-controlled subsidiaries and joint ventures, and at entities we founded and in which we maintain significant minority ownership positions. Fortress has a talented and experienced business development team, comprising scientists, doctors, and finance professionals, who identify and evaluate promising products and product candidates for potential acquisition by new or existing partner companies. Through our partner companies, we have executed such arrangements in partnership with some of the world's foremost universities, research institutes and pharmaceutical companies, including City of Hope National Medical Center, Fred Hutchinson Cancer Research Center, St. Jude Children's Research Hospital, Dana-Farber Cancer Institute, Nationwide Children's Hospital, Cincinnati Children's Hospital Medical Center, Columbia University, the University of Pennsylvania, and AstraZeneca plc.

Following the exclusive license or other acquisition of the intellectual property underpinning a product or product candidate, we leverage our business, scientific, regulatory, legal and finance expertise to help our partners achieve their goals. Our partner companies then assess a broad range of strategic arrangements to accelerate and provide additional funding to support research and development, including joint ventures, partnerships, out-licensings, and public and private financings; to date, three partner companies are publicly-traded, and two have consummated strategic partnerships with industry leaders Alexion Pharmaceuticals, Inc. and InvaGen Pharmaceuticals, Inc. (a subsidiary of Cipla Limited).

Recent Events

Marketed Dermatology Products

During the three and nine months ended September 30, 2020, through our partner company Journey Medical Corporation ("Journey" or "JMC"), our marketed products generated net revenue of $9.4 million and $30.8 million, respectively.

Late Stage Product Candidates

Intravenous (IV) Tramadol

IV Tramadol is currently in development with our partner company, Avenue Therapeutics, Inc. ("Avenue") (NASDAQ: ATXI). Avenue submitted a new drug application ("NDA") for IV Tramadol to treat moderate to moderately severe postoperative pain pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act ("FDCA") in December 2019. On October 12, 2020, Avenue announced it received a Complete Response Letter ("CRL") from the U.S Food and Drug Administration ("FDA") regarding its New Drug Application ("NDA") for IV tramadol. The CRL cited deficiencies related to the terminal sterilization validation and stated that IV Tramadol, intended to treat patients in acute pain who require an opioid, is not safe for the intended patient population. Avenue has a meeting scheduled with the FDA for the fourth quarter of 2020 to discuss the issues cited in the CRL.

In October 2020, InvaGen Pharmaceuticals Inc. ("InvaGen") communicated to Avenue that it believes a Material Adverse Effect (as defined in the Stock Purchase and Merger Agreement ("Avenue SPMA")) has occurred, due to the COVID-19 pandemic, which means that it is possible that InvaGen is attempting to avoid their obligations to consummate the second stage closing under the Avenue SPMA. Avenue disagrees with InvaGen's assertion that a Material Adverse Effect has occurred, and Avenue has advised InvaGen of this position.

CUTX-101 (Copper Histidinate)

In July 2020, Cyprium announced that the European Medicines Agency ("EMA") Committee for Orphan Medicinal Products issued a positive opinion on Cyprium's application for Orphan Drug Designation for Copper Histidinate, also referred to as CUTX-101, a potential treatment for Menkes disease. Menkes disease is a rare X-linked recessive pediatric disease caused by genetic mutations of the copper transporter, ATP7A. The FDA previously granted Orphan Drug and Fast Track Designations to CUTX-101 for the treatment of Menkes disease. The FDA grants Rare Pediatric Disease Designation for serious and life-threatening diseases that primarily affect children ages 18 years or younger and fewer than 200,000 people in the United States.

In August 2020, Cyprium reported positive topline clinical efficacy results for CUTX-101. The study demonstrated statistically significant improvement in overall survival for Menkes disease subjects who received early treatment (ET) with CUTX-101, compared to an untreated historical control (HC) cohort, with a nearly 80% reduction in the risk of death (Hazard Ratio = 0.21, $p<0.0001$). Median survival for the ET cohort was 14.8 years (177.1 months) compared to 1.3 years (15.9 months) for the untreated HC cohort.

Cyprium intends to begin the rolling submission of the NDA for CUTX-101 to the FDA by the first quarter of 2021. If Cyprium's NDA is approved, it may be eligible to receive a priority review voucher, which can be redeemed to obtain priority review for any subsequent marketing application and may be sold or transferred.

MB-107/MB-207 (Ex vivo Lentiviral Therapies for X-linked Severe Combined Immunodeficiency (XSCID))

In August 2020, Mustang announced that the FDA granted Rare Pediatric Disease Designation to MB-107, a lentiviral gene therapy for the treatment of X-linked severe combined immunodeficiency ("XSCID"), also known as bubble boy disease, in newly-diagnosed infants, and to MB-207, a lentiviral gene therapy for the treatment of patients with XSCID who were previously treated with a hematopoietic stem cell transplantation ("HSCT") and for whom re-treatment is indicated.

In September 2020, Mustang announced that the FDA granted Orphan Drug Designation to MB-107 for the treatment of XSCID in newly-diagnosed infants and to MB-207 for the treatment of patients with XSCID who were previously treated with a HSCT and for whom re-treatment is indicated.

Mustang had previously received Advanced Therapy Medicinal Product ("ATMP") classification from the European Medicines Agency ("EMA") for MB-107 in April 2020, as well as Regenerative Medicine Advanced Therapy ("RMAT") designation from the FDA for MB-107 in August 2019.

In October 2020, Mustang licensed LentiBOOST™ technology from SIRION Biotech GmbH ("SIRION") for the development of MB-207.

In May 2020, Mustang submitted an Investigational New Drug ("IND") application with the FDA to initiate a registrational multicenter Phase 2 clinical trial of MB-107 in newly diagnosed infants with XSCID who are under the age of two. The trial is expected to enroll 10 patients who, together with 15 patients enrolled in the current multicenter trial led by St. Jude Children's Research Hospital, will be compared with 25 matched historical control patients who have undergone HSCT. The primary efficacy endpoint will be event-free survival. The initiation of this trial is currently on hold pending CMC clearance by the FDA, and this clearance is expected in the first quarter of 2021. We are targeting topline data from the trial in the fourth quarter of 2022.

Mustang expects to file an IND in the first quarter of 2021 for a registrational multi-center Phase 2 clinical trial of its lentiviral gene therapy in previously transplanted XSCID patients (MB-207). Mustang anticipates enrolling 20 patients and comparing them to matched historical control patients who have undergone a second HSCT. Mustang is targeting topline data for this trial in the fourth quarter of 2022.

Cosibelimab (anti-PD-L1 antibody (formerly CK-301))

In September 2020, Checkpoint announced updated interim results from the ongoing global, open-label, multicohort, Phase 1 clinical trial of its anti-PD-L1 antibody, cosibelimab, in patients with advanced cancers, including the registration-enabling cohort of patients with metastatic cutaneous squamous cell carcinoma ("mCSCC"). Cosibelimab demonstrated a 51.4% objective response rate ("ORR") and 13.5% complete response rate, which is nearly double the complete response rate observed at the time of previous analysis.
The registration-enabling study in mCSCC is currently over 50% enrolled, with full enrollment anticipated in early 2021. Checkpoint is on track to report full top-line results in the second half of 2021. Additional information on the Phase 1 trial can be found on www.ClinicalTrials.gov using identifier NCT03212404.

CAEL-101 (light chain fibril-reactive monoclonal antibody for AL amyloidosis)

In September 2020, Caelum announced the initiation of two Phase 3 studies of CAEL-101 for AL amyloidosis. The Phase 2 study met its primary objective, supporting initiation of the two parallel Phase 3 studies that will enroll ~370 AL amyloidosis patients. The Phase 2 program continues with the addition of a study arm to evaluate CAEL-101 in combination with SoC therapy plus daratumumab.
Positive long-term Phase 1a/1b data presented at the International Symposium on Amyloidosis (ISA) 2020 demonstrated prolonged overall survival (78 percent at 37 months) and durable organ response. CAEL-101 is currently in development at Caelum in collaboration with Alexion Pharmaceuticals, Inc.

Early Stage Product Candidates

MB-102 (CD123-targeted CAR T cell therapy)

In October 2020, Mustang announced that the first patient was been dosed in an open label, multicenter Phase 1/2 clinical trial to evaluate the safety and efficacy of MB-102 (CD123-targeted CAR T cell therapy) in patients with relapsed or refractory blastic plasmacytoid dendritic cell neoplasm ("BPDCN"), acute myeloid leukemia ("AML") and high-risk myelodysplastic syndrome ("hrMDS"). Study sites include City of Hope, where the CAR T cell therapy was initially developed and where the clinical data were generated to support Mustang's current multicenter trial, Dana-Farber Cancer Institute, Duke University and MD Anderson Cancer Center. Additional information on the Phase 1/2 trial can be found on www.ClinicalTrials.gov using identifier NCT04109482.

ONCOlogues (proprietary platform technology using PNA oligonucleotides)

In May 2020, we entered into an exclusive worldwide licensing agreement with Columbia University to develop novel oligonucleotides for the treatment of genetically driven cancers. The proprietary platform produces oligomers, known as "ONCOlogues," which are capable of binding gene sequences 1,000 times more effectively than complementary native DNA. ONCOlogues invade a DNA double helix and displace native mutated strands. This prevents the mRNA that antisense binds to from ever being created. It is active higher upstream than traditional antisense approaches as well as potentially more potent and broader in its utility.

In addition, we are exploring the potential of the platform to treat novel coronaviruses, such as COVID-19.

The ONCOlogues platform is currently in development at our partner company, Oncogenuity, Inc.

General Corporate

In August 2020, Fortress closed an underwritten public offering of 666,666 shares of its 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock ("Series A Preferred Stock"), (plus a 45-day option to purchase up to an additional 66,666 shares, which was exercised in August 2020) at a price of $18.00 per share for gross proceeds of approximately $13.2 million, before deducting underwriting discounts and commissions and offering expenses of $1.1 million.

Coupled with the February and May 2020 underwritten offerings of Series A Preferred Stock, Fortress has raised gross proceeds of approximately $39.1 million as of September 30, 2020 through the sale of its Series A Preferred Stock.

On June 28, 2019, Fortress entered into an At Market Issuance Sales Agreement ("2019 Common ATM"), with Cantor Fitzgerald & Co., Oppenheimer & Co., Inc., H.C. Wainwright & Co. Inc., Jones Trading Institutional Services LLC and B. Riley, as selling agents, governing potential sales of the Company's common stock. From January 1, 2020 through November 5, 2020 the Company issued approximately 16.4 million shares of common stock for gross proceeds of $44.8 million at an average selling price of $2.74.

Also in August 2020, Fortress announced a $60 million loan agreement with Oaktree Capital Management ("Oaktree Note"). The proceeds from this loan were used to pay off the balances outstanding under the 2017 Subordinated Note Financing, the 2018 Venture Notes, and the 2019 Notes. The loan agreement will mature in August 2025.

Critical Accounting Policies and Use of Estimates

See Note 2 to the Condensed Consolidated Financial Statements.

Results of Operations

General

For the three and nine months ended September 30, 2020, we generated $9.5 million and $31.9 million, respectively, of net revenue, of which $9.4 million and $30.8 million, respectively, relates primarily to the sale of Journey branded and generic products and approximately $28,000 and $1.0 million, respectively, relates to Checkpoint's collaborative agreements with TG Therapeutics Inc. ("TGTX"). As of September 30, 2020, we had an accumulated deficit of $477.5 million. While we may in the future generate revenue from a variety of sources, including license fees, milestone payments, research and development payments in connection with strategic partnerships and/or product sales, our and our subsidiaries' current product candidates are at an early stage of development and may never be successfully developed or commercialized. Accordingly, we expect to continue to incur substantial losses from operations for the foreseeable future, and there can be no assurance that we will ever generate significant revenues.

For the three and nine months ended September 30, 2020, we had $3.4 million and $10.3 million, respectively, of costs of goods sold in connection with the sale of Journey's marketed products, compared to $2.7 million and $7.0 million, respectively, for the three and nine months ended September 30, 2019. The increase is as a result of the amortization of license fees including the drug user fee related to the expansion of the marketed product portfolio as well as higher royalty fees attributed directly to the increase in net sales.

Research and Development Expenses

Research and development costs primarily consist of personnel related expenses, including salaries, benefits, travel, and other related expenses, stock-based compensation, payments made to third parties for license and milestone costs related to in-licensed products and technology, payments made to third party contract research organizations for preclinical and clinical studies, investigative sites for clinical trials, consultants, the cost of acquiring and manufacturing clinical trial materials, costs associated with regulatory filings and patents, laboratory costs and other supplies.

For the three months ended September 30, 2020 and 2019, research and development expenses were approximately $13.3 million and $14.6 million, respectively. Additionally, during the three months ended September 30, 2020 and 2019, we expensed approximately $0.5 million and $0.7 million, respectively, in costs related to the acquisition of licenses. Noncash, stock-based compensation expense included in research and development for the three months ended September 30, 2020 and 2019, was $0.7 million and $1.2 million, respectively.

The table below provides a summary of research and development costs associated with the development of our licenses by entity, for the quarter ended September 30, 2020 and 2019, by entity:

	Three Months Ended September 30,		% of total	
($ in thousands)	2020	2019	2020	2019
Research & Development				
Fortress	$ 364	$ 707	3 %	5 %
Partner Companies:				
Avenue	466	1,706	4 %	12 %
Checkpoint	2,543	3,894	19 %	27 %
Mustang	7,925	7,247	60 %	50 %
Other[1]	2,000	1,017	14 %	6 %
Total Research & Development Expense	**$ 13,298**	**$ 14,571**	**100 %**	**100 %**

Note 1: Includes the following partner companies: Aevitas, Baergic (2020 only), Cellvation, Cyprium, Helocyte, Oncogenuity (2020 only) and Tamid (2019 only).

General and Administrative Expenses

General and administrative expenses consist principally of sales and marketing costs, personnel-related costs, professional fees for legal, consulting, audit and tax services, rent and other general operating expenses not otherwise included in research and development expenses. For the three months ended September 30, 2020 and 2019, general and administrative expenses were approximately $15.4 million and $14.3 million, respectively. Noncash, stock-based compensation expense included in general and administrative expenses for the three months September 30, 2020 and 2019, was $2.5 million and $2.5 million, respectively.

The table below provides a summary of general and administrative costs for the quarter ended September 30, 2020 and 2019, by entity:

	Three Months Ended September 30,		% of Total	
($ in thousands)	2020	2019	2020	2019
General & Administrative				
Fortress	$ 5,289	$ 4,994	34 %	35 %
Partner Companies:				
Avenue	571	617	4 %	4 %
Checkpoint	1,573	1,403	10 %	10 %
JMC[1]	5,829	5,038	38 %	35 %
Mustang	1,640	1,924	11 %	13 %
Other[2]	481	363	3 %	3 %
Total General & Administrative Expense	**$ 15,383**	**$ 14,339**	**100 %**	**100 %**

Note 1: Includes cost of outsourced sales force for the three months ended September 30, 2020 and 2019 of $2.9 million and $2.5 million, respectively.

Note 2: Includes the following partner companies: Aevitas, Baergic (2020 only), Cellvation, Cyprium, Helocyte, Oncogenuity (2020 only) and Tamid (2019 only).

Comparison of three months ended September 30, 2020 and 2019

	Three Months Ended September 30,		Change	
($ in thousands)	2020	2019	$	%
Revenue				
Product revenue, net	$ 9,447	$ 9,492	$ (45)	0%
Revenue – related party	28	280	(252)	(90)%
Net revenue	9,475	9,772	(297)	(3)%
Operating expenses				
Cost of goods sold – product revenue	3,379	2,702	677	25 %
Research and development	13,298	14,571	(1,273)	(9)%
Research and development – licenses acquired	458	700	(242)	(35)%
General and administrative	15,383	14,339	1,044	7 %
Total operating expenses	32,518	32,312	206	1 %
Loss from operations	(23,043)	(22,540)	(503)	2 %
Other income (expense)				
Interest income	265	738	(473)	(64)%
Interest expense and financing fee	(6,958)	(3,168)	(3,790)	120 %
Change in fair value of derivative liability	(803)	—	(803)	100 %
Change in fair value of investment	575	—	575	100 %
Gain on deconsolidation of Caelum	—	—	—	100 %
Total other expense	(6,921)	(2,430)	(4,491)	185 %
Net Loss	**(29,964)**	**(24,970)**	**(4,994)**	**20 %**
Less: net loss attributable to non-controlling interest	14,417	12,208	2,209	18 %
Net loss attributable to common stockholders	**$ (15,547)**	**$ (12,762)**	**$ (2,785)**	**22 %**

Net revenues decreased $0.3 million or 3% from the three months ended September 30, 2019 to the three months ended September 30, 2020 due to a temporary supply shortage for Ximino in September 2020, which resulted in flat net revenue for Journey, as well as a decrease in collaboration revenue between Checkpoint and TGTX. Related party revenue for the three months ended September 30, 2019 included $0.2 million from TGTX for the purchase of clinical material of cosibelimab not replicated in the current quarter.

Cost of goods sold increased by $0.7 million or 25% from the three months ended September 30, 2019 to the three months ended September 30, 2020 due to the increase in the amortization of license fees including the drug user fee related to the expansion of Journey's marketed product portfolio.

Research and development expenses decreased $1.3 million or 9% from the three months ended September 30, 2019 to the three months ended September 30, 2020. The following table shows the change in research and development spending by Fortress and its partner companies:

	Three Months Ended September 30, September 30,		Change	
(Sin thousands)	2020	2019	$	%
Research & Development				
Stock-based compensation				
Fortress	$ 207	$ 158	$ 49	31 %
Partner Companies:				
Avenue	62	140	(78)	(56)%
Checkpoint	156	179	(23)	(13)%
Mustang	258	731	(473)	(65)%
Other[1]	15	3	12	400 %
Sub-total stock-based compensation expense	698	1,211	(513)	(42)%
Other Research & Development				
Fortress	157	549	(392)	(71)%
Partner Companies:				
Avenue	404	1,566	(1,162)	(74)%
Checkpoint	2,388	3,715	(1,327)	(36)%
Mustang	7,667	6,516	1,151	18 %
Other[1]	1,984	1,014	970	96 %
Total Research & Development Expense	**$ 13,298**	**$ 14,571**	**$ (1,273)**	(9)**%**

Note 1: Includes the following partner companies: Aevitas, Baergic (2020 only), Cellvation, Cyprium, Helocyte, Oncogenuity (2020 only) and Tamid (2019 only).

The decrease in stock-based compensation for the quarter ended September 30, 2020 is primarily due to the effect of fully vested and forfeited equity grants to key employees and non-employees at Mustang.

The decrease in research and development expense of $1.2 million at Avenue is mainly due to NDA preparation costs and the completion of Avenue's abdominoplasty and safety studies; the decreased spending at Checkpoint of $1.3 million is attributable primarily to reduced manufacturing and clinical costs related to Checkpoint's product candidates. Mustang's increase in research and development spending of $1.2 million is attributable to increased costs associated with third-party vector manufacturing and personnel related expenses. The increase in "Other" of $0.1 million is attributable to increased spend in the three months ended September 30, 2020 as compared to the three months ended September 30, 2019 Cyprium, as Cyprium prepares to file for its rolling NDA.

General and administrative expenses increased $1.0 million, or 7%, from the three months ended September 30, 2019 to the three months ended September 30, 2020. The following table shows the change in general and administrative spending by Fortress and its partner companies:

	Three Months Ended September 30,		Change	
(Sin thousands)	2020	2019	$	%
General & Administrative				
Stock-based compensation				
Fortress	$ 1,425	$ 1,248	$ 177	14 %
Partner Companies:				
Avenue	99	158	(59)	(37)%
Checkpoint	569	654	(85)	(13)%
Mustang	348	389	(41)	(11)%
Other[2]	32	81	(49)	(60)%
Sub-total stock-based compensation expense	2,473	2,530	(57)	(2)%
Other General & Administrative				
Fortress	3,864	3,746	118	3 %
Partner Companies:				
Avenue	472	459	13	3 %
Checkpoint	1,004	749	255	34 %
JMC[1]	5,797	5,038	759	15 %
Mustang	1,292	1,535	(243)	(16)%
Other[2]	481	282	199	71 %
Total General & Administrative Expense	**$ 15,383**	**$ 14,339**	**$ 1,044**	**7 %**

Note 1: Includes cost of outsourced sales force for the three months ended September 30, 2020 and 2019 of $2.9 million and $2.5 million, respectively.

Note 2: Includes the following partner companies: Aevitas, Baergic (2020 only), Cellvation, Cyprium, Helocyte, Oncogenuity (2020 only) and Tamid (2019 only). “Other” with regards to stock-based compensation expense includes JMC.

For the quarter ended September 30, 2020, the increase in general and administrative expenses of $1.0 million or 7% is primarily attributable to Journey’s increase in sales headcount, with 35 sales reps in the quarter ended September 30, 2019 vs. 40 in the quarter ended September 30, 2020, as well as Checkpoint’s increase in expenses related to professional fees and investor relations.

Total other expense increased $4.5 million, or 185%, from $2.4 million for the three months ended September 30, 2019 to $6.9 million for the three months ended September 30, 2020, primarily due to the interest expense and financing fee associated with the Oaktree Note and the debt payoff, and the change in fair value of derivative liabilities related to the warrants issued by Cyprium of $0.8 million recorded in the three months ended September 30, 2020.

Net loss attributable to common stockholders increased $2.9 million, or 22%, from a net loss of $12.8 million for the three months ended September 30, 2019 to a net loss of $15.5 million for the three months ended September 30, 2020.

Comparison of nine months ended September 30, 2020 and 2019

	Nine Months Ended September 30,		Change	
(Sin thousands)	2020	2019	$	%
Revenue				
Product revenue, net	$ 30,808	$ 23,816	$ 6,992	29 %
Revenue – related party	1,042	1,683	(641)	(38)%
Net revenue	31,850	25,499	6,351	25 %
Operating expenses				
Cost of goods sold – product revenue	10,313	6,972	3,341	48 %
Research and development	43,868	56,355	(12,487)	(22)%
Research and development – licenses acquired	2,278	1,350	928	69 %
General and administrative	45,358	41,260	4,098	10 %
Total operating expenses	101,817	105,937	(4,120)	(4)%
Loss from operations	(69,967)	(80,438)	10,471	(13)%
Other income (expense)				
Interest income	1,228	1,955	(727)	(37)%
Interest expense and financing fee	(13,142)	(8,743)	(4,399)	50 %
Change in fair value of derivative liability	(1,189)	—	(1,189)	100 %
Change in fair value of investment	575	—	575	100 %
Gain on deconsolidation of Caelum	—	18,521	(18,521)	(100)%
Total other (expense) income	(12,528)	11,733	(24,261)	(207)%
Net loss	**(82,495)**	**(68,705)**	**(13,790)**	**20 %**
Less: net loss attributable to non-controlling interest	41,264	44,237	(2,973)	(7)%
Net loss attributable to common stockholders	**$ (41,231)**	**$ (24,468)**	**$ (16,763)**	**69 %**

Net revenues increased $6.4 million or 25% from the nine months ended September 30, 2019 to the nine months ended September 30, 2020. The increase in net revenue is related to an increase in product revenue of $7.0 million associated with Journey's marketed products driven by the expansion of its product lines and overall sales growth, offset by a decrease of $0.6 million in collaboration revenue between Checkpoint and TGTX.

Cost of goods sold increased by $3.3 million or 48% from the nine months ended September 30, 2019 to the nine months ended September 30, 2020 due to the increase in Journey marketed products revenue in the current nine-month period as compared to the prior period.

Research and development expenses decreased $12.5 million or 22% from the nine months ended September 30, 2019 to the nine months ended September 30, 2020. The following table shows the change in research and development spending by Fortress and its partner companies:

	Nine Months Ended September 30,		Change	
($ in thousands)	2020	2019	$	%
Research & Development				
Stock-based compensation				
Fortress	$ 611	$ 447	$ 164	37 %
Partner Companies:				
Avenue	231	505	(274)	(54)%
Checkpoint	462	559	(97)	(17)%
Mustang	1,156	1,116	40	4 %
Other[1]	26	8	18	225 %
Sub-total stock-based compensation expense	2,486	2,635	(149)	(6)%
Other Research & Development				
Fortress	775	1,454	(679)	(47)%
Partner Companies:				
Avenue	2,151	17,834	(15,683)	(88)%
Checkpoint	7,745	12,036	(4,291)	(36)%
Mustang	25,788	19,789	5,999	30 %
Other[1]	4,923	2,607	2,316	89 %
Total Research & Development Expense	**$ 43,868**	**$ 56,355**	**$ (12,487)**	**(22)%**

Note 1: Includes the following partner companies: Aevitas, Baergic (2020 only), Cellvation, Cyprium, Helocyte, Oncogenuity (2020 only) and Tamid (2019 only).

The increase in stock-based compensation for the nine months ended September 30, 2020 is primarily due to additional equity grants to key employees and non-employees at Fortress and Mustang.

The decrease in research and development expense of $15.7 million at Avenue is due to the completion of Avenue's abdominoplasty and safety studies; the decreased spending at Checkpoint of $4.3 million is attributable primarily to manufacturing costs related to cosibelimab incurred in the nine months ended September 30, 2019 and were not replicated in the current nine month period and a reduction in clinical costs for CK-101. Mustang's increase in research and development spending of $6.0 million is attributable to personnel costs due to increased headcount and increased spending on third-party vector manufacturing, third-party contract research organizations, as well as consulting and sponsored research and clinical trial agreements. The increase in "Other" of $2.3 million is attributable to increased spend in the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019 primarily attributable to development costs associated with our partner company Cyprium, as Cyprium prepares to file for its rolling NDA.

General and administrative expenses increased $4.1 million, or 10%, from the nine months ended September 30, 2019 to the nine months ended September 30, 2020. The following table shows the change in general and administrative spending by Fortress and its partner companies:

($ in thousands)	Nine Months Ended September 30, 2020	Nine Months Ended September 30, 2019	Change $	Change %
General & Administrative				
Stock-based compensation				
Fortress	$ 4,490	$ 3,590	$ 900	25 %
Partner Companies:				
Avenue	361	1,079	(718)	(67)%
Checkpoint	1,633	1,885	(252)	(13)%
Mustang	1,212	1,058	154	15 %
Other[2]	137	176	(39)	(22)%
Sub-total stock-based compensation expense	7,833	7,788	45	1 %
Other General & Administrative				
Fortress	11,639	10,165	1,474	15 %
Partner Companies:				
Avenue	1,471	1,373	98	7 %
Checkpoint	2,989	2,623	366	14 %
JMC[1]	16,284	13,872	2,412	17 %
Mustang	4,119	4,613	(494)	(11)%
Other[2]	1,023	826	197	24 %
Total General & Administrative Expense	**$ 45,358**	**$ 41,260**	**$ 4,098**	**10 %**

Note 1: Includes cost of outsourced sales force for the nine months ended September 30, 2020 and 2019 of $7.5 million and $7.4 million, respectively.

Note 2: Includes the following partner companies: Aevitas, Baergic (2020 only), Cellvation, Cyprium, Helocyte, Oncogenuity (2020 only) and Tamid (2019 only). “Other” with regards to stock-based compensation expense includes JMC.

For the nine months ended September 30, 2020, the increase in general and administrative expenses of $4.1 million or 10% is primarily attributable to Journey’s sales and marketing cost increases due to the increased sales headcount as well as the product portfolio, and Fortress’ increase due to increased headcount-related costs, professional fees for ongoing business development activities as well as legal expenses, accounting fees, and costs associated with investor relations.

Total other income (expense) decreased $24.3 million, or 207%, from income of $11.7 million for the nine months ended September 30, 2019 to expense of $12.5 million for the nine months ended September 30, 2020, primarily due to the gain on deconsolidation of Caelum of $18.5 million recorded in the nine months ended September 30, 2019 as well as an increase in financing fees of $4.4 million attributable to the repayment of debt.

Net loss attributable to common stockholders increased $16.8 million, or 69%, from a net loss of $24.5 million for the nine months ended September 30, 2019 to a net loss of $41.2 million for the nine months ended September 30, 2020.

Liquidity and Capital Resources

We will require additional financing to fully develop and prepare regulatory filings and obtain regulatory approvals for our existing and new product candidates, fund operating losses, and, if deemed appropriate, establish or secure through third parties manufacturing for our potential products, and sales and marketing capabilities. We have funded our operations to date primarily through the sale of equity and debt securities. We believe that our current cash and cash equivalents is sufficient to fund operations for at least the next twelve months. Our failure to raise capital as and when needed would have a material adverse impact on our financial condition and our ability to pursue our business strategies. We may seek funds through equity or debt financings, collaborative or other arrangements with corporate sources, sales of stakes in partner companies, the contingent acquisitions of Avenue and Caelum, or through other sources of financing.

In addition to the foregoing, based on the Company's current assessment, the Company does not expect any material impact on its long-term development timeline and its liquidity due to the worldwide spread of the COVID-19 virus. However, the Company is continuing to assess the effect on its operations by monitoring the spread of COVID-19 and the actions implemented to combat the virus throughout the world.

Cash Flows for the Nine Months Ended September 30, 2020 and 2019

($ in thousands)	Nine Months Ended September 30, 2020	2019
Statement of cash flows data:		
Total cash (used in)/provided by:		
Operating activities	$ (63,196)	$ (69,909)
Investing activities	(5,597)	19,787
Financing activities	135,395	119,559
Net increase in cash and cash equivalents and restricted cash	$ 66,602	$ 69,437

Components of cash flows from publicly-traded partner companies are comprised of:

	For the Nine Months Ended September 30, 2020				
($ in thousands)	Fortress[1]	Avenue	Checkpoint	Mustang	Total
Statement of cash flows data:					
Total cash (used in)/provided by:					
Operating activities	$ (20,315)	$ (3,420)	$ (11,617)	$ (27,844)	$ (63,196)
Investing activities	(1,649)	(1,000)	—	(2,948)	(5,597)
Financing activities	63,196	—	27,569	44,630	135,395
Net increase in cash and cash equivalents and restricted cash	$ 41,232	$ (4,420)	$ 15,952	$ 13,838	$ 66,602

	For the Nine Months Ended September 30, 2019				
($ in thousands)	Fortress[1]	Avenue	Checkpoint	Mustang	Total
Statement of cash flows data:					
Total cash (used in)/provided by:					
Operating activities	$ (7,911)	$ (21,263)	$ (16,644)	$ (24,091)	$ (69,909)
Investing activities	9,487	(5,000)	—	15,300	19,787
Financing activities	14,401	32,333	7,709	65,116	119,559
Net increase in cash and cash equivalents and restricted cash	$ 15,977	$ 6,070	$ (8,935)	$ 56,325	$ 69,437

Note 1: Includes Fortress and non-public partner companies, with the exception of Caelum, which was deconsolidated in the quarter ended March 31, 2019. Operating activities are offset by a gain of $18.5 million related to the deconsolidation of Caelum for the nine months ended September 30, 2019.

Operating Activities

Net cash used in operating activities decreased $6.7 million from the nine months ended September 30, 2019, compared to the nine months ended September 30, 2020. The decrease is due to the decrease of $18.5 million in the gain recognized on the deconsolidation of Caelum, offset by the $2.6 million increase in cash used from the changes in operating assets and liabilities as well as the $13.8 million increase in net loss.

Investing Activities

Net cash provided by investing activities for the nine months ended September 30, 2019 of $19.8 million, as compared to net cash used in investing activities of $5.6 million for the nine months ended September 30, 2020 is a $25.4 million change in cash flows from investing activities. The change is primarily due to $17.4 million decrease in the redemption of certificates of deposit, an increase in the purchase of research and development licenses of $2.5 million, offset by the $13.1 million decrease in cash from discontinued investing activities due to the deconsolidation of Caelum.

Financing Activities

Net cash provided by financing activities was $119.6 million for the nine months ended September 30, 2019, compared to $135.4 million of net cash provided by financing activities for the nine months ended September 30, 2020, an increase of $15.9 million. During the nine months ended September 30, 2020, net proceeds the issuance of Series A preferred stock was $35.7 million, net proceeds from at-the-market offerings for both the Company and its partners was $76.8 million, and net proceeds from partner company sale of stock was $54.1 million, offset by $4.5 million paid in Series A Preferred dividends. During the nine months ended September 30, 2019, net proceeds from partners' offerings were $61.0 million, net proceeds from partner companies' at-the-market offerings were $29.7 million, and net proceeds from Mustang's Horizon Notes was $13.6 million.

Off-Balance Sheet Arrangements

We are not party to any off-balance sheet transactions. We have no guarantees or obligations other than those which arise out of normal business operations.

Item 3. Quantitative and Qualitative Disclosures About Market Risks

Market risk represents the risk of loss that may result from the change in value of financial instruments due to fluctuations in their market price. Market risk is inherent in all financial instruments. Market risk may be exacerbated in times of trading illiquidity when market participants refrain from transacting in normal quantities and/or at normal bid-offer spreads. Our exposure to market risk is directly related to derivatives, debt and equity linked instruments related to our financing activities.

Our assets and liabilities are denominated in U.S. dollars. Consequently, we have not considered it necessary to use foreign currency contracts or other derivative instruments to manage changes in currency rates. We do not know, nor do we plan to, use derivative financial instruments for speculative or trading purposes. However, these circumstances might change.

The primary quantifiable market risk associated with our financial instruments is sensitivity to changes in interest rates. Interest rate risk represents the potential loss from adverse changes in market interest rates. We use an interest rate sensitivity simulation to assess our interest rate risk exposure. For purposes of presenting the possible earnings effect of a hypothetical, adverse change in interest rates over the 12-month period from our reporting date, we assume that all interest rate sensitive financial instruments will be impacted by a hypothetical, immediate 100 basis point increase in interest rates as of the beginning of the period. The sensitivity is based upon the hypothetical assumption that all relevant types of interest rates that affect our results would increase instantaneously, simultaneously and to the same degree. We do not believe that our cash and equivalents have significant risk of default or illiquidity.

The sensitivity analyses of the interest rate sensitive financial instruments are hypothetical and should be used with caution. Changes in fair value based on a 1% or 2% variation in an estimate generally cannot be extrapolated because the relationship of the change in the estimate to the change in fair value may not be linear. Also, the effect of a variation in a particular estimate on the fair value of financial instruments is calculated independent of changes in any other estimate; in practice, changes in one factor may result in changes in another factor, which might magnify or counteract the sensitivities. In addition, the sensitivity analyses do not consider any action that we may take to mitigate the impact of any adverse changes in the key estimates.

Based on our analysis, for the years ended December 31, 2018 and December 31, 2019, and for the interim period through September 30, 2020, we determined the effect of a 100+1- basis point change in interest rates on the value of our financial instruments and the resultant effect on our net loss to be immaterial.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness, as of September 30, 2020, of the design and operation of our disclosure controls and procedures, as such term is defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based on this evaluation, our principal executive officer and principal financial officer have concluded that, as of such date, our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in our Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

No change in internal control over financial reporting occurred during the most recent quarter with respect to our operations, which materially affected, or is reasonable likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

Investing in our Common Stock, Series A Preferred Stock or any other type of equity or debt securities (together our "Securities") involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K including the consolidated financial statements and the related notes, as well as the risks, uncertainties and other information set forth in the reports and other materials filed or furnished by our partners and affiliates Checkpoint, Mustang, and Avenue with the SEC, before deciding to invest in our Securities. If any of the following risks or the risks included in the public filings of Checkpoint, Mustang or Avenue were to materialize, our business, financial condition, results of operations, and future growth prospects could be materially and adversely affected. In that event, the market price of our Securities could decline, and you could lose part of or all of your investment in our Securities. In addition, you should be aware that the below stated risks should be read as being applicable to our partners and affiliates such that, if any of the negative outcomes associated with any such risk is experienced by one of our partners or affiliates, the value of Fortress' holdings in such partner or affiliate (if any) may decline.

The below risks are grouped into nine broad categories:

(1) Risks Inherent in Drug Development
(2) Risks Pertaining to the Need for and Impact of Existing and Additional Financing Activities
(3) Risks Pertaining to Our Existing Revenue Stream from Journey Medical
(4) Risks Pertaining to our Business Strategy, Structure and Organization
(5) Risks Pertaining to Reliance on Third Parties
(6) Risks Pertaining to Intellectual Property and Potential Disputes with Licensors Thereof
(7) Risks Pertaining to the Commercialization of Product Candidates
(8) Risks Pertaining to Legislation and Regulation Affecting the Biopharmaceutical and Other Industries
(9) General Risks

The above categories are broadly stated, and you should review each of the individual sub-headings and detailed descriptions thereunder for a more comprehensive understanding of the risks posed by investing in our Securities.

Risks Inherent in Drug Development

Most of our product candidates are at early stages of development and may not be successfully developed or commercialized; the product candidates that we do advance into clinical trials may not receive regulatory approval.

Most of our existing product candidates remain in the early stages of development and will require substantial further capital expenditures, development, testing and regulatory clearances/approvals prior to commercialization. The development and regulatory approval processes take several years, and it is not likely that our product candidates, even if successfully developed and approved by the FDA and/or foreign equivalent regulatory bodies, would be commercially available for several years. Of the large number of drugs in development, only a small percentage successfully obtain regulatory approval and are commercialized. Accordingly, even if we are able to obtain the requisite financing to fund development programs, we cannot assure you that any of our product candidates will be successfully developed or commercialized, which could result in the failure of our business and a loss of your investment in our Company.

Pharmaceutical development has inherent risks. We will be required to demonstrate through well-controlled clinical trials that product candidates are effective with a favorable benefit-risk profile for use in their target indications before seeking regulatory approvals for their commercial sale. Success in early clinical trials does not mean that later clinical trials will be successful, as product candidates in later-stage clinical trials may fail to demonstrate sufficient safety or efficacy despite having progressed through initial clinical testing. Also, we may need to conduct additional clinical trials that are not currently anticipated. Companies frequently suffer significant setbacks in advanced clinical trials, even after earlier clinical trials have shown promising results. As a result, product candidates that we advance into clinical trials may not receive regulatory approval.

In addition, even if our product candidates were to obtain approval, regulatory authorities may approve any such product candidates or any future product candidate for fewer or more limited indications than we request, may not approve the price we intend to charge for our products, may grant approval contingent on the performance of costly post-marketing clinical trials, or may approve a product candidate with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate. The regulatory authority may also require the label to contain warnings, contraindications, or precautions that limit the commercialization of the product. In addition, the Drug Enforcement Agency (or foreign equivalent) may classify one or more of our product candidates in scheduling under the Controlled Substances Act (or its foreign equivalent) that could impede such product's commercial viability. Any of these scenarios could compromise the commercial prospects for one or more of our current or future product candidates.

Our product candidates currently under clinical development are subject to extensive regulation, which can be costly and time consuming, cause unanticipated delays and/or prevent the receipt of the required approvals to commercialize product candidates.

The clinical development, manufacturing, labeling, storage, record-keeping, advertising, promotion, import, export, marketing and distribution of any product candidate, including our product candidates, is subject to extensive regulation by the FDA in the United States and by comparable health authorities in foreign markets. In the United States, we are not permitted to market a product candidate until such product candidate's Biologics License Application ("BLA") or New Drug Application ("NDA") is approved by the FDA. The process of obtaining approval is expensive, often takes many years, and can vary substantially based upon the type, complexity and novelty of the products involved. In addition to significant clinical testing requirements, our ability to obtain marketing approval for product candidates depends on obtaining the final results of required non-clinical testing, including characterization of the manufactured components of our product candidates and validation of our manufacturing processes. The FDA may determine that our product manufacturing processes, testing procedures or facilities are inadequate to justify approval. Approval policies or regulations may change, and the FDA has substantial discretion in the pharmaceutical approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons. Despite the time and expense invested in the clinical development of product candidates, regulatory approval is never guaranteed.

The FDA and other regulatory agencies can delay, limit or deny approval of a product candidate for many reasons, including, but not limited to:

- the FDA or comparable foreign regulatory authorities may disagree with the design or implementation of our clinical trials;
- our inability to demonstrate to the satisfaction of the FDA that a product candidate is safe and effective for an indication;

- the FDA may not accept clinical data from trials conducted by individual investigators or in countries where the standard of care is potentially different from that of the United States;
- the results of clinical trials may not meet the level of statistical significance required by the FDA for approval;
- the FDA may disagree with the interpretation of data from preclinical studies or clinical trials;
- the FDA may not approve the manufacturing processes or facilities or those of third-party manufacturers with which we or our respective collaborators currently contract for clinical supplies and plan to contract for commercial supplies; or
- the approval policies or regulations of the FDA may significantly change in a manner rendering the clinical data insufficient for approval or the product characteristics or benefit-risk profile unfavorable for approval.

With respect to foreign markets, approval procedures vary among countries and, in addition to the aforementioned risks, can involve additional product testing, administrative review periods and agreements with pricing authorities. In addition, recent events raising questions about the safety of certain marketed pharmaceuticals may result in increased cautiousness by the FDA and comparable foreign regulatory authorities in reviewing new pharmaceuticals based on safety, efficacy or other regulatory considerations and may result in significant delays in obtaining regulatory approvals. Any delay in obtaining, or inability to obtain, applicable regulatory approvals would prevent us from commercializing our product candidates.

Delays in the commencement of our clinical trials (or suspensions or terminations of such trials) could result in increased costs and/or delay our ability to pursue regulatory approvals.

The commencement or resumption of clinical trials can be delayed for a variety of reasons, including, but not necessarily limited to, delays in:

- obtaining regulatory clearance/approval to commence a clinical trial;
- identifying, recruiting and training suitable clinical investigators;
- reaching and preserving agreements on acceptable terms with prospective clinical research organizations ("CROs") and trial sites, the terms of which can be subject to extensive negotiation, may be subject to modification from time to time and may vary significantly among different CROs and trial sites;
- obtaining sufficient quantities of a product candidate for use in clinical trials;
- obtaining Institutional Review Board ("IRB") or ethics committee approval to conduct a clinical trial at a prospective site;
- developing and validating companion diagnostics on a timely basis, if required;
- adding new clinical sites once a trial has begun;
- the death, disability, departure or other change to the principal investigator or other staff overseeing the clinical trial at a given site;
- identifying, recruiting and enrolling patients to participate in a clinical trial; or
- retaining (or replacing) patients who have initiated a clinical trial but who may withdraw due to adverse events from the therapy, insufficient efficacy, fatigue with the clinical trial process, personal issues, or other reasons.

Any delays in the commencement of our clinical trials will delay our ability to pursue regulatory approval for product candidates. In addition, many of the factors that cause, or lead to, a delay in the commencement of clinical trials may also ultimately lead to the denial of regulatory approval of a product candidate.

Additionally, unacceptable adverse safety events caused by any of our product candidates that we advance into clinical trials could cause regulatory authorities to interrupt, delay or stop clinical trials and could result in the denial of regulatory approval by the FDA or other regulatory authorities for any or all targeted indications and markets. This, in turn, could prevent us from commercializing the affected product candidate and generating revenues from its sale. If any of our product candidates causes unacceptable adverse safety events in clinical trials, we may not be able to obtain regulatory approval or commercialize such products, or, if such product candidates are approved for marketing, future adverse events could cause us to withdraw such products from the market.

Suspensions or delays in the completion of clinical testing could result in increased costs and delay or prevent our ability to complete development of that product or generate product revenues.

Once a clinical trial has begun, patient recruitment and enrollment may be slower than we anticipate. Clinical trials may also be delayed as a result of ambiguous or negative interim results or difficulties in obtaining sufficient quantities of product manufactured in accordance with regulatory requirements and on a timely basis. Further, a clinical trial may be modified, suspended or terminated by us, an IRB, an ethics committee or a data safety monitoring committee overseeing the clinical trial, any clinical trial site with respect to that site, or the FDA or other regulatory authorities, due to a number of factors, including, but not necessarily limited to:

- failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols;
- inspection of the clinical trial operations or clinical trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;
- stopping rules contained in the protocol;
- unforeseen safety issues or any determination that the clinical trial presents unacceptable health risks; and
- lack of adequate funding to continue the clinical trial.

Changes in regulatory requirements and guidance also may occur, and we may need to amend clinical trial protocols to reflect these changes. Amendments may require us to resubmit clinical trial protocols to IRBs for re-examination, which may in turn impact the costs and timing of, and the likelihood of successfully completing, a clinical trial. If we experience delays in the completion of, or if we must suspend or terminate, any clinical trial of any product candidate, our ability to obtain regulatory approval for that product candidate will be delayed, and the commercial prospects, if any, for the product candidate may suffer as a result. In addition, many of these factors may also ultimately lead to the denial of regulatory approval of a product candidate.

If our competitors develop treatments for any of the target indications for which our product candidates are being developed and those competitor products are approved more quickly, marketed more successfully or demonstrated to be more effective, the commercial opportunity with respect to that product candidate will be reduced or eliminated.

The biotechnology and pharmaceutical industries are subject to rapid and intense technological change. We face, and will continue to face, competition in the development and marketing of our product candidates from academic institutions, government agencies, research institutions and biotechnology and pharmaceutical companies. There can be no assurance that developments by others will not render one or more of our product candidates obsolete or noncompetitive. Furthermore, new developments, including the development of other drug technologies and methods of preventing the incidence of disease, occur in the pharmaceutical industry at a rapid pace. These developments may render one or more of our product candidates obsolete or noncompetitive.

Competitors may seek to develop alternative formulations that do not directly infringe on our in-licensed patent rights. The commercial opportunity for one or more of our product candidates could be significantly harmed if competitors are able to develop alternative formulations outside the scope of our in-licensed patents. Compared to us, many of our potential competitors have substantially greater:

- capital resources;
- development resources, including personnel and technology;
- clinical trial experience;

- regulatory experience;
- expertise in prosecution of intellectual property rights; and
- manufacturing, distribution and sales and marketing experience.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize one or more of our product candidates. Our competitors may also develop drugs that are more effective, safe, useful and less costly than ours and may be more successful than us in manufacturing and marketing their products. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. We will also face competition from these third parties in establishing clinical trial sites, in patient registration for clinical trials, and in identifying and in-licensing new product candidates.

Negative public opinion and increased regulatory scrutiny of the therapies that underpin many of our product candidates may damage public perception of our product candidates or adversely affect our ability to conduct our business or obtain regulatory approvals for our product candidates.

Public perception may be influenced by claims that one or more of the therapies underpinning our product candidates, including without limitation gene therapy, is unsafe, and such therapy may not gain the acceptance of the public or the medical community. In particular, the success of our gene therapy platforms will depend upon physicians specializing in the treatment of those diseases that our product candidates target prescribing treatments that involve the use of our product candidates in lieu of, or in addition to, existing treatments with which they are already familiar and for which greater clinical data may be available. More restrictive government regulations or negative public opinion would have a negative effect on our business or financial condition and may delay or impair the development and commercialization of our product candidates or demand for any products we may develop. Adverse events in our clinical trials, even if not ultimately attributable to our product candidates, and the resulting publicity, could lead to increased governmental regulation, unfavorable public perception, potential regulatory delays in the testing or approval of our potential product candidates, stricter labeling requirements for those product candidates that do obtain approval and/or a decrease in demand for any such product candidates. Concern about environmental spread of our products, whether real or anticipated, may also hinder the commercialization of our products.

Regulatory approval for any approved product is limited by the FDA to those specific indications and conditions for which clinical safety and efficacy have been demonstrated.

Any regulatory approval is limited to those specific diseases and indications for which a product is deemed to be safe and effective by the FDA. In addition to the FDA approval required for new formulations, any new indication for an approved product also requires FDA approval. If we are not able to obtain FDA approval for any desired future indications for our products, our ability to effectively market and sell our products may be reduced and our business may be adversely affected.

While physicians may choose to prescribe drugs for uses that are not described in the product's labeling and for uses that differ from those tested in clinical studies and approved by the regulatory authorities, our ability to promote the products is limited to those indications that are specifically approved by the FDA. These "off-label" uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. Regulatory authorities in the US generally do not regulate the behavior of physicians in their choice of treatments. Regulatory authorities do, however, restrict communications by pharmaceutical companies on the subject of off-label use. If our promotional activities fail to comply with these regulations or guidelines, we may be subject to warnings from, or enforcement action by, these authorities. In addition, our failure to follow FDA rules and guidelines relating to promotion and advertising may cause the FDA to suspend or withdraw an approved product from the market, require a recall or institute fines, or could result in disgorgement of money, operating restrictions, corrective advertising, injunctions or criminal prosecution, any of which could harm our business.

Risks Pertaining to the Need for and Impact of Existing and Additional Financing Activities

We have historically financed a significant portion of our growth and operations in part through the assumption of debt; should an event of default occur under any applicable loan documents, our business would be materially adversely affected. Also, our current credit arrangement with Oaktree Capital contains restrictive covenants that inhibit our and certain of our partner companies' abilities to take certain actions.

At September 30, 2020, the total amount of debt outstanding, net of the debt discount was $51.4 million. If we default on our obligations, the holders of our debt may declare the outstanding amounts immediately payable together with accrued interest, and/or take possession of pledged collateral, if any. If an event of default occurs, we may not be able to cure it within any applicable cure period, if at all. If the maturity of our indebtedness is accelerated, we may not have sufficient funds available for repayment or we may not have the ability to borrow or obtain sufficient funds to replace the accelerated indebtedness on terms acceptable to us, or at all. In addition, current or future debt obligations may limit our ability to finance future operations or satisfy capital needs or to engage in, expand or pursue our business activities. Such restrictive covenants may also prevent us from engaging in activities that could be beneficial to our business and our stockholders unless we repay the outstanding debt, which may not be desirable or possible.

On August 27, 2020, we entered into a $60.0 million senior secured credit agreement with Oaktree Fund Administration, LLC and the lenders from time to time party thereto (collectively, "Oaktree"). The Oaktree credit agreement contains certain affirmative and negative covenants restricting our and certain of our partner companies' abilities to take certain actions, especially as pertains indebtedness, liens, investments, affiliate transactions, dispositions, prepayment of other indebtedness, dividends and other distributions (subject in each case to exceptions). The Oaktree credit agreement also contains financial covenants obligating us to maintain a minimum liquidity amount and a minimum amount of revenue, in both cases subject to exceptions. The breach of any such provisions (even, potentially, in an immaterial manner) could result in an event of default under the Oaktree credit agreement, and the restrictions imposed by such provisions may inhibit our and certain of our partner companies' ability to enter into certain transactions or arrangements that management otherwise believes would be in our or such partner companies' best interests.

We have a history of operating losses that is expected to continue, and we are unable to predict the extent of future losses, whether we will generate significant or any revenues or whether we will achieve or sustain profitability.

We are an early-stage company and our prospects must be considered in light of the uncertainties, risks, expenses and difficulties frequently encountered by companies in their early stages of operations. We continue to generate operating losses in all periods including losses from continuing operations of approximately $101.7 million and $130.8 million for the years ended December 31, 2019 and 2018, respectively, and a loss from continuing operations of $70.0 million for the nine months ended September 30, 2020. At September 30, 2020, we had an accumulated deficit of approximately $477.5 million. We expect to make substantial expenditures and incur increasing operating costs and interest expense in the future, and our accumulated deficit will increase significantly as we expand development and clinical trial activities for our product candidates and finance investments in certain of our existing and new partners and affiliates in accordance with our growth strategy. Our losses have had, and are expected to continue to have, an adverse impact on our working capital, total assets and stockholders' equity.

Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the timing or amount of increased expenses or when or if, we will be able to achieve profitability. Our net losses may fluctuate significantly from quarter to quarter and year to year. We anticipate that our expenses will increase substantially if:

- one or more of our product candidates is approved for commercial sale, due to our ability to establish the necessary commercial infrastructure to launch this product candidate without substantial delays, including hiring sales and marketing personnel and contracting with third parties for warehousing, distribution, cash collection and related commercial activities;
- we are required by the FDA or foreign regulatory authorities, to perform studies in addition to those currently expected;
- there are any delays in completing our clinical trials or the development of any of our product candidates;
- we execute other collaborative, licensing or similar arrangements and the timing of payments we may make or receive under these arrangements;
- there are variations in the level of expenses related to our future development programs;

- there are any product liability or intellectual property infringement lawsuits in which we may become involved;
- there are any regulatory developments affecting product candidates of our competitors; and
- one or more of our product candidates receives regulatory approval.

Our ability to become profitable depends upon our ability to generate revenue. To date, we have not generated any revenue from our development stage products, and we do not know when, or if, we will generate any revenue. Our ability to generate revenue depends on a number of factors, including, but not limited to, our ability to:

- obtain regulatory approval for one or more of our product candidates, or any future product candidate that we may license or acquire;
- manufacture commercial quantities of one or more of our product candidates or any future product candidate, if approved, at acceptable cost levels; and
- develop a commercial organization and the supporting infrastructure required to successfully market and sell one or more of our product candidates or any future product candidate, if approved.

Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the value of our company and could impair our ability to raise capital, expand our business, maintain our research and development efforts, diversify our product offerings or even continue our operations. A decline in the value of our company could also cause you to lose all or part of your investment.

To fund our operations and service our debt securities, which may be deemed to include our Series A Preferred Stock, we will be required to generate a significant amount of cash. Our ability to generate cash depends on a number of factors, some of which are beyond our control, and any failure to meet our debt obligations would have a material adverse effect on our business, financial condition, cash flows and results of operations and could cause the market value of our common stock and/or preferred stock to decline.

Prevailing economic conditions and financial, business and other factors, many of which are beyond our control, may affect our ability to make payments on our debt. If we do not generate sufficient cash flow to satisfy our debt obligations, we may have to undertake alternative financing plans, such as refinancing or restructuring our debt, selling assets, reducing or delaying capital investments or seeking to raise additional capital. Alternatively, as we have done in the past, we may also elect to refinance certain of our debt, for example, to extend maturities. Our ability to restructure or refinance our debt will depend on the capital markets and our financial condition at such time. If we are unable to access the capital markets, whether because of the condition of those capital markets or our own financial condition or reputation within such capital markets, we may be unable to refinance our debt. In addition, any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. Our inability to generate sufficient cash flow to satisfy our debt obligations or to refinance our obligations on commercially reasonable terms, or at all, could have a material adverse effect on our business, financial condition, cash flows and results of operations and could cause the market value of our common stock and/or debt securities to decline.

Repayment of our indebtedness is dependent in part on the generation of cash flow by Journey and its ability to make such cash available to us, by dividend, debt repayment or otherwise. Journey may not be able to, or may not be permitted to, make distributions to enable us to make payments in respect of our indebtedness. Each of our subsidiaries, including Journey, is a distinct legal entity and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from our subsidiaries.

Our ability to continue to reduce our indebtedness will depend upon factors including our future operating performance, our ability to access the capital markets to refinance existing debt and prevailing economic conditions and financial, business and other factors, many of which are beyond our control. We can provide no assurance of the amount by which we will reduce our debt, if at all. In addition, servicing our debt will result in a reduction in the amount of our cash flow available for other purposes, including operating costs and capital expenditures that could improve our competitive position and results of operations.

If we cannot continue to fund our research and development programs, we may be required to reduce product development, which will adversely impact our growth strategy.

Our research and development ("R&D") programs will require substantial additional capital to conduct research, preclinical testing and clinical trials, establish pilot scale and commercial scale manufacturing processes and facilities, and establish and develop quality control, regulatory, marketing, sales, and administrative capabilities to support these programs. We expect to fund our R&D activities from a combination of cash generated from royalties and milestones from our partners in various past, ongoing, and future collaborations, and through additional equity or debt financings from third parties. These financings could depress the stock prices of our securities. If additional funds are required to support our operations and such funds cannot be obtained on favorable terms, we may not be able to develop products, which will adversely impact our growth strategy.

We may not be able to generate returns for our investors if our partners, several of which have limited or no operating history, no commercialized revenue generating products, and are not yet profitable, cannot obtain additional third-party financing.

As part of our growth strategy, we have made and will likely continue to make substantial financial and operational commitments in our partners, which often have limited or no operating history, no commercialized revenue generating products, and require additional third-party financing to fund product and services development or acquisitions. Our business depends in large part on the ability of one or more of our partner companies to innovate, in-license, develop or acquire successful biopharmaceutical products and/or acquire companies in increasingly competitive and highly regulated markets. If certain of our partner companies do not successfully obtain additional third-party financing to commercialize products or successfully acquire companies, as applicable, the value of our businesses and our ownership stakes in our partner companies may be materially adversely affected.

We may need substantial additional funding and may be unable to raise capital when needed, which may force us to delay, curtail or eliminate one or more of our R&D programs, commercialization efforts or planned acquisitions and potentially change our growth strategy.

Our operations have consumed substantial amounts of cash since inception. During the years ended December 31, 2019 and 2018 we incurred R&D expenses of approximately $75.2 million and $83.3 million, respectively, and $43.9 million for the nine months ended September 30, 2020. We expect to continue to spend significant amounts on our growth strategy. We believe that our current cash and cash equivalents will enable us to continue to fund operations in the normal course of business for at least the next 12 months. Until such time, if ever, as we can generate a sufficient amount of product revenue and achieve profitability, we expect to seek to finance potential cash needs. Our ability to obtain additional funding when needed, changes to our operating plans, our existing and anticipated working capital needs, the acceleration or modification of our planned R&D activities, expenditures, acquisitions and growth strategy, increased expenses or other events may affect our need for additional capital in the future and require us to seek additional funding sooner or on different terms than anticipated. In addition, if we are unable to raise additional capital when needed, we might have to delay, curtail or eliminate one or more of our R&D programs and commercialization efforts and potentially change our growth strategy.

Raising additional funds by issuing securities or through licensing or lending arrangements may cause dilution to our existing stockholders, restrict our operations or require us to relinquish proprietary rights.

To the extent that we raise additional capital by issuing common stock (or preferred stock that is convertible into common stock), the share ownership of existing stockholders will be diluted. Any future debt financings may involve covenants that restrict our operations, including limitations on our ability to incur liens or additional debt, pay dividends, redeem our stock, make certain financial commitments and engage in certain merger, consolidation or asset sale transactions, among other restrictions. In addition, if we raise additional funds through licensing or sublicensing arrangements, it may be necessary to relinquish potentially valuable rights to our product candidates or grant licenses on terms that are not favorable to us.

Risks Pertaining to Our Existing Operating Revenue Stream

Future revenue based on sales of our dermatology products, especially Ximino, Targadox and Exelderm, may be lower than expected or lower than in previous periods.

The vast majority of our operating income for the foreseeable future is expected to come from the sale of dermatology products through our partner company Journey Medical Corporation. Any setback that may occur with respect to such products, in particular Ximino, Targadox and Exelderm, could significantly impair our operating results and/or reduce our revenue and the market prices of our Securities. Setbacks for such products could include, but are not necessarily limited to, problems with shipping, distribution, demand, manufacturing, product safety, marketing, government regulation or reimbursement, licenses and approvals, intellectual property rights, competition with existing or new products, physician or patient acceptance of the products, as well as higher than expected total rebates, returns or recalls. These products also are or may become subject to third party generic competition.

Any disruptions to the capabilities, composition, size or existence of Journey's sales force may have a significant adverse impact on our existing revenue stream. Also, with respect to future potential product candidates, if we are unable to establish and/or maintain sales and marketing capabilities or fail to enter into agreements with third parties to market, distribute and sell products that may be successfully developed, we may not be able to effectively market and sell such products and generate product revenue.

Journey's sales force has been and is expected to continue to be an important contributor to its commercial success; any disruptions to Journey's relationship with such sales force or the third-party contractor through which they are engaged could materially adversely affect Journey's product sales.

Apart from Journey, we do not currently have the infrastructure for the sales, marketing and distribution of any of our product candidates, and we must build and maintain such infrastructures or make arrangements with third parties to perform these functions in order to commercialize any products that we may successfully develop. The establishment and development of a sales force, either by us or certain of our partners, or the establishment of a contract sales force, to market any products for which we may receive marketing approval is expensive and time-consuming and could delay any such product launch or compromise the successful commercialization of such products. If we are unable to establish and maintain sales and marketing capabilities or any other non-technical capabilities necessary to commercialize any products that may be successfully developed, we will need to contract with third parties to market and sell such products. We may not be able to establish arrangements with third parties on commercially reasonable terms, or at all.

Failure to be included in formularies developed by managed care organizations and coverage by other organizations may negatively impact the utilization of our products, which could harm our market shares and could have a material adverse effect on our business and financial condition.

Managed care organizations and other third-party payors try to negotiate the pricing of medical services and products to control their costs. Managed care organizations and pharmacy benefit managers typically develop formularies to reduce their cost for medications. Formularies can be based on the prices and therapeutic benefits of the available products. Due to their lower costs, generic products are often favored. The breadth of the products covered by formularies varies considerably from one managed care organization to another, and many formularies include alternative and competitive products for treatment of particular medical conditions. Failure to be included in such formularies or to achieve favorable formulary status may negatively impact the utilization and market share of our products. If our products are not included within an adequate number of formularies or adequate reimbursement levels are not provided, or if those policies increasingly favor generic products, this could have a material adverse effect on our business and financial condition.

Reimbursement may be limited or unavailable in certain market segments for our product candidates, which could make it difficult for us to sell our products profitably.

We intend to seek approval to market our future products in both the United States and in countries and territories outside the United States. If we obtain approval in one or more foreign countries, we will be subject to rules and regulations in those countries relating to such products. In some foreign countries, particularly in the European Union, the pricing of prescription pharmaceuticals and biologics is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product candidate. In addition, market acceptance and sales of our product candidates will depend significantly on the availability of adequate coverage and reimbursement from third-party payors for any of our product candidates and may be affected by existing and future healthcare reform measures.

Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which pharmaceuticals they will pay for and establish reimbursement levels. Reimbursement by a third-party payor may depend upon a number of factors, including the third-party payor's determination that use of a product is:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- experimental or investigational.

Obtaining coverage and reimbursement approval for a product from a government or other third-party payor is a time consuming and costly process that could require that we provide supporting scientific, clinical and cost-effectiveness data for the use of our products to the payor. We may not be able to provide data sufficient to gain acceptance with respect to coverage and reimbursement. If reimbursement of our future products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability. Additionally, while we may seek approval of our products in combination with each other, there can be no guarantee that we will obtain coverage and reimbursement for any of our products together, or that such reimbursement will incentivize the use of our products in combination with each other as opposed to in combination with other agents which may be priced more favorably to the medical community.

In both the United States and certain foreign countries, there have been a number of legislative and regulatory changes to the healthcare system that could impact our ability to sell our products profitably. In particular, the Medicare Modernization Act of 2003 revised the payment methodology for many products reimbursed by Medicare, resulting in lower rates of reimbursement for many types of drugs, and added a prescription drug benefit to the Medicare program that involves commercial plans negotiating drug prices for their members. Since 2003, there have been a number of other legislative and regulatory changes to the coverage and reimbursement landscape for pharmaceuticals.

The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, collectively, the "Affordable Care Act" or "ACA," was enacted in 2010 and made significant changes to the United States' healthcare system. The ACA and any revisions or replacements of that Act, any substitute legislation, and other changes in the law or regulatory framework could have a material adverse effect on our business.

Among the provisions of the ACA of importance to our potential product candidates are:

- an annual, nondeductible fee on any entity that manufactures, or imports specified branded prescription drugs and biologic agents, apportioned among these entities according to their market share in certain government healthcare programs;
- an increase in the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program to 23.1% and 13.0% of the average manufacturer price for branded and generic drugs, respectively;
- expansion of healthcare fraud and abuse laws, including the federal False Claims Act and the federal Anti-Kickback Statute, new government investigative powers and enhanced penalties for non-compliance;
- a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for a manufacturer's outpatient drugs to be covered under Medicare Part D;
- extension of a manufacturer's Medicaid rebate liability to covered drugs dispensed to individuals who are enrolled in Medicaid managed care organizations;

- expansion of eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals and by adding new mandatory eligibility categories for certain individuals with income at or below 138% of the federal poverty level, thereby potentially increasing a manufacturer's Medicaid rebate liability;

- expansion of the entities eligible for discounts under the 340B Drug Pricing Program;

- new requirements under the federal Open Payments program and its implementing regulations;

- a new requirement to annually report drug samples that manufacturers and distributors provide to physicians;

- a new regulatory pathway for the approval of biosimilar biological products, all of which will impact existing government healthcare programs and will result in the development of new programs; and

- a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research.

The Supreme Court upheld the ACA in the main challenge to the constitutionality of the law in 2012. Specifically, the Supreme Court held that the individual mandate and corresponding penalty was constitutional because it would be considered a tax by the federal government. The Supreme Court also upheld federal subsidies for purchasers of insurance through federally facilitated exchanges in a decision released in June 2015.

President Trump ran for office on a platform that supported the repeal of the ACA, and one of his first actions after his inauguration was to sign an Executive Order instructing federal agencies to waive or delay requirements of the ACA that impose economic or regulatory burdens on states, families, the health-care industry and others.

In January 2017, Congress voted to adopt a budget resolution for fiscal year 2017, or the Budget Resolution, that authorizes the implementation of legislation that would repeal portions of the ACA. The Budget Resolution is not a law. However, it is widely viewed as the first step toward the passage of legislation that would repeal certain aspects of the ACA. In March 2017, following the passage of the budget resolution for fiscal year 2017, the United States House of Representatives passed legislation known as the American Health Care Act of 2017, which, if enacted, would amend or repeal significant portions of the ACA. Attempts in the Senate in 2017 to pass ACA repeal legislation, including the Better Care Reconciliation Act of 2017, were unsuccessful.

At the end of 2017, Congress passed the Tax Cuts and Jobs Act, which repealed the penalty for individuals who fail to maintain minimum essential health coverage as required by the ACA. Following this legislation, Texas and 19 other states filed a lawsuit alleging that the ACA is unconstitutional as the individual mandate was repealed, undermining the legal basis for the Supreme Court's prior decision. On December 14, 2018, a Texas federal district court judge issued a ruling declaring that the ACA in its entirety is unconstitutional. Upon appeal, the Fifth Circuit upheld the district court's ruling that the individual mandate is unconstitutional. However, the Fifth Circuit remanded the case back to the district court to conduct a more thorough assessment of the constitutionality of the entire ACA despite the individual mandate being unconstitutional. While this decision has no immediate legal effect on the ACA and its provisions, this lawsuit is ongoing and the outcome may have a significant impact on our business.

The Bipartisan Budget Act of 2018, the "BBA," which set government spending levels for Fiscal Years 2018 and 2019, revised certain provisions of the ACA. Specifically, beginning in 2019, the BBA increased manufacturer point-of-sale discounts off negotiated prices of applicable brand drugs in the Medicare Part D coverage gap from 50% to 70%, ultimately increasing the liability for brand drug manufacturers. Further, this mandatory manufacturer discount applies to biosimilars beginning in 2019.

The 116th Congress has explored legislation intended to address the cost of prescription drugs. Notably, the major committees of jurisdiction in the Senate (Finance Committee, Health, Education, Labor and Pensions Committee, and Judiciary Committee), have marked up legislation intended to address various elements of the prescription drug supply chain. Proposals include a significant overhaul of the Medicare Part D benefit design, addressing patent "loopholes", and efforts to cap the increase in drug prices. The House Energy and Commerce Committee approved drug-related legislation intended to increase transparency of drug prices and also curb anti-competitive behavior in the pharmaceutical supply chain. In addition, the House Ways & Means Committee approved legislation intended to improve drug price transparency, including for drug manufacturers to justify certain price increases. While we cannot predict what proposals may ultimately become law, the elements under consideration could significantly change the landscape in which the pharmaceutical market operates.

The Senate Committee on Health, Education, Labor, and Pensions (HELP) advanced the Lower Health Care Costs Act of 2019. Among other things, the bill is intended to reduce costs in the United States health sector. The bill revises certain requirements to expedite the approval of generics and biosimilars. It also limits prices that pharmacy benefit managers may charge health insurers or enrollees for prescription drugs. Although this bill still needs to pass the full Senate and House of Representatives, it is worth noting the wide-ranging effects it could have on the health care sector.

On December 12, 2019, the House of Representatives passed broad legislation (H.R. 3, the *Elijah E. Cummings Lower Drug Costs Now Act*) that would, among other provisions, require HHS to negotiate drug prices and impose price caps and restructure the Medicare Part D benefit, imposing more financial responsibility on certain drug manufacturers. Failure by a manufacturer to reach an agreement with HHS on the negotiated price could result in significant penalties for prescription drug manufacturers. In addition, S. 2543, *the Prescription Drug Pricing Reduction Act* would also, among other provisions, restructure the Medicare Part D benefit, but it would not authorize direct negotiation by the federal government. While we cannot predict what proposals may ultimately become law, the elements under consideration could significantly change the landscape in which the pharmaceutical market operates.

The Trump Administration has also taken several regulatory steps to redirect ACA implementation. The Department of Health and Human Services, the HHS, finalized a Medicare hospital payment reduction for Part B drugs acquired through the 340B Drug Pricing Program. The courts have since overturned this payment reduction, but the lawsuit is ongoing on appeal and HHS continues to implement the payment cuts. HHS also has signaled its intent to continue to pursue reimbursement policy changes for all Medicare Part B drugs that likely would reduce hospital and physician reimbursement for these drugs.

HHS has made numerous other proposals aimed at lowering drug prices for Medicare beneficiaries and increasing price transparency. While many of the proposals have been withdrawn or struck down by the courts, it appears the Trump Administration will continue to explore its authority to make regulatory changes to the pharmaceutical industry. For example, the Trump Administration released an Advance Notice of Proposed Rulemaking related to an international price index model. It is unclear what eventually will be proposed, but the President has alluded to the concept of most favored nation pricing with regard to U.S. drug purchasing. In addition, HHS, in conjunction with the FDA, released two pharmaceutical importation models in December 2019: (1) a Notice of Proposed Rulemaking to permit importation of pharmaceuticals from Canada, and (2) draft FDA guidance permitting manufacturers to import their own pharmaceuticals that were originally intended for marketing in other countries.

HHS also has taken steps to increase the availability of cheaper health insurance options, typically with fewer benefits and less generous coverage. The Administration has also signaled its intention to address drug prices and to increase competition, including by increasing the availability of biosimilars and generic drugs. As these are regulatory actions, a new administration could undo or modify these efforts.

There likely will continue to be legislative and regulatory proposals at the federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare products and services. We cannot predict the initiatives that may be adopted in the future. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may adversely affect:

- the demand for any products for which we may obtain regulatory approval;
- our ability to set a price that we believe is fair for our products;
- our ability to generate revenues and achieve or maintain profitability;
- the level of taxes that we are required to pay; and
- the availability of capital.

In addition, governments may impose price controls, which may adversely affect our future profitability In January 2020, President Trump signed into law the U.S.-Mexico-Canada (USMCA) trade deal into law. As enacted, there are no commitments with respect to biologic product intellectual property rights or data protection, which may create an unfavorable environment across these three countries.

Risks Pertaining to our Business Strategy, Structure and Organization

We have in the past and are likely in the future to undergo collaborations and/or divestitures with respect to certain of our assets and subsidiaries, some of which may be material and/or transformative, which could adversely affect our business, prospects and opportunities for growth.

We have in the past completed a number of partnerships and/or contingent sales of our assets and subsidiaries, including an equity investment and contingent sale between Avenue and InvaGen and an equity investment and contingent option transaction between Caelum and Alexion Pharmaceuticals, Inc. Each of these transactions has been time-consuming and has diverted management's attention. As a result of these contingent sales (and other similar transactions we may in the future complete), we may experience a reduction in the size or scope of our business, our market share in particular markets, our opportunities with respect to certain markets, products or therapeutic categories or our ability to compete in certain markets and therapeutic categories. For example, in connection with execution of the Avenue SPMA, we signed a Restrictive Covenant Agreement, which prohibits us from, directly or indirectly, engaging in the business of hospital administered pain management anywhere in the world other than Canada, Central America or South America for a period of five years after the earlier of the termination of the Avenue SPMA or consummation of the Merger Transaction (as defined in the Avenue SPMA).

In addition, in connection with any such transaction that involves a (contingent or non-contingent) sale of one of our assets or subsidiaries, we may surrender our ability to realize long-term value from such asset or subsidiary, in the form of foregone royalties, milestone payments, sublicensing revenue or otherwise, in exchange for upfront and/or other payments. In the event, for instance, that a product candidate underpinning any such asset or subsidiary is granted FDA approval for commercialization following the execution of documentation governing the sale by us of such asset or subsidiary, the transferee of such asset or subsidiary may realize tremendous value from commercializing such product, which we would have realized for ourselves had we not executed such sale transaction and been able to achieve applicable approvals independently.

Should we seek to enter into collaborations or divestitures with respect to other assets or subsidiaries, we may be unable to consummate such arrangements on satisfactory or commercially reasonable terms within our anticipated timelines. In addition, our ability to identify, enter into and/or consummate collaborations and/or divestitures may be limited by competition we face from other companies in pursuing similar transactions in the biotechnology and pharmaceutical industries. Any collaboration or divestiture we pursue, whether we are able to complete it or not, may be complex, time consuming and expensive, may divert the management's attention, have a negative impact on our customer relationships, cause us to incur costs associated with maintaining the business of the targeted collaboration or divestiture during the transaction process and also to incur costs of closing and disposing the affected business or transferring the operations of the business to other facilities. In addition, if such transactions are not completed for any reason, the market price of our common stock may reflect a market assumption that such transactions will occur, and a failure to complete such transactions could result in a negative perception by the market of us generally and a decline in the market price of our common stock. For example, consummation of the Avenue-InvaGen merger contemplated by the Avenue SPMA is conditioned on, *inter alia*: (i) final FDA approval of IV tramadol (Avenue's lead product candidate); (ii) labeling for IV tramadol containing an indication as moderate to moderately severe (post-operative) pain, not restricted to any specific type of surgery; (iii) classification of IV tramadol by the DEA as a Schedule IV drug; and (iv) there being no Risk Evaluation and Mitigation Strategy from the FDA applicable to IV tramadol. If one or more of these conditions is not satisfied, InvaGen will not be obligated to consummate the Avenue-InvaGen merger, which could materially adversely affect our business.

On October 12, 2020, Avenue announced that it had received a Complete Response Letter (the "CRL") from the FDA regarding Avenue's New Drug Application for IV Tramadol. The CRL cited deficiencies related to the terminal sterilization validation and stated that IV Tramadol, intended to treat patients in acute pain who require an opioid, is not safe for the intended patient population. Avenue's ability to potentially commercialize IV Tramadol, and the timing of potential commercialization, is dependent on the FDA's review of Avenue's response to the CRL and its NDA for IV Tramadol, and other items such as timely and successful completion of the terminal sterilization validation, ultimate FDA approval, and potentially additional capital.

In October 2020, InvaGen communicated to Avenue that it believes a Material Adverse Effect (as defined in the SPMA) has occurred due to the impact of the COVID-19 pandemic on potential commercialization and projected sales of IV Tramadol, which means it is possible InvaGen could attempt to avoid its obligation to consummate the second stage closing under the SPMA. Avenue disagrees with InvaGen's assertion that a Material Adverse Effect has occurred and has advised InvaGen of this position.

As a result of these factors, any collaboration or divestiture (whether or not completed) could have a material adverse effect on our business, financial condition, cash flows and results of operations and could cause the market value of our common stock and/or preferred stock to decline.

We have in the past acted, do currently act, and are likely to continue in the future to act as guarantor and/or indemnitor of the obligations, actions or inactions of certain of our subsidiaries and affiliated companies; depending on the terms of such arrangements, we may be contractually obligated to pay substantial amounts to third parties based on the actions or inactions of our subsidiaries and/or affiliates.

We have in the past acted, do currently act, and are likely to continue in the future to act as guarantor of the debt obligations of several of our subsidiaries and/or affiliates, including Aevitas, Baergic, Cellvation and Cyprium. Depending on the terms of such guaranty arrangements, we may be contractually obligated to pay substantial amounts to third party lenders based on the actions or inactions of such subsidiaries and/or affiliates, which would result in a reduction of the amount of our cash available for other purposes and may have a material adverse effect on the price of our Securities.

We also have in the past acted, do currently act, and are likely to continue in the future to act as indemnitor of potential losses that may be experienced by one or more of our affiliated companies and/or their partners or investors. In particular, under that certain Indemnification Agreement, dated as of November 12, 2018 (the "Indemnification Agreement"), we indemnify InvaGen Pharmaceuticals Inc. ("InvaGen") and its affiliates for any losses they may sustain in connection with inaccuracies that may appear in the representations and warranties that our partner company Avenue made to InvaGen in that certain Stock Purchase and Merger Agreement, dated as of November 12, 2018 (the "Avenue SPMA"). The maximum amount of indemnification we may have to provide under the Indemnification Agreement is $35.0 million, and such obligation terminates upon the consummation of the Merger Transaction (as defined in the Avenue SPMA). In the event of payment by us of any such indemnification amount, we would be able to recoup such amounts (other than our pro rata share of the indemnification as a shareholder in Avenue) from the Merger Transaction proceeds, but if the Merger Transaction never occurs, we would have no means of recouping such previously-paid indemnification amounts. If we become obligated to pay all or a portion of such indemnification amounts (regardless of whether or not we are partially reimbursed out of the proceeds of the Merger Transaction), our business and the market value of our common stock and/or debt securities may be materially adversely impacted.

Our future growth depends in part on our ability to identify and acquire or in-license products and product candidates, and if we are unable to do so, or to integrate acquired products into our operations, we may have limited growth opportunities.

An important part of our business strategy is to continue to develop a pipeline of product candidates by acquiring or in-licensing products, businesses or technologies. Future in-licenses or acquisitions, however, may entail numerous operational and financial risks, including, but not necessarily limited to:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- difficulty or inability to secure financing to fund development activities for such acquired or in-licensed technologies in the current economic environment;
- incurrence of substantial debt or dilutive issuances of securities to pay for acquisitions;
- higher than expected acquisition and integration costs;
- increased amortization expenses;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.

We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. In particular, we may compete with larger pharmaceutical companies and other competitors in our efforts to establish new collaborations and in-licensing opportunities. These competitors likely will have access to greater financial resources than us and may have greater expertise in identifying and evaluating new opportunities. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts.

Certain of our officers and directors serve in similar roles at our partners, affiliates, related parties and/or other entities with which we transact business or in which we hold significant minority ownership positions; ongoing and future relationships and transactions between these parties could result in conflicts of interest.

We share directors and/or officers with certain of our partners, and other entities with which we transact business or in which we hold significant minority ownership positions, and such arrangements could create conflicts of interest in the future, including with respect to the allocation of corporate opportunities. While we believe that we have put in place policies and procedures to identify and mitigate such conflicts, and that any existing agreements that may give rise to such conflicts and any such policies or procedures were negotiated at arm's length in conformity with fiduciary duties, such conflicts of interest may nonetheless arise. The existence and consequences of such potential conflicts could expose us to lost profits, claims by our investors and creditors, and harm to our results of operations.

Some of our executives, directors and principal stockholders can control our direction and policies, and their interests may be adverse to the interests of our other stockholders.

At September 30, 2020, Lindsay A. Rosenwald, M.D., our Chairman, President and Chief Executive Officer, beneficially owned 10.1% of our issued and outstanding capital stock. At September 30, 2020, Michael S. Weiss, our Executive Vice Chairman, Strategic Development, beneficially owned 10.9% of our issued and outstanding capital stock. By virtue of their holdings and membership on our Board of Directors, Dr. Rosenwald and Mr. Weiss may individually influence our management and our affairs and may make it difficult for us to consummate corporate transactions such as mergers, consolidations or the sale of all or substantially all of our assets that may be favorable from our standpoint or that of our other stockholders.

If we acquire, enter into joint ventures with or obtain a controlling interest in companies in the future, it could adversely affect our operating results and the value of our Securities, thereby diluting stockholder value, disrupting our business and/or diminishing the value of our holdings in our partner companies.

As part of our growth strategy, we might acquire, enter into joint ventures with, or obtain significant ownership stakes in other companies. Acquisitions of, joint ventures with and investments in other companies involve numerous risks, including, but not necessarily limited to:

- risk of entering new markets in which we have little to no experience;
- diversion of financial and managerial resources from existing operations;
- successfully negotiating a proposed acquisition or investment timely and at a price or on terms and conditions favorable to us;
- the impact of regulatory reviews on a proposed acquisition or investment;
- the outcome of any legal proceedings that may be instituted with respect to the proposed acquisitions or investment;
- with respect to an acquisition, difficulties in integrating operations, technologies, services and personnel; and
- potential inability to maintain relationships with customers of the companies we may acquire or invest in.

If we fail to properly evaluate potential acquisitions, joint ventures or other transaction opportunities, we might not achieve the anticipated benefits of any such transaction, we might incur higher costs than anticipated, and management resources and attention might be diverted from other necessary or valuable activities.

Risks Pertaining to Reliance on Third Parties

We currently rely predominantly on third parties to manufacture our preclinical and clinical pharmaceutical supplies and expect to continue to rely heavily on them and other contractors to produce commercial supplies of our products, and our dependence on third-party suppliers could adversely impact our businesses. We also rely solely on third parties to manufacture Journey's commercialized products, which dependence may also adversely impact our businesses.

We depend heavily on third party manufacturers for product supply. If our contract manufacturers cannot successfully manufacture material that conforms to applicable specifications and with FDA regulatory requirements, we will not be able to secure and/or maintain FDA approval for those products. Our third-party suppliers will be required to maintain compliance with cGMPs and will be subject to inspections by the FDA and comparable agencies and authorities in other jurisdictions to confirm such compliance. In the event that the FDA or such other authorities determine that our third-party suppliers have not complied with cGMPs or comparable regulations, the relevant clinical trials could be terminated or subjected to a clinical hold until such time as we are able to obtain appropriate replacement material and/or applicable compliance, and commercial product could be unfit for sale, or if distributed, could be recalled from the market. Any delay, interruption or other issues that arise in the manufacture, testing, packaging, labeling, storage, or distribution of our products as a result of a failure of the facilities or operations of our third-party suppliers to comply with regulatory requirements or pass any regulatory agency inspection could significantly impair our ability to develop and commercialize our products and product candidates. In addition, several of our currently commercialized products, sold through our partner company Journey, are produced by a single manufacturer, and, although we closely monitor inventory prophylactically, disruptions to such supply arrangements could adversely affect our ability to meet product demand and therefore diminish revenues.

We also rely on third-party manufacturers to purchase from third-party suppliers the materials necessary to produce product candidates for anticipated clinical trials. There are a small number of suppliers for certain capital equipment and raw materials that are used to manufacture those products. We do not have any control over the process or timing of the acquisition of these raw materials by our third-party manufacturers. Moreover, we currently do not have any agreements for the commercial production of these raw materials. Any significant delay in the supply of raw material components related to an ongoing clinical trial could considerably delay completion of our clinical trials, product testing and potential regulatory approval.

We do not expect to have the resources or capacity to commercially manufacture our product candidates internally, if approved, and would likely continue to be heavily dependent upon third-party manufacturers. Our dependence on third parties to manufacture and supply clinical trial materials, as well as our planned dependence on third party manufacturers for any products that may be approved, may adversely affect our ability to develop and commercialize products in a timely or cost-effective manner, or at all.

We rely heavily on third parties for the development and manufacturing of products and product candidates.

Certain our partner companies, on whose successes we largely rely, are early-stage biopharmaceutical companies with limited operating histories. To date, we have engaged primarily in acquisition, evaluative and R&D activities and have not generated any revenues from product sales (except through Journey). We have incurred significant net losses since our inception. As of September 30, 2020, we had an accumulated deficit of approximately $477.5 million. We may need to rely on third parties for activities critical to the product candidate development process, including but not necessarily limited to:

- identifying and evaluating product candidates;
- negotiating, drafting and entering into licensing and other arrangements with product development partners; and
- continuing to undertake pre-clinical development and designing and executing clinical trials.

We have also not demonstrated the ability to perform the functions necessary for the successful commercialization of any of our pre-market product candidates, should any of them be approved for marketing. If we were to have any such product candidates approved, the successful commercialization of such products would require us to perform or contract with third parties for performance of a variety of critical functions, including, but not necessarily limited to:

- advising and participating in regulatory approval processes;
- formulating and manufacturing products for clinical development programs and commercial sale; and

- conducting sales and marketing activities.

Our operations have been limited to acquiring, developing and securing the proprietary rights for, and undertaking pre-clinical development and clinical trials of, product candidates, both at the Fortress level and via our partner companies. These operations provide a limited basis for our stockholders and prospective investors to assess our ability to develop and commercialize potential product candidates, as well as for you to assess the advisability of investing in our securities.

We rely on third parties to conduct clinical trials. If these third parties do not meet agreed-upon deadlines or otherwise conduct the trials as required, our clinical development programs could be delayed or unsuccessful, and we may not be able to obtain regulatory approval for or commercialize our product candidates when expected or at all.

We rely on third-party contract research organizations and site management organizations to conduct most of our preclinical studies and all of our clinical trials for our product candidates. We expect to continue to rely on third parties, such as contract research organizations, site management organizations, clinical data management organizations, medical institutions and clinical investigators, to conduct some of our preclinical studies and all of our clinical trials. These CROs, investigators, and other third parties will and do play a significant role in the conduct of our trials and the subsequent collection and analysis of data from the clinical trials.

There is no guarantee that any CROs, investigators and other third parties upon which we rely for administration and conduct of our clinical trials will devote adequate time and resources to such trials or perform as contractually required. If any of these third parties fails to meet expected deadlines, or fails to adhere to our clinical protocols or otherwise perform in a substandard manner, our clinical trials may be extended, delayed or terminated. If any of the clinical trial sites terminates for any reason, we may lose follow-up information on patients enrolled in our ongoing clinical trials unless the care of those patients is transferred to another qualified clinical trial site. In addition, principal investigators for our clinical trials may serve as scientific advisers or consultants to us from time to time and receive cash or equity compensation in connection with such services. If these relationships and any related compensation result in perceived or actual conflicts of interest, the integrity of the data generated at the applicable clinical trial site, or the FDA's willingness to accept such data, may be jeopardized.

Our reliance on these third parties for research and development activities will reduce our control over these activities but will not relieve us of our responsibilities. For example, we will remain responsible for ensuring that each of our preclinical studies and clinical trials are conducted in accordance with the general investigational plan and protocols for the trial and for ensuring that our preclinical studies are conducted in accordance with good laboratory practice ("GLP") as appropriate. Moreover, the FDA requires us to comply with standards, commonly referred to as good clinical practices ("GCPs") for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Regulatory authorities enforce these requirements through periodic inspections of trial sponsors, clinical investigators and trial sites. If we or any of our clinical research organizations fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials complies with GCP regulations. In addition, our clinical trials must be conducted with product produced under cGMP regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process. We also are required to register ongoing clinical trials and post the results of completed clinical trials on a government-sponsored database, ClinicalTrials.gov, within specified timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions.

If any of our relationships with these third-party contract research organizations or site management organizations terminates, we may not be able to enter into arrangements with alternative contract research organizations or site management organizations or to do so on commercially reasonable terms. Switching or adding additional contract research organizations or site management organizations involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new contract research organization or site management organization commences work. As a result, delays could occur, which could compromise our ability to meet our desired development timelines. Though we carefully manage our relationships with our contract research organizations or site management organizations, there can be no assurance that we will not encounter similar challenges or delays in the future.

We rely on clinical and pre-clinical data and results obtained by third parties that could ultimately prove to be inaccurate or unreliable.

As part of the strategy we implement to mitigate development risk, we seek to develop product candidates with well-studied mechanisms of action, and we intend to utilize biomarkers to assess potential clinical efficacy early in the development process. This strategy necessarily relies upon clinical and pre-clinical data and other results produced or obtained by third parties, which may ultimately prove to be inaccurate or unreliable. If the third-party data and results we rely upon prove to be inaccurate, unreliable or not applicable to our product candidates, we could make inaccurate assumptions and conclusions about our product candidates, and our research and development efforts could be compromised or called into question during the review of any marketing applications that we submit.

Collaborative relationships with third parties could cause us to expend significant resources and incur substantial business risk with no assurance of financial return.

We anticipate substantial reliance upon strategic collaborations for marketing and commercializing our existing product candidates and we may rely even more on strategic collaborations for R&D of other product candidates. We may sell product offerings through strategic partnerships with pharmaceutical and biotechnology companies. If we are unable to establish or manage such strategic collaborations on terms favorable to us in the future, our revenue and drug development may be limited.

If we enter into R&D collaborations during the early phases of drug development, success will, in part, depend on the performance of research collaborators. We may not directly control the amount or timing of resources devoted by research collaborators to activities related to product candidates. Research collaborators may not commit sufficient resources to our R&D programs. If any research collaborator fails to commit sufficient resources, the preclinical or clinical development programs related to the collaboration could be delayed or terminated. Also, collaborators may pursue existing or other development-stage products or alternative technologies in preference to those being developed in collaboration with us. Finally, if we fail to make required milestone or royalty payments to collaborators or to observe other obligations in agreements with them, the collaborators may have the right to terminate or stop performance of those agreements.

Establishing strategic collaborations is difficult and time-consuming. Our discussions with potential collaborators may not lead to the establishment of collaborations on favorable terms, if at all. Potential collaborators may reject collaborations based upon their assessment of our financial, regulatory or intellectual property positions. Even if we successfully establish new collaborations, these relationships may never result in the successful development or commercialization of product candidates or the generation of sales revenue. To the extent that we enter into collaborative arrangements, the related product revenues that might follow are likely to be lower than if we directly marketed and sold products. Such collaborators may also consider alternative product candidates or technologies for similar indications that may be available to collaborate on, and such collaborations could be more attractive than the one with us for any future product candidate.

Management of our relationships with collaborators will require:

- significant time and effort from our management team;
- coordination of our marketing and R&D programs with the respective marketing and R&D priorities of our collaborators; and
- effective allocation of our resources to multiple projects.

Risks Pertaining to Intellectual Property and Potential Disputes with Licensors Thereof

If we are unable to obtain and maintain patent protection for our technology and products, or if the scope of the patent protection obtained is not sufficiently broad, our competitors could develop and commercialize technology and products similar or identical to ours, and our ability to successfully commercialize our technology and products may be impaired.

Our success depends, in large part, on our ability to obtain patent protection for product candidates and their formulations and uses. The patent application process is subject to numerous risks and uncertainties, and there can be no assurance that we or our partners will be successful in obtaining patents or what the scope of an issued patent may ultimately be. These risks and uncertainties include, but are not necessarily limited to, the following:

- patent applications may not result in any patents being issued, or the scope of issued patents may not extend to competitive product candidates and their formulations and uses developed or produced by others;
- our competitors, many of which have substantially greater resources than us or our partners, and many of which have made significant investments in competing technologies, may seek, or may already have obtained, patents that may limit or interfere with our abilities to make, use, and sell potential product candidates, file new patent applications, or may affect any pending patent applications that we may have;
- there may be significant pressure on the U.S. government and other international governmental bodies to limit the scope of patent protection both inside and outside the United States for disease treatments that prove successful as a matter of public policy regarding worldwide health concerns; and
- countries other than the United States may have patent laws less favorable to patentees than those upheld by U.S. courts, allowing foreign competitors a better opportunity to create, develop and market competing products.

In addition, patents that may be issued or in-licensed may be challenged, invalidated, modified, revoked, circumvented, found to be unenforceable, or otherwise may not provide any competitive advantage. Moreover, we may be subject to a third-party pre-issuance submission of prior art to the US Patent and Trademark Office ("PTO"), or become involved in opposition, derivation, reexamination, *inter partes* review, post-grant review or interference proceedings challenging our patent rights or the patent rights of others. The costs of these proceedings could be substantial, and it is possible that our efforts to establish priority of invention would be unsuccessful, resulting in a material adverse effect on our US patent positions. An adverse determination in any such submission, patent office trial, proceeding or litigation could reduce the scope of, render unenforceable, or invalidate, our patent rights, allow third parties to commercialize our technologies or products and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights. In addition, if the breadth or strength of protection provided by our patents and patent applications is threatened, it could dissuade companies from collaborating with us to license, develop or commercialize current or future product candidates. Third parties are often responsible for maintaining patent protection for our product candidates, at our and their expense. If that party fails to appropriately prosecute and maintain patent protection for a product candidate, our abilities to develop and commercialize products may be adversely affected, and we may not be able to prevent competitors from making, using and selling competing products. Such a failure to properly protect intellectual property rights relating to any of our product candidates could have a material adverse effect on our financial condition and results of operations. In addition, U.S. patent laws may change, which could prevent or limit us from filing patent applications or patent claims to protect products and/or technologies or limit the exclusivity periods that are available to patent holders, as well as affect the validity, enforceability, or scope of issued patents.

We and our licensors also rely on trade secrets and proprietary know-how to protect product candidates. Although we have taken steps to protect our and their trade secrets and unpatented know-how, including entering into confidentiality and non-use agreements with third parties, and proprietary information and invention assignment agreements with employees, consultants and advisers, third parties may still come upon this same or similar information independently. Despite these efforts, any of these parties may also breach the agreements and may unintentionally or willfully disclose our or our licensors' proprietary information, including our trade secrets, and we may not be able to identify such breaches or obtain adequate remedies. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. Moreover, if any of our or our licensors' trade secrets were to be lawfully obtained or independently developed by a competitor, we and our licensors would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our or our licensors' trade secrets were to be disclosed to or independently developed by a competitor, our competitive positions would be harmed.

The patent prosecution process is expensive and time-consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify any patentable aspects of our research and development output and methodology, and, even if we do, an opportunity to obtain patent protection may have passed. Given the uncertain and time-consuming process of filing patent applications and prosecuting them, it is possible that our product(s) or process(es) originally covered by the scope of the patent application may have changed or been modified, leaving our product(s) or process(es) without patent protection. If our licensors or we fail to obtain or maintain patent protection or trade secret protection for one or more product candidates or any future product candidate we may license or acquire, third parties may be able to leverage our proprietary information and products without risk of infringement, which could impair our ability to compete in the market and adversely affect our ability to generate revenues and achieve profitability. Moreover, should we enter into other collaborations we may be required to consult with or cede control to collaborators regarding the prosecution, maintenance and enforcement of licensed patents. Therefore, these patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions and has in recent years been the subject of much litigation. In addition, no consistent policy regarding the breadth of claims allowed in pharmaceutical or biotechnology patents has emerged to date in the US. The patent situation outside the US is even more uncertain. The laws of foreign countries may not protect our rights to the same extent as the laws of the US, and we may fail to seek or obtain patent protection in all major markets. For example, European patent law restricts the patentability of methods of treatment of the human body more than US law does. We might also become involved in derivation proceedings in an event that a third party misappropriates one or more of our inventions and files their own patent application directed to such one or more inventions. The costs of these proceedings could be substantial and it is possible that our efforts to establish priority of invention (or that a third party derived an invention from us) would be unsuccessful, resulting in a material adverse effect on our US patent position. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain. Our pending and future patent applications may not result in patents being issued which protect our technology or products, in whole or in part, or which effectively prevent others from commercializing competitive technologies and products. Changes in either the patent laws or interpretation of the patent laws in the US and other countries may diminish the value of our patents or narrow the scope of our patent protection. For example, the federal courts of the US have taken an increasingly dim view of the patent eligibility of certain subject matter, such as naturally occurring nucleic acid sequences, amino acid sequences and certain methods of utilizing same, which include their detection in a biological sample and diagnostic conclusions arising from their detection. Such subject matter, which had long been a staple of the biotechnology and biopharmaceutical industry to protect their discoveries, is now considered, with few exceptions, ineligible in the first instance for protection under the patent laws of the US. Accordingly, we cannot predict the breadth of claims that may be allowed and remain enforceable in our patents or in those licensed from a third party.

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. On September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to United States patent law. These include changes to transition from a “first-to-invent” system to a “first inventor-to-file” system and to the way issued patents are challenged. The formation of the Patent Trial and Appeal Board now provides a less burdensome, quicker and less expensive process for challenging issued patents. The PTO recently developed new regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first inventor-to-file provisions, only became effective on March 16, 2013. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

Even if our patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our owned or licensed patents by developing similar or alternative technologies or products in a non-infringing manner.

We also may rely on the regulatory period of market exclusivity for any of our biologic product candidates that are successfully developed and approved for commercialization. Although this period in the United States is generally 12 years from the date of marketing approval (depending on the nature of the specific product), there is a risk that the U.S. Congress could amend laws to significantly shorten this exclusivity period. Once any regulatory period of exclusivity expires, depending on the status of our patent coverage and the nature of the product, we may not be able to prevent others from marketing products that are biosimilar to or interchangeable with our products, which would materially adversely affect our business.

If we or our licensors are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on our business.

Our success also depends on our ability, and the abilities of any of our respective current or future collaborators, to develop, manufacture, market and sell product candidates without infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing products, some of which may be directed at claims that overlap with the subject matter of our or our licensors' intellectual property. Because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that our product candidates or proprietary technologies may infringe. Similarly, there may be issued patents relevant to our product candidates of which we or our licensors are not aware. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the US and other jurisdictions are typically not published until 18 months after a first filing, or in some cases not at all. Therefore, we cannot know with certainty whether we or such licensors were the first to make the inventions claimed in patents or pending patent applications that we own or licensed, or that we and our licensors were the first to file for patent protection of such inventions. In the event that a third party has also filed a US patent application relating to our product candidates or a similar invention, depending upon the priority dates claimed by the competing parties, we may have to participate in interference proceedings declared by the PTO to determine priority of invention in the US. The costs of these proceedings could be substantial, and it is possible that our efforts to establish priority of invention would be unsuccessful, resulting in a material adverse effect on our U.S. patent position. As a result, the issuance, scope, validity, enforceability and commercial value of our or any of our licensors' patent rights are highly uncertain.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and biopharmaceutical industries generally. If a third party claims that we or any of our licensors, suppliers or collaborators infringe the third party's intellectual property rights, we may have to, among other things:

- obtain additional licenses, which may not be available on commercially reasonable terms, if at all;
- abandon an infringing product candidate or redesign products or processes to avoid infringement, which may demand substantial funds, time and resources and which may result in inferior or less desirable processes and/or products;
- pay substantial damages, including the possibility of treble damages and attorneys' fees, if a court decides that the product or proprietary technology at issue infringes on or violates the third party's rights;
- pay substantial royalties, fees and/or grant cross-licenses to our product candidates; and/or

defend litigation or administrative proceedings which may be costly regardless of outcome, and which could result in a substantial diversion of financial and management resources.

We may be involved in lawsuits to protect or enforce our patents or the patents of licensors, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our or our licensors' patents. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. Any claims we assert against accused infringers could provoke these parties to assert counterclaims against us alleging invalidity of our or our licensors' patents or that we infringe their patents; or provoke those parties to petition the PTO to institute *inter partes* review against the asserted patents, which may lead to a finding that all or some of the claims of the patent are invalid. In addition, in a patent infringement proceeding, a court may decide that a patent of ours or our licensor's is invalid or unenforceable, in whole or in part, construe the patent's claims narrowly or refuse to stop the other party from using the technology at issue on the grounds that our or our licensors' patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated, found to be unenforceable, or interpreted narrowly and could likewise put pending patent applications at risk of not issuing. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation.

Because we in-license the intellectual property needed to develop and commercialize products and product candidates from third parties, any dispute with the licensors or the non-performance of such license agreements may adversely affect our ability to develop and commercialize the applicable product candidates.

The patents, patent applications and other intellectual property rights underpinning all of our existing product candidates were in-licensed from third parties. Under the terms of such license agreements, the licensors generally have the right to terminate such agreements in the event of a material breach. The licenses require us to make annual, milestone or other payments prior to commercialization of any product and our ability to make these payments depends on the ability to generate cash in the future. These license agreements also generally require the use of diligent and reasonable efforts to develop and commercialize product candidates.

If there is any conflict, dispute, disagreement or issue of non-performance between us or one of our partners, on the one hand, and the respective licensing partner, on the other hand, regarding the rights or obligations under the license agreements, including any conflict, dispute or disagreement arising from a failure to satisfy payment obligations under such agreements, the ability to develop and commercialize the affected product candidate may be adversely affected.

The types of disputes that may arise between us and the third parties from whom we license intellectual property include, but are not necessarily limited to:

- the scope of rights granted under such license agreements and other interpretation-related issues;
- the extent to which our technologies and processes infringe on intellectual property of the licensor that is not subject to such license agreements;
- the scope and interpretation of the representations and warranties made to us by our licensors, including those pertaining to the licensors' right title and interest in the licensed technology and the licensors' right to grant the licenses contemplated by such agreements;
- the sublicensing of patent and other rights under our license agreements and/or collaborative development relationships, and the rights and obligations associated with such sublicensing, including whether or not a given transaction constitutes a sublicense under such license agreement;
- the diligence and development obligations under license agreements (which may include specific diligence milestones) and what activities or achievements satisfy those diligence obligations;
- whether or not the milestones associated with certain milestone payment obligations have been achieved or satisfied;
- the applicability or scope of indemnification claims or obligations under such license agreements;
- the permissibility and advisability of, and strategy regarding, the pursuit of potential third-party infringers of the intellectual property that is the subject of such license agreements;
- the calculation of royalty, milestone, sublicense revenue and other payment obligations under such license agreements;
- the extent to which rights, if any, are retained by licensors under such license agreements;
- whether or not a material breach has occurred under such license agreements and the extent to which such breach, if deemed to have occurred, is or can be cured within applicable cure periods, if any;
- disputes regarding patent filing and prosecution decisions, as well as payment obligations regarding past and ongoing patent expenses;
- intellectual property rights resulting from the joint creation or use of intellectual property (including improvements made to licensed intellectual property) by our and our partners' licensors and us and our partners; and
- the priority of invention of patented technology.

In addition, the agreements under which we currently license intellectual property or technology from third parties are complex, and certain provisions in such agreements may be susceptible to multiple interpretations or may conflict in such a way that puts us in breach of one or more agreements, which would make us susceptible to lengthy and expensive disputes with one or more of such third-party licensing partners. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the relevant agreements, either of which could have a material adverse effect on our business, financial condition, results of operations and prospects. Moreover, if disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected product candidates, which could have a material adverse effect on our business, financial conditions, results of operations and prospects.

Risks Pertaining to the Commercialization of Product Candidates

If any of our product candidates that may be successfully developed do not achieve broad market acceptance among physicians, patients, healthcare payors and the medical community, the revenues that any such product candidates generate from sales will be limited.

Even if our product candidates receive regulatory approval, they may not gain market acceptance among physicians, patients, healthcare payors and the medical community. Coverage and reimbursement of our product candidates by third-party payors, including government payors, generally would also be necessary for commercial success. The degree of market acceptance of any approved products would depend on a number of factors, including, but not necessarily limited to:

- the efficacy and safety as demonstrated in clinical trials;
- the timing of market introduction of such product candidate as well as competitive products;
- the clinical indications for which the product is approved;
- acceptance by physicians, major operators of hospitals and clinics and patients of the product as a safe and effective treatment;
- the potential and perceived advantages of product candidates over alternative treatments;
- the safety of product candidates in a broader patient group (i.e., based on actual use);
- the cost of treatment in relation to alternative treatments;
- the availability of adequate reimbursement and pricing by third parties and government authorities;
- changes in regulatory requirements by government authorities for our product candidates;
- relative convenience and ease of administration;
- the prevalence and severity of side effects and adverse events;
- the effectiveness of our sales and marketing efforts; and
- unfavorable publicity relating to the product.

If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, hospitals, healthcare payors and patients, we may not generate sufficient revenue from these products and in turn we may not become or remain profitable.

Even if approved, any product candidates that we may develop and market may be later withdrawn from the market or subject to promotional limitations.

We may not be able to obtain the labeling claims or scheduling classifications necessary or desirable for the promotion of our marketed products (or our product candidates if approved). We may also be required to undertake post-marketing clinical trials. If the results of such post-marketing studies are not satisfactory or if adverse events or other safety issues arise after approval, the FDA or a comparable regulatory authority in another jurisdiction may withdraw marketing authorization or may condition continued marketing on commitments from us that may be expensive and/or time consuming to complete. In addition, if we or others identify adverse side effects after any of our products are on the market, or if manufacturing problems occur, regulatory approval may be withdrawn and reformulation of our products, additional clinical trials, changes in labeling of our products and additional marketing applications may be required. Any reformulation or labeling changes may limit the marketability of such products if approved.

We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability for one or more of our product candidates or a future product candidate we may license or acquire and may have to limit their commercialization.

The use of one or more of our product candidates and any future product candidate we may license or acquire in clinical trials and the sale of any products for which we obtain marketing approval expose us to the risk of product liability claims. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during clinical testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. Product liability claims might be brought against us by consumers, health care providers or others using, administering or selling our products. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- withdrawal of clinical trial participants;
- suspension or termination of clinical trial sites or entire trial programs;
- decreased demand for any product candidates or products that we may develop;
- initiation of investigations by regulators;
- impairment of our business reputation;
- costs of related litigation;
- substantial monetary awards to patients or other claimants;
- loss of revenues;
- reduced resources of our management to pursue our business strategy; and
- the inability to commercialize our product candidate or future product candidates.

We will obtain limited product liability insurance coverage for any and all of our upcoming clinical trials. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. When needed we intend to expand our insurance coverage to include the sale of commercial products if we obtain marketing approval for one or more of our product candidates in development, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

Additionally, we have entered into various agreements under which we indemnify third parties for certain claims relating to product candidates. These indemnification obligations may require us to pay significant sums of money for claims that are covered by these indemnifications.

Any product for which we obtain marketing approval could be subject to restrictions or withdrawal from the market and we may be subject to penalties if we fail to comply with regulatory requirements or if we experience unanticipated problems with products, when and if any of them are approved.

Any product for which we obtain marketing approval, along with the manufacturing processes and facilities, post-approval clinical data, labeling, advertising and promotional activities for such product, will be subject to continual requirements of, and review by, the FDA and comparable regulatory authorities. These requirements include submissions of safety and other post-marketing information and reports, registration requirements, cGMP requirements relating to quality control, quality assurance and corresponding maintenance of records and documents, requirements regarding the distribution of samples to physicians and recordkeeping, and requirements regarding company presentations and interactions with healthcare professionals. Even if we obtain regulatory approval for a product, the approval may be subject to limitations on the indicated uses for which the product may be marketed or subject to conditions of approval, or contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product. We also may be subject to state laws and registration requirements covering the distribution of drug products. Later discovery of previously unknown problems with products, manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in actions such as:

- restrictions on product manufacturing, distribution or use;
- restrictions on the labeling or marketing of a product;
- requirements to conduct post-marketing studies or clinical trials;
- warning letters;
- withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recalls;
- fines;
- suspension or withdrawal of marketing or regulatory approvals;
- refusal to permit the import or export of products;
- product seizure or detentions;
- injunctions or the imposition of civil or criminal penalties; and
- adverse publicity.

If we or our suppliers, third-party contractors, clinical investigators or collaborators are slow to adapt, or are unable to adapt, to changes in existing regulatory requirements or adoption of new regulatory requirements or policies, we or our collaborators may be subject to the actions listed above, including losing marketing approval for products when and if any of them are approved, resulting in decreased revenue from milestones, product sales or royalties.

We will need to obtain FDA approval of any proposed product brand names, and any failure or delay associated with such approval may adversely impact our business.

A pharmaceutical product cannot be marketed in the US or other countries until it has completed a rigorous and extensive regulatory review processes, including approval of a brand name. Any brand names we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the PTO. The FDA typically conducts a review of proposed product brand names, including an evaluation of potential for confusion with other product names. The FDA may also object to a product brand name if it believes the name inappropriately implies medical claims. If the FDA objects to any of our proposed product brand names, we may be required to adopt an alternative brand name for our product candidates. If we adopt an alternative brand name, we would lose the benefit of our existing trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product brand name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

Risks Pertaining to Legislation and Regulation Affecting the Biopharmaceutical and Other Industries

We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad.

We cannot predict the likelihood, nature or extent of how government regulation that may arise from future legislation or administrative or executive action taken by the U.S. presidential administration may impact our business and industry. In particular, the U.S. President has taken several executive actions, specifically through rulemaking and guidance, that could impact the pharmaceutical business and industry. A few of the major administrative actions include:

1. On October 9, 2019, the Centers for Medicare & Medicaid Services ("CMS") issued a proposed rule entitled,*Modernizing and Clarifying the Physician Self-Referral Regulations* and on the same day the HHS Office of Inspector General issued a similar rule, entitled*Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary penalty Rules Regarding Beneficiary Inducements*. The proposed rules are an effort to reform regulations dealing with anti-kickback and self-referral laws. The proposals are attempting to allow certain financial arrangements that would otherwise violate anti-kickback and self-referral laws for providers that are participating in value-based payment arrangements. The proposed rule could impact drug purchasing behavior to ensure providers are within their budget and/or restructure existing payment structures between providers and manufacturers.

2. On October 30, 2019, the Administration issued an advanced notice of proposed rulemaking ("ANPRM") entitled,*International Pricing Index Model for Medicare Part B Drugs*. This ANPRM is soliciting feedback on a potential proposal to align United States drug prices in the Medicare Part B program with international prices. It also solicits public feedback on a policy that would allowing private-sector vendors to negotiate prices, take title to drugs, and improve competition for hospital and physician business. Although this is only a notice for a potential rule, it signals the Administration's desire to regulatorily influence the United States drug pricing system that could adversely affect the industry.

3. On November 15, 2019, CMS issued a proposed rule entitled,*Transparency in Coverage* and finalized the *Calendar Year ("CY") 2020 Outpatient Prospective Payment System ("OPPS") & Ambulatory Surgical Center Price Transparency Requirements for Hospitals to Make Standard Charges Rule*. Together the rules would increase price transparency through health plans and in hospitals. The affects may influence consumer purchasing habits in the health care sector as a whole. Although the transparency provisions are not yet in effect and the hospital price transparency requirements are subject to litigation, there could be implications for the industry related to drug pricing if or when it is enacted.

4. On November 18, 2019, CMS issued a proposed rule entitled,*Medicaid Fiscal Accountability Regulation ("MFAR")*. The proposed rule would significantly impact states' ability to finance their Medicaid programs. If finalized, the MFAR could force states to restructure their Medicaid financing that could disincentivize or change state prescription drug purchasing behavior that would adversely impact the industry.

5. On December 18, 2019, the FDA issued a proposed rule entitled, *Importation of Prescription Drugs*. The proposed rule would allow the importation of certain prescription drugs from Canada. If finalized, states or other non-federal government entities would be able to submit importation program proposals to FDA for review and authorization. This proposed rule could also influence pricing practices in the United States.

6. On January 30, 2020, CMS issued a state waiver option entitled *Health Adult Opportunity ("HAO")*. The HAO would allow states to restructure benefits and coverage policies for their Medicaid programs. The HAO will provide states administrative flexibilities in exchange for a capped federal share. The cap on the federal share is commonly referred to as a "block grant." Importantly, the HAO allows states to set formularies that align with Essential Health Benefit requirements while still requiring manufacturers to participate in the Medicaid Rebate Program. Depending on utilization of the HAO by states, it could impact the industry – especially if states elect to use a formulary.

It is also possible that the Trump Administration will include drug pricing proposals in annual rulemaking throughout the year. As noted above, it is impossible to predict whether these policies will be included in future rulemaking; however, it is possible and worth noting.

Our current and future relationships with customers and third-party payors in the United States and elsewhere may be subject, directly or indirectly, to applicable anti-kickback, fraud and abuse, false claims, transparency, health information privacy and security and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens and diminished profits and future earnings.

Healthcare providers, physicians and third-party payors in the U.S. and elsewhere will play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our future arrangements with third-party payors and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act, which may constrain the business or financial arrangements and relationships through which we sell, market and distribute any product candidates for which we obtain marketing approval. In addition, we may be subject to transparency laws and patient privacy regulation by the federal and state governments and by governments in foreign jurisdictions in which we conduct our business. The applicable federal, state and foreign healthcare laws and regulations that may affect our ability to operate include, but are not necessarily limited to:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal and state healthcare programs, such as Medicare and Medicaid;

- federal civil and criminal false claims laws and civil monetary penalty laws, including the federal False Claims Act, which impose criminal and civil penalties, including civil whistleblower or qui tam actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, including the Medicare and Medicaid programs, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government; the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, and their respective implementing regulations, which impose obligations on covered healthcare providers, health plans, and healthcare clearinghouses, as well as their business associates that create, receive, maintain or transmit individually identifiable health information for or on behalf of a covered entity, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;

- the federal Open Payments program, which requires manufacturers of certain drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, with specific exceptions, to report annually to the Centers for Medicare & Medicaid Services, or CMS, information related to "payments or other transfers of value" made to "covered recipients," which include physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors, and teaching hospitals) and applicable manufacturers. Applicable group purchasing organizations also are required to report annually to CMS the ownership and investment interests held by the physicians and their immediate family members. The SUPPORT for Patients and Communities Act added to the definition of covered recipient practitioners including physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists and certified nurse-midwives effective in 2022. Data collection began on August 1, 2013 with requirements for manufacturers to submit reports to CMS by March 31, 2014 and 90 days after the end of each subsequent calendar year. Disclosure of such information was made by CMS on a publicly available website beginning in September 2014; and

- analogous state and foreign laws and regulations, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers; state and foreign laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers; state and foreign laws that require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, fines, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations, which could have a material adverse effect on our businesses. If any of the physicians or other healthcare providers or entities with whom we expect to do business, including our collaborators, is found not to be in compliance with applicable laws, it may be subject to criminal, civil or administrative sanctions, including exclusions from participation in government healthcare programs, which could also materially affect our businesses.

As we continue to execute our growth strategy, we may be subject to further government regulation which could adversely affect our financial results, including without limitation the Investment Company Act of 1940.

If we engage in business combinations and other transactions that result in holding minority or non-control investment interests in a number of entities, we may become subject to regulation under the Investment Company Act of 1940, as amended (the "Investment Company Act"). If we do become subject to the Investment Company Act, we would be required to register as an investment company and could be expected to incur significant registration and compliance costs in the future.

General Risks

Major public health issues, and specifically the pandemic caused by the coronavirus COVID-19 outbreak, could have an adverse effect on the clinical trials of our partner companies, and as a result, have an adverse impact on our financial condition and results of operations and other aspects of our business.

In December 2019, a novel strain of coronavirus which causes a disease referred to as COVID-19, was first detected in Wuhan, China, and has since spread worldwide. On March 11, 2020, the World Health Organization declared that the rapidly spreading COVID-19 outbreak had evolved into a pandemic. In response to the pandemic, many governments around the world are implementing a variety of control measures to reduce the spread of COVID-19, including travel restrictions and bans, instructions to residents to practice social distancing, quarantine advisories, shelter-in-place orders and required closures of non-essential businesses.

The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains, and created significant volatility and disruption of financial markets. The extent to which the COVID-19 pandemic impacts our business and operating results will depend on future developments that are highly uncertain and cannot be accurately predicted, including new information that may emerge concerning the virus and the actions to contain it or treat its impact, among others.

Some factors from the COVID-19 outbreak that may delay or otherwise adversely affect our or our partner companies' clinical trial programs, as well as adversely impact our business generally, include:

- delays or difficulties in clinical site initiation, including difficulties in recruiting clinical sites, and delays enrolling patients in our clinical trials or increased rates of patients withdrawing from our clinical trials following enrollment as a result of contracting COVID-19, being forced to quarantine, or not otherwise being able to complete study assessments, particularly for older patients or others with a higher risk of contracting COVID-19;

- missed study visits or study procedures which could lead to an abundance of protocol deviations that have the potential to interfere with the interpretability of trial results;

- impacts to clinical results, including an increased number of observed adverse events, as a result of participants enrolled in our clinical trials contracting COVID-19;

- diversion of healthcare resources, including clinical trial investigators and staff, away from the conduct of clinical trials to focus on pandemic concerns which could result in delays to our partner companies' clinical trials;

- limitations on travel, including limitations on domestic and international travel, and government-imposed quarantines or restrictions imposed by key third parties that could interrupt key trial activities, such as clinical trial site initiations and monitoring;

- interruption of, or delays in receiving, supplies of our product candidates from our contract manufacturing organizations due to staffing shortages, or production slowdowns or stoppages;

- disruptions and delays caused by potential workplace, laboratory and office closures and an increased reliance on employees working from home across the healthcare system; and

- disruptions in or delays to regulatory approvals, inspections, reviews or other regulatory activities, including review of NDAs and approvals of protocol changes or amendments to SPAs, as a result of the spread of COVID-19 affecting the operations of the FDA or other regulatory authorities.

The disruptions discussed above and other consequences of COVID-19 pandemic could result in missed study visits or study procedures in our clinical trials, which could lead to an abundance of protocol deviations that impact the interpretability of the trial results. A significant number of deviations may call into question whether the execution of a clinical trial was consistent with the protocol, which is of particular importance where study designs were agreed to as part of a Special Protocol Assessment (SPA). In extreme cases, significant deviations from the protocol may be considered a violation of a SPA and result in potential rescindment of an SPA agreement.

We and our partner companies currently rely on third parties for certain functions or services in support of our clinical trials and key areas of our operations. These third parties include contract research organizations (CROs), medical institutions and clinical investigators, contract manufacturing organizations, suppliers, and external business partners supporting our preparations for commercialization. If these third parties themselves are adversely impacted by restrictions resulting from the COVID-19 outbreak, we will likely experience delays and/or realize additional costs. As a result, our or our partner companies' efforts to obtain regulatory approvals for, and to commercialize, our or our partner companies' product candidates may be delayed or disrupted.

In addition, as a result of government directives on social distancing and to protect the health of our workforce, we have asked our office-based employees to work remotely and have restricted domestic and international travel indefinitely.

We restricted on-site staff to only those personnel and contractors who must perform essential activities that must be completed on-site. Third parties on which we rely may also increase their use of remote working arrangements in response to COVID-19. Our increased reliance on personnel working remotely may negatively impact productivity, including our ability to monitor clinical trials, prepare regulatory applications, and conduct data analysis, or disrupt, delay, or otherwise adversely impact our business. In addition, remote working could increase our cybersecurity risk, create data accessibility concerns, and make us more susceptible to communication disruptions, any of which could adversely impact our business operations or delay necessary interactions with local and federal regulators, ethics committees, manufacturing sites, research or clinical trial sites and other important agencies and contractors.

The ability of the Company's employees and consultants to work may be significantly impacted by the coronavirus.

The Company's employees and consultants are being affected by the COVID-19 pandemic. Substantially all of our office and management personnel are working remotely, and the Company may need to enact further precautionary measures to help minimize the risk of our employees being exposed to the coronavirus. COVID-19 may also compromise the ability of independent contractors who perform consulting services for us to deliver services or deliverables in a satisfactory or timely manner. Further, our management team is focused on mitigating the adverse effects of the COVID-19 pandemic, which has required and will continue to require a large investment of time and resources, thereby diverting their attention from other priorities that existed prior to the outbreak of the pandemic. If these conditions worsen, or last for an extended period of time, the Company's ability to manage its business may be impaired, and operational risks, cybersecurity risks and other risks facing the Company even prior to the pandemic may be elevated.

We may not be able to hire or retain key officers or employees needed to implement our business strategy and develop products and businesses.

Our success depends on the continued contributions of our executive officers, financial, scientific, and technical personnel and consultants, and on our ability to attract additional personnel as we continue to implement growth strategies and acquire and invest in companies with varied businesses. During our operating history, many essential responsibilities have been assigned to a relatively small number of individuals. However, as we continue to implement our growth strategy, the demands on our key employees will expand, and we will need to recruit additional qualified employees. The competition for such qualified personnel is intense, and the loss of services of certain key personnel, or our inability to attract additional personnel to fill critical positions, could adversely affect our business.

We currently depend heavily upon the efforts and abilities of our management team and the management teams of our partners. The loss or unavailability of the services of any of these individuals could have a material adverse effect on our business, prospects, financial condition and results. In addition, we have not obtained, do not own, and are not the beneficiary of key-person life insurance for any of our key personnel. We only maintain a limited amount of directors' and officers' liability insurance coverage. There can be no assurance that this coverage will be sufficient to cover the costs of the events that may occur, in which case, there could be a substantial impact on our ability to continue operations.

Our employees, consultants, or third-party partners may engage in misconduct or other improper activities, including but not necessarily limited to noncompliance with regulatory standards and requirements or internal procedures, policies or agreements to which such employees, consultants and partners are subject, any of which could have a material adverse effect on our business.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees, consultants, or third-party partners could include intentional failures to comply with FDA regulations, provide accurate information to the FDA, comply with current good manufacturing practices ("cGMPs"), comply with federal and state healthcare fraud and abuse laws and regulations, report financial information or data accurately, comply with internal procedures, policies or agreements to which such employees, consultants or partners are subject, or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee, consultant, or third-party misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation, as well as civil and criminal liability. The precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines or other civil and/or criminal sanctions.

We receive a large amount of proprietary information from potential or existing licensors of intellectual property and potential acquisition target companies, all pursuant to confidentiality agreements. The confidentiality and proprietary invention assignment agreements that we have in place with each of our employees and consultants prohibit the unauthorized disclosure of such information, but such employees or consultants may nonetheless disclose such information through negligence or willful misconduct. Any such unauthorized disclosures could subject us to monetary damages and/or injunctive or equitable relief. The notes, analyses and memoranda that we have generated based on such information are also valuable to our businesses, and the unauthorized disclosure or misappropriation of such materials by our employees and consultants could significantly harm our strategic initiatives – especially if such disclosures are made to our competitor companies.

We may be subject to claims that our employees and/or consultants have wrongfully used or disclosed to us alleged trade secrets of their former employers or other clients.

As is common in the biopharmaceutical industry, we rely on employees and consultants to assist in the development of product candidates, many of whom were previously employed at, or may have previously been or are currently providing consulting services to, other biopharmaceutical companies, including our competitors or potential competitors. We may become subject to claims related to whether these individuals have inadvertently or otherwise used, disclosed or misappropriated trade secrets or other proprietary information of their former employers or their former or current clients. Litigation may be necessary to defend against these claims. Even if we are successful in defending these claims, litigation could result in substantial costs and be a distraction to management and/or the employees or consultants that are implicated.

The market price of our securities may be volatile and may fluctuate in a way that is disproportionate to our operating performance.

The stock prices of our securities may experience substantial volatility as a result of a number of factors, including, but not necessarily limited to:

- announcements we make regarding our current product candidates, acquisition of potential new product candidates and companies and/or in-licensing through multiple partners/affiliates;
- sales or potential sales of substantial amounts of our Common Stock;
- issuance of debt or other securities;
- our delay or failure in initiating or completing pre-clinical or clinical trials or unsatisfactory results of any of these trials;
- announcements about us or about our competitors, including clinical trial results, regulatory approvals or new product introductions;
- developments concerning our licensors and/or product manufacturers;
- litigation and other developments relating to our patents or other proprietary rights or those of our competitors;
- conditions in the pharmaceutical or biotechnology industries;
- governmental regulation and legislation;
- unstable regional political and economic conditions;
- variations in our anticipated or actual operating results; and
- change in securities analysts' estimates of our performance, or our failure to meet analysts' expectations.

Many of these factors are beyond our control. The stock markets in general, and the market for pharmaceutical and biotechnological companies in particular, have historically experienced extreme price and volume fluctuations. These fluctuations often have been unrelated or disproportionate to the operating performance of these companies. These broad market and industry factors could reduce the market prices of our securities, regardless of our actual operating performance.

Sales of a substantial number of shares of our Common Stock, or the perception that such sales may occur, may adversely impact the price of our Common Stock.

Almost all of the 99.7 million outstanding shares of our Common Stock, inclusive of outstanding equity awards, as of September 30, 2020 are available for sale in the public market, either pursuant to Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"), or an effective registration statement. In addition, pursuant to our current shelf registration statement on Form S-3, from time to time we may issue and sell shares of our Common Stock or Preferred Stock having an aggregate offering price of up to $29.5 million as of September 30, 2020. Any sale of a substantial number of shares of our Common Stock or our Preferred Stock could cause a drop in the trading price of our Common Stock or Preferred Stock on the Nasdaq Stock Market.

We may not be able to manage our anticipated growth, which may in turn adversely impact our business.

We will need to continue to expend capital on improving our infrastructure to address our anticipated growth. Acquisitions of companies or products could place a strain on our management, and administrative, operational and financial systems. In addition, we may need to hire, train, and manage more employees, focusing on their integration with us and corporate culture. Integration and management issues associated with increased acquisitions may require a disproportionate amount of our management's time and attention and distract our management from other activities related to running our business.

The occurrence of a catastrophic disaster could damage our facilities beyond insurance limits or we could lose key data which could cause us to curtail or cease operations.

We are vulnerable to damage and/or loss of vital data from natural disasters, such as earthquakes, tornadoes, power loss, fire, health epidemics and pandemics, floods and similar events, as well as from accidental loss or destruction. If any disaster were to occur, our ability to operate our businesses could be seriously impaired. We have property, liability and business interruption insurance that may not be adequate to cover losses resulting from disasters or other similar significant business interruptions, and we do not plan to purchase additional insurance to cover such losses due to the cost of obtaining such coverage. Any significant losses that are not recoverable under our insurance policies could seriously impair our business, financial condition and prospects. Any of the aforementioned circumstances, including without limitation the COVID-19 virus, may also impede our employees' and consultants' abilities to provide services in-person and/or in a timely manner; hinder our ability to raise funds to finance our operations on favorable terms or at all; and trigger effectiveness of "force majeure" clauses under agreements with respect to which we receive goods and services, or under which we are obligated to achieve developmental milestones on certain timeframes. Disputes with third parties over the applicability of such "force majeure" clauses, or the enforceability of developmental milestones and related extension mechanisms in light of such business interruptions, may arise and may become expensive and time-consuming.

Our ability to use our pre-change NOLs and other pre-change tax attributes to offset post-change taxable income or taxes may be subject to limitation.

We may, from time to time, carry net operating loss carryforwards ("NOLs") as deferred tax assets on our balance sheet. Under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change" (generally defined as a greater than 50-percentage-point cumulative change (by value) in the equity ownership of certain stockholders over a rolling three-year period), the corporation's ability to use its pre-change NOLs and other pre-change tax attributes to offset its post-change taxable income or taxes may be limited. We may experience ownership changes in the future as a result of shifts in our stock ownership, some of which changes are outside our control. As a result, our ability to use our pre-change NOLs and other pre-change tax attributes to offset post-change taxable income or taxes may be subject to limitation.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could harm our business.

We, and/or third parties on our behalf, may use hazardous materials, including chemicals and biological agents and compounds that could be dangerous to human health and safety or the environment. Our operations may also produce hazardous waste products. Federal, state and local laws and regulations govern the use, generation, manufacture, storage, handling and disposal of these materials and wastes. Compliance with applicable environmental laws and regulations may be expensive, and current or future environmental laws and regulations may impair our product development efforts. In addition, we cannot entirely eliminate the risk of accidental injury or contamination from these materials or wastes. We do not carry specific biological or hazardous waste insurance coverage, and our property and casualty and general liability insurance policies specifically exclude coverage for damages and fines arising from biological or hazardous waste exposure or contamination. Accordingly, in the event of contamination or injury, we could be held liable for damages or penalized with fines in an amount exceeding our respective resources, and clinical trials or regulatory approvals could be suspended.

Although we maintain workers' compensation insurance to cover costs and expenses incurred due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted in connection with the storage or disposal of biological or hazardous materials.

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations may impair our research, development or production efforts. Failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

We have never paid and currently do not intend to pay cash dividends in the near future, except for the dividend we pay on our Series A Preferred Stock. As a result, capital appreciation, if any, will be the sole source of gain for our Common Stockholders.

We have never paid cash dividends on our Common Stock, or made stock dividends, except for the dividend we pay on shares of our Series A Preferred Stock, and we currently intend to retain future earnings, if any, to fund the development and growth of our businesses, and retain our stock positions. In addition, the terms of existing and future debt agreements may preclude us from paying cash or stock dividends. Equally, each of our partners is governed by its own board of directors with individual governance and decision-making regimes and mandates to oversee such entities in accordance with their respective fiduciary duties. As a result, we alone cannot determine the acts that could maximize value to you of such partners in which we maintain ownership positions, such as declaring cash or stock dividends. As a result, capital appreciation, if any, of our Common Stock will be the sole source of gain for our Common Stockholders for the foreseeable future.

Changes in funding for the FDA and other government agencies could hinder their ability to hire and retain key leadership and other personnel, or otherwise prevent new products and services from being developed or commercialized in a timely manner, which could negatively impact our business or the business of our partners.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, ability to hire and retain key personnel, ability to accept the payment of user fees, and statutory, regulatory, and policy changes. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of other government agencies that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for new drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business or the business of our partners. For example, over the last several years, including for 35 days beginning on December 22, 2018, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough nonessential FDA employees and stop routine activities. If a prolonged government shutdown occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. If the timing of FDA's review and approval of new products is delayed, the timing of our or our partners' development process may be delayed, which could result in delayed milestone revenues and materially harm our operations or business.

We will continue to incur significant increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives. Also, if we fail to maintain proper and effective internal control over financial reporting in the future, our ability to produce accurate and timely financial statements could be impaired, which could harm our operating results, investors' views of us and, as a result, the value of our Securities.

As a public company, we incur significant legal, accounting and other expenses under the Sarbanes-Oxley Act ("SOX"), as well as rules subsequently implemented by the SEC, and the rules of the Nasdaq Stock Exchange. These rules impose various requirements on public companies, including requiring establishment and maintenance of effective disclosure and financial controls and appropriate corporate governance practices. Our management and other personnel have devoted and will continue to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations increase our legal and financial compliance costs and make some activities more time-consuming and costly. For example, these rules and regulations make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

SOX requires, among other things, that we maintain effective internal controls for financial reporting and disclosure controls and procedures. As a result, we are required to periodically perform an evaluation of our internal controls over financial reporting to allow management to report on the effectiveness of those controls, as required by Section 404 of SOX. Additionally, our independent auditors are required to perform a similar evaluation and report on the effectiveness of our internal controls over financial reporting. These efforts to comply with Section 404 and related regulations have required, and continue to require, the commitment of significant financial and managerial resources. While we anticipate maintaining the integrity of our internal controls over financial reporting and all other aspects of Section 404, we cannot be certain that a material weakness will not be identified when we test the effectiveness of our control systems in the future. If a material weakness is identified, we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources, costly litigation or a loss of public confidence in our internal controls, which could have an adverse effect on the market price of our stock.

Provisions in our certificate of incorporation, our bylaws and Delaware law might discourage, delay or prevent a change in control of our Company or changes in our management and, therefore, depress the trading price of our Common Stock or other Securities.

Provisions of our certificate of incorporation, our bylaws and Delaware law may have the effect of deterring unsolicited takeovers and/or delaying or preventing a change in control of our Company or changes in our management, including transactions in which our stockholders might otherwise receive a premium for their shares over then-current market prices. In addition, these provisions may limit the ability of stockholders to approve transactions that they may deem to be in their best interests. These provisions include:

- the inability of stockholders to call special meetings; and
- the ability of our Board of Directors to designate the terms of and issue new series of preferred stock without stockholder approval, which could include the right to approve an acquisition or other change in our control or could be used to institute a rights plan, also known as a poison pill, that would work to dilute the stock ownership of a potential hostile acquirer, likely preventing acquisitions that have not been approved by our Board of Directors.

In addition, the Delaware General Corporation Law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our Common Stock. They could also deter potential acquirers of our Company, thereby reducing the likelihood that you would receive a premium for your ownership of our Securities through an acquisition.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit Index

Exhibit Number	Exhibit Title
10.1	Credit Agreement entered into by and among Fortress Biotech, Inc., the lenders from time to time party thereto, and Oaktree Fund Administration, LLC on August 27, 2020. (*+)
31.1	Certification of Chairman, President and Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of the Chairman, President and Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document.(*)
101.SCH	Inline XBRL Taxonomy Extension Schema Document.(*)
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.(*)
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.(*)
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.(*)
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.(*)
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.
\+ Certain confidential portions of this exhibit have been omitted pursuant to Item 601(b) of Regulation S-K.

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.

November 9, 2020

FORTRESS BIOTECH, INC.

By: /s/ Lindsay A. Rosenwald, M.D.
Lindsay A. Rosenwald, M.D., Chairman, President and Chief Executive Officer (Principal Executive Officer)

November 9, 2020

By: /s/ Robyn M. Hunter
Robyn M. Hunter Chief Financial Officer (Principal Financial Officer)

Certain identified information has been excluded from the document because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Exhibit 10.1

CREDIT AGREEMENT

dated as of August 27, 2020

by and among

FORTRESS BIOTECH, INC.,
as the Borrower,

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SCHEDULES AND EXHIBITS

CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of August 27, 2020 (this "***Agreement***"), among **FORTRESS BIOTECH, INC.**, a Delaware corporation (the "***Borrower***"), the lenders from time to time party hereto (each a "***Lender***" and collectively, the "***Lenders***"), and **OAKTREE FUND ADMINISTRATION, LLC**, as administrative agent for the Lenders (in such capacity, the "***Administrative Agent***").

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders provide a senior secured term loan facility to the Borrower in an aggregate principal amount of $60,000,000 to be extended on the Closing Date; and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions set forth herein, to provide such senior secured term loan facility.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1.
DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

"***Account Control Agreement Completion Date***" has the meaning set forth in **Section 8.16(a)**.

"***Acquisition***" means any transaction, or any series of related transactions, by which any Person (for purposes of this definition, an "***acquirer***") directly or indirectly, by means of amalgamation, merger, purchase of assets, purchase of Equity Interests, or otherwise, (i) acquires all or substantially all of the assets of any other Person, (ii) acquires an entire business line or unit or division of any other Person, (iii) with respect to any other Person that is managed or governed by a Board, acquires control of Equity Interests of such other Person representing more than fifty percent (50%) of the ordinary voting power (determined on a fully-diluted basis) for the election of directors of such Person's Board, or (iv) acquires control of more than fifty percent (50%) of the Equity Interests in any other Person (determined on a fully-diluted basis) that is not managed by a Board.

"***Administrative Agent***" has the meaning set forth in the preamble hereto.

"***Affiliate***" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"***Agreement***" has the meaning set forth in the preamble hereto.

"***Anti-Terrorism Laws***" means any laws relating to terrorism or money laundering, including, without limitation, (i) the Money Laundering Control Act of 1986 (e.g., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act of 1970 (e.g., 31 U.S.C. §§ 5311 – 5330), as amended by the Patriot Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), or (vi) any similar laws enacted in the United States, European Union or any other jurisdictions in which the parties to this agreement operate, and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war.

"***Applicable Prepayment Percentage***" means 20.0%.

"***Arm's Length Transaction***" means, with respect to any transaction, the terms of such transaction shall not be less favorable to the Borrower or any of its Subsidiaries than commercially reasonable terms that would be obtained in a transaction with a Person that is an unrelated third party.

"***Asset Sale***" has the meaning set forth in **Section 9.09**.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an assignee of such Lender substantially in the form of **Exhibit E**, or such other form as is acceptable to the Administrative Agent.

"***Bail-In Action***" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"***Bail-In Legislation***" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"***Bankruptcy Code***" means Title 11 of the United States Code entitled "Bankruptcy."

"***Beneficial Ownership Certification***" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"***Beneficial Ownership Regulation***" means 31 C.F.R. § 1010.230.

"***Benefit Plan***" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which the Borrower or any Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Board***" means, with respect to any Person, the board of directors or equivalent management or oversight body of such Person or any committee thereof authorized to act on behalf of such board (or equivalent body).

"***Board Observer***" has the meaning set forth in **Section 8.13(b)**.

"***Borrower***" has the meaning set forth in the preamble hereto.

"***Borrower Party***" has the meaning set forth in **Section 13.03(b)**.

"***Borrowing***" means the borrowing of the Loans on the Closing Date.

"***Borrowing Notice***" means a written notice substantially in the form of **Exhibit B**.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City.

"***Capital Lease Obligations***" means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"***Casualty Event***" means the damage, destruction or condemnation, as the case may be, of property of the Borrower or any of its Subsidiaries in excess of $2,000,000.

"***CFC***" means a Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"***CFC Holding Company***" means any Domestic Subsidiary that owns no material assets (directly or indirectly) other than Equity Interests, or Equity Interests and debt, of one or more CFCs or Domestic Subsidiaries that are themselves CFC Holding Companies.

"***Change of Control***" means an event or series of events (i) as a result of which any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Act, but excluding any of such person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such Plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "***option right***")), directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or (ii) as a result of which, during any period of twelve (12) consecutive months, a majority of the members of the Board of the Borrower cease to be composed of individuals (x) who were members of such

Board on the first day of such period, (y) whose election or nomination to such Board was approved by individuals referred to in **clause (x)** above constituting at the time of such election or nomination at least a majority of such Board or equivalent governing body or (z) whose election or nomination to such Board was approved by individuals referred to in **clauses (x)** and **(y)** above constituting at the time of such election or nomination at least a majority of such Board; or (iii) that results in the sale of all or substantially all of the assets or businesses of the Borrower and its Subsidiaries, taken as a whole.

"***Claims***" means (and includes) any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, judgement or other similar process, whether in respect of assessments or reassessments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"***Closing Date***" means the date on which the conditions precedent specified in **Section 6.01** are satisfied (or waived in accordance with **Section 13.04**) and on which the Loans are to be made to the Borrower.

"***Closing Date Equity Interests***" has the meaning set forth in **Section 9.19**.

"***Code***" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"***Collateral***" means any real, personal and mixed property (including Equity Interests), whether tangible or intangible, in which Liens are granted or purported to be granted to the Administrative Agent as security for the Obligations under any Loan Document on or after the Closing Date, including future acquired or created assets or property (or collectively, all such real, personal and mixed property, as the context may require).

"***Commitment***" means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower on the Closing Date in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender's name on **Schedule 1** under the caption "Commitment", as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise. The aggregate amount of Commitments on the date of this Agreement equals $60,000,000.

"***Compliance Certificate***" has the meaning set forth in **Section 8.01(c)**.

"***Connection Income Taxes***" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"***Contracts***" means any contract, license, lease, agreement, obligation, promise, undertaking, understanding, arrangement, document, commitment, entitlement or engagement under which a Person has, or will have, any liability or contingent liability (in each case, whether

written or oral, express or implied, and whether in respect of monetary or payment obligations, performance obligations or otherwise).

"***Control***" means, in respect of a particular Person, the possession by one or more other Persons, directly or indirectly, of the power to direct or cause the direction of the management or policies of such particular Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"***Controlled Account***" has the meaning set forth in **Section 8.15(a)**.

"***Copyright***" means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof and all other rights whatsoever accruing thereunder or pertaining thereto throughout the world.

"***Cyprium***" means Cyprium Therapeutics, Inc.

"***Cyprium Financing***" has the meaning set forth on **Schedule 7.18**.

"***Default***" means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

"***Default Rate***" has the meaning set forth in **Section 3.02(b)**.

"***Designated Jurisdiction***" means any country or territory to the extent that such country or territory is the subject of country- or territory-wide Sanctions.

"***Disqualified Equity Interests***" means, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date.

"***Division***" has the meaning set forth in **Section 1.04**.

"***Dollars***" and "***$***" means lawful money of the United States of America.

"***Domestic Subsidiary***" means any Subsidiary that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the laws of the United States, any state of the United States or the District of Columbia.

"***DOSPA***" has the meaning set forth in Section 8.16(e).

"***EEA Financial Institution***" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in **clause (a)** of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in **clauses (a)** or **(b)** of this definition and is subject to consolidated supervision with its parent.

"***EEA Member Country***" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"***EEA Resolution Authority***" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"***Eligible Transferee***" means and includes (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course, (vi) with respect to any Lender, any of its Affiliates or such Lender's or Affiliate's managed funds or accounts, and (vii) any other "accredited investor" (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes.

"***Environmental Claims***" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, information request, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment, arising out of a violation of Environmental Law or any Hazardous Materials Activity.

"***Environmental Law***" means all laws (including common law and any federal, state, provincial or local governmental law), rule, regulation, order, writ, judgment, notice, requirement, binding agreement, injunction or decree, whether U.S. or non-U.S., relating in any way to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) to the extent related to Hazardous Materials Activity, occupational safety and health, industrial hygiene, land use, natural resources or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

"***Environmental Liability***" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) exposure to any Hazardous Materials,

(iv) the release or threatened release of any Hazardous Materials into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Equity Interests***" means, with respect to any Person (for purposes of this defined term, an "***issuer***"), all shares of, interests or participations in, or other equivalents in respect of such issuer's capital stock, including all membership interests, partnership interests or equivalent, and all debt or other securities directly or indirectly exchangeable, exercisable or otherwise convertible into, such issuer's capital stock, whether now outstanding or issued after the Closing Date, and in each case, however designated and whether voting or non-voting.

"***Equivalent Amount***" means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination.

"***ERISA***" means the United States Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" means, collectively, the Borrower, any Subsidiary thereof, and any Person under common control, or treated as a single employer, with the Borrower or any Subsidiary thereof, within the meaning of Section 414(b) or (c) of the Code and solely for purposes of Section 412 of the Code and Section 302 of ERISA, Section 414 (m) or (o) of the Code.

"***ERISA Event***" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events for which the 30-day notice requirement has been waived; (ii) a withdrawal by the Borrower or any ERISA Affiliate thereof from a Title IV Plan during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA or the termination of any Title IV Plan with at least two or more contributing sponsors that are not ERISA Affiliates resulting in liability under Section 4064 of ERISA; (iii) the withdrawal of the Borrower or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by the Borrower or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is insolvent pursuant to Section 4245 of ERISA; (iv) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (v) the imposition of liability on the Borrower or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vi) the failure by the Borrower or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (vii) the determination that any Title IV Plan is considered an at-risk plan

or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (viii) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate thereof; (ix) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; or (x) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of the Borrower or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code.

"***ERISA Funding Rules***" means the rules regarding minimum required contributions (including any installment payment thereof) to Title IV Plans, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"***EU Bail-In Legislation Schedule***" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"***Event of Default***" has the meaning set forth in **Section 11.01**.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"***Exchange Rate***" means, as of any date, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Bloomberg screen at or about 11:00 a.m. (Eastern time) on such date. In the event that such rate does not appear on the Bloomberg screen, the "Exchange Rate" shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably designated by the Administrative Agent.

"***Excluded Taxes***" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (1) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under **Section 5.04**) or (2) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 5.03**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient's failure to comply with **Section 5.03(f)**, and (iv) any U.S. federal withholding Taxes imposed under FATCA.

"***Facility***" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased or operated by the Borrower or any of its Subsidiaries.

"***FATCA***" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"***Federal Funds Effective Rate***" means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three (3) major banks of recognized standing selected by it; and provided further, that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"***Fee Letter***" means the Fee Letter, dated as of the date of this Agreement, among the Borrower, the Lenders and the Administrative Agent.

"***Foreign Lender***" means a Lender that is not a U.S. Person.

"***Foreign Subsidiary***" means any Subsidiary that is not a Domestic Subsidiary.

"***Funding Date Certificate***" means a certificate substantially in the form of Exhibit H.

"***GAAP***" means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. All references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.01(f)(i)**.

"***Governmental Approval***" means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance or exemption that is issued or granted by or from (or pursuant to any act of) any Governmental Authority, including any application or submission related to any of the foregoing.

"***Governmental Authority***" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision

thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of any country, in each case whether U.S. or non-U.S.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided , that the term Guarantee shall not include (x) endorsements for collection or deposit and (y) guarantees of operating leases, in each case, in the ordinary course of business.

"***Hazardous Material***" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or would reasonably be expected to pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"***Hazardous Materials Activity***" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, recycling, disposition or handling of any Hazardous Materials, and any investigation, monitoring, corrective action or response action with respect to any of the foregoing.

"***Hedging Agreement***" means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"***Immaterial Subsidiary***" means any Subsidiary of the Borrower that (i) individually constitutes or holds less than five percent (5%) of the Borrower's consolidated total assets or generates less than five percent (5%) of the Borrower's consolidated total revenue, and (ii) when taken together with all then existing Immaterial Subsidiaries, such Subsidiary and such Immaterial Subsidiaries, in the aggregate, would constitute or hold less than fifteen percent (15%) of the Borrower's consolidated total assets or generate less than fifteen percent (15%) of the Borrower's consolidated total revenue, in each case as pursuant to the most recent fiscal

period for which financial statements were required to have been delivered pursuant to **Sections 8.01(a)** or **(b)**.

"***Indebtedness***" of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business and not overdue by more than ninety (90) days), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (x) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (xi) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (xii) all guaranteed minimum payments of such Person under any license or other agreements, (xiii) any Disqualified Equity Interests of such Person, and (xiv) all other obligations required to be classified as indebtedness of such Person under GAAP; provided that, notwithstanding the foregoing, Indebtedness shall not include accrued expenses, deferred rent, deferred taxes, deferred compensation or customary obligations under employment agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***Indemnified Party***" has the meaning set forth in **Section 13.03(b)**.

"***Indemnified Taxes***" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation and (ii) to the extent not otherwise described in **clause (i)**, Other Taxes.

"***Information Certificate***" means the Information Certificate delivered pursuant to **Section 6.01(c)**.

"***Insolvency Proceeding***" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

"***Intellectual Property***" means, collectively, all rights, priorities and privileges relating to intellectual property, whether arising under the laws of the U.S. or any other jurisdiction or political subdivision thereof (including any multinational laws or otherwise), including all inventions (whether patentable or unpatentable and whether or not reduced to practice) and discoveries, and all improvements thereto, and all know-how, confidential or proprietary information, trade secrets, data, Patents, Trademarks, Copyrights and internet domain names, together with all common law rights and moral rights therein, and all goodwill associated therewith, and all rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"***Interest Rate***" means 11.0% per annum, as may be increased pursuant to **Section 3.02(b)**.

"***Invention***" means any novel, inventive or useful art, apparatus, method, process, machine (including any article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

"***Investment***" means, for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) of any debt or Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (ii) the making of any deposit with, or advance, loan, assumption of debt or other extension of credit to, or capital contribution in any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of inventory or supplies by such Person in the Ordinary Course; or (iii) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person. The amount of an Investment will be determined at the time the Investment is made without giving effect to any subsequent changes in value.

"***IRS***" means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

"***JMC***" means Journey Medical Corporation, a Delaware corporation.

"***Law***" means, collectively, all U.S. or non-U.S. federal, state, provincial, territorial, municipal or local statute, treaty, rule, guideline, regulation, ordinance, code or administrative or judicial precedent or authority, including any interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"***Lenders***" has the meaning set forth in the preamble hereto.

"***Lien***" means (a) any mortgage, lien, pledge, hypothecation, charge, security interest, or other encumbrance of any kind or character whatsoever, whether or not filed, recorded or otherwise perfected under applicable law, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any other encumbrance on title to real property, any option or other agreement to sell, or give a security interest in, such asset and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes of any jurisdiction)) or any preferential arrangement that has the practical effect of creating a security interest and (b) in the case of Equity Interests, any purchase option, call or similar right of a third party with respect to such Equity Interests.

"***Loan***" means each loan advanced by a Lender pursuant to **Section 2.01**.

"***Loan Documents***" means, collectively, this Agreement, the Notes, the Security Documents, the Warrant, the Fee Letter and any subordination agreement, intercreditor agreement or other present or future document, instrument, agreement or certificate delivered to the Administrative Agent (for itself or for the benefit of any other Secured Party) in connection with this Agreement or any of the other Loan Documents, in each case, as amended or otherwise modified.

"***Loss***" means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

"***Majority Lenders***" means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect.

"***Margin Stock***" means "margin stock" within the meaning of Regulations U and X.

"***Material Adverse Change***" and "***Material Adverse Effect***" mean a material adverse change in or effect on (i) the business, financial performance, operations, condition of the assets or liabilities of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of the Borrower to perform its obligations under the Loan Documents, as and when due, or (iii) the legality, validity, binding effect or enforceability of the Loan Documents or the rights, remedies and benefits available to, or conferred upon, the Administrative Agent or the Secured Parties under any of the Loan Documents.

"***Material Agreement***" means any Contract required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act of 1933 or Securities Exchange Act of 1934, as may be amended. For the avoidance of doubt, employment and management contracts shall not be Material Agreements.

"***Material Indebtedness***" means, at any time, any Indebtedness of the Borrower or any Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds $5,000,000 (or the Equivalent Amount in other currencies).

"***Material Subsidiary***" means any Subsidiary of the Borrower that is not an Immaterial Subsidiary and in which the Borrower owns more than fifty percent (50%) of the outstanding Equity Interests.

"***Maturity Date***" means August 27, 2025.

"***Maximum Rate***" has the meaning set forth in **Section 13.17.**

"***Minimum Liquidity Amount***" means (i) from the Closing Date to but not including the earliest date following the Closing Date on which the Borrower consummates a Permitted Acquisition, $20,000,000 and (ii) from the earliest date following the Closing Date on which the Borrower consummates a Permitted Acquisition, $25,000,000; provided that, notwithstanding the foregoing, the Minimum Liquidity Amount shall be permanently reduced to $15,000,000 on the first date on which the outstanding principal amount of the Loans is less than $40,000,000.

"***Minimum Revenue Covenant***" has the meaning set forth in **Section 10.02**.

"***Minimum Revenue Cure Right***" has the meaning set forth in **Section 11.04(a)**.

"***Monetization Event***" means the occurrence of any of the following events: (i) an Asset Sale (other than a Qualifying Avenue Sale or a Qualifying [*] Sale), (ii) the sale of any priority review voucher by Cyprium; (iii) the sale of any priority review voucher by Mustang Bio, Inc.; and (iv) the receipt by the Borrower of any dividend or other distribution (other than royalty payments received based on customary revenue or sales payments, but excluding any such payments relating to milestones or regulatory developments) in cash from any of its Subsidiaries in excess of $5,000,000 other than in connection with an event referred to in clauses (i) through (iii) above, a Qualifying Avenue Sale or a Qualifying [*] Sale.

"***Multiemployer Plan***" means any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Net Proceeds***" means, (i) with respect to any Casualty Event experienced or suffered by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (x) costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; and (ii) with respect to any Monetization Event, Qualifying Avenue Sale or Qualifying [*] Sale the amount of total consideration (including but not limited to consideration in the form of cash and Equity Interests) received (directly or indirectly) from time to time (including any contingent consideration, including but not limited to milestone payments and royalty payments) by or on behalf of such Person after deducting therefrom only (x) costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection

therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; provided that, in each case of **clauses (i)** and **(ii)** , costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x) actually paid to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries and (y) properly attributable to such Casualty Event, Asset Sale or other Monetization Event, as the case may be.

"***Note***" means a promissory note, in substantially the form of **Exhibit A** hereto, executed and delivered by the Borrower to any Lender in accordance with **Section 2.03**.

"***Notice of Intent to Cure Revenue Covenant***" has the meaning set forth in **Section 11.04(b)**.

"***NY UCC***" means the UCC as in effect from time to time in New York.

"***Oaktree Lender***" means any Lender that is an Affiliate or managed fund or account of Oaktree Capital Management, L.P.

"***Obligations***" means, with respect to the Borrower, all amounts, obligations, liabilities, covenants and duties of every type and description owing by the Borrower to any Secured Party (including all Warrant Obligations) any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, Prepayment Fee, Specified Return Shortfall, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to the Borrower under any Loan Document.

"***OFAC***" has the meaning assigned to such term in the definition of "Anti-Terrorism Laws."

"***Ordinary Course***" means ordinary course of business or ordinary trade activities that are customary for similar businesses in the normal course of their ordinary operations and not while in financial distress.

"***Organic Document***" means, for any Person, such Person's formation documents, including, as applicable, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to such Person's Equity Interests, or any equivalent document of any of the foregoing.

"***Other Connection Taxes***" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing

such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.03(g)**).

"***Participant***" has the meaning set forth in **Section 13.05(e)**.

"***Participant Register***" has the meaning set forth in **Section 13.05(e)**.

"***Patents***" means all patents and patent applications, including (i) the Inventions and improvements described and claimed therein, (ii) the reissues, divisions, continuations, renewals, extensions, and continuations in part thereof, and (iii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world.

"***Patriot Act***" has the meaning set forth in **Section 13.19**.

"***Payment Date***" means (i) March 31, June 30, September 30 and December 31 of each year, commencing on the first such date to occur after the Closing Date; and (ii) the Maturity Date.

"***PBGC***" means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"***Permitted Acquisition***" means any Acquisition by the Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise; provided that:

(a) immediately prior to, and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to result therefrom;

(b) such Acquisition shall comply in all material respects with all applicable Laws and all applicable Governmental Approvals;

(c) in the case of any Acquisition of Equity Interests of another Person, after giving effect to such Acquisition, all Equity Interests of such other Person acquired by the Borrower or any of its Subsidiaries shall be owned, directly or indirectly, beneficially and of record, by the Borrower or any of its Subsidiaries, and, the Borrower shall satisfy each of the actions set forth in **Section 8.11** as required by such Section;

(d) on a *Pro Forma* Basis after giving effect to such Acquisition, the Borrower shall have at least $25,000,000 in cash in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent;

(e) to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof does not exceed $10,000,000 (or the Equivalent Amount in other currencies) in any fiscal year;

(f) to the extent that the purchase price for any such Acquisition is paid in Equity Interests, all such Equity Interests shall be Qualified Equity Interests;

(g) promptly upon request by the Administrative Agent in the case of any such Acquisition, the Borrower shall provide to the Administrative Agent (i) at least ten (10) Business Day's prior written notice of any such Acquisition, together with summaries, prepared in reasonable detail, of all due diligence conducted by or on behalf of the Borrower or the applicable Subsidiary, as applicable, prior to such Acquisition, in each case subject to customary confidentiality restrictions, (ii) subject to customary confidentiality restrictions, a copy of the draft purchase agreement related to the proposed Acquisition (and any related documents requested by the Administrative Agent), (iii) pro forma financial statements of the Borrower and its Subsidiaries (as of the last day of the most recently ended fiscal quarter prior to the date of consummation of such Acquisition for which financial statements are required to be delivered pursuant to **Sections 8.01(a)** or **(b)**) after giving effect to such Acquisition, and (iv) subject to customary confidentiality restrictions, any other information reasonably requested (to the extent available), by the Administrative Agent and available to the Borrower; and

(h) neither the Borrower nor any of its Subsidiaries (including any acquired Person) shall, in connection with any such Acquisition, assume or remain liable with respect to (x) any Indebtedness of the related seller or the business, Person or assets acquired, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.02** or (z) any other liabilities (including Tax, ERISA and environmental liabilities), except to the extent the assumption of such liability could not reasonably be expected to result in a Material Adverse Effect. Any other such Indebtedness, liabilities or Liens not permitted to be assumed, continued or otherwise supported by the Borrower or Subsidiary thereof hereunder shall be paid in full or released within sixty (60) days of the acquisition date.

"***Permitted Cash Equivalent Investments***" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any member states of the European Union or any agency or any state thereof having maturities of not more than one (1) year from the date of acquisition, (ii) commercial paper maturing no more than two hundred seventy (270) days after the date of acquisition thereof and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., and (iii) funds held in ICS and CDARS programs.

"***Permitted Indebtedness***" means any Indebtedness permitted under **Section 9.01**.

"***Permitted Liens***" means any Liens permitted under **Section 9.02**.

"***Permitted Refinancing***" means, with respect to any Indebtedness permitted to be refinanced, extended, renewed or replaced hereunder, any refinancings, extensions, renewals and replacements of such Indebtedness; provided that such refinancing, extension, renewal or replacement shall not (i) increase the outstanding principal amount of the Indebtedness being refinanced, extended, renewed or replaced, except by an amount equal to accrued interest and a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred in connection therewith, (ii) contain terms relating to outstanding principal amount, amortization, maturity, collateral security (if any) or subordination (if any), or other material terms that, taken as a whole, are less favorable in any material respect to the Borrower and its Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing such existing Indebtedness, (iii) have an applicable interest rate which does not exceed the greater of (A) the rate of interest of the Indebtedness being replaced and (B) the then applicable market interest rate, (iv) contain any new requirement to grant any Lien or to give any Guarantee that was not an existing requirement of such Indebtedness and (v) after giving effect to such refinancing, extension, renewal or replacement, no Default shall have occurred (or could reasonably be expected to occur) as a result thereof.

"***Person***" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"***Plan***" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***Prepayment Fee***" means (a) with respect to any prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration, payment of a Revenue Cure Payment or otherwise (other than by mandatory prepayment in connection with a Monetization Event, a Qualifying Avenue Sale or a Qualifying [*] Sale), occurring (i) on or prior to the second anniversary of the Closing Date, an amount equal to the amount of interest that would have been paid on the principal amount of the Loans being so repaid or prepaid for the period from and including the date of such repayment or prepayment to but excluding the date that is the two (2) year anniversary of the Closing Date, *plus* three percent (3%) of the principal amount of the Loans being so repaid or prepaid, (ii) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, an amount equal to three percent (3%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iii) at any time after the third anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date, an amount equal to two percent (2%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid and (iv) if the prepayment is made after the fourth anniversary of the Closing Date, 0% and (b) with respect to any

mandatory prepayment of all or any portion of the Loans in connection with a Monetization Event (which shall not include, for the avoidance of doubt, any Qualifying Avenue Sale or Qualifying [*] Sale), occurring (i) on or prior to the first anniversary of the Closing Date, an amount equal to six percent (6%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (ii) at any time after the first anniversary of the Closing Date but on or prior to the second anniversary of the Closing Date, an amount equal to four and a half percent (4.5%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iii) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, an amount equal to three percent (3%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iv) at any time after the third anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date, an amount equal to two percent (2%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid and (v) if the prepayment is made after the fourth anniversary of the Closing Date, 0%.

"***Prepayment Price***" has the meaning set forth in **Section 3.03(a)(i)**.

"Private Subsidiary" is any Subsidiary that is not a Public Subsidiary.

"***Pro Forma Basis***" shall mean, with respect to the calculation of any financial ratio, as of any date, that *pro forma* effect will be given to the Transactions, any Permitted Acquisition, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio is being calculated) and all sales, transfers and other dispositions or discontinuance of any subsidiary, line of business or division, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the "Reference Period"), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made, as if each such event occurred on the first day of the Reference Period.

"***Prohibited Payment***" means any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value (including meals or entertainment) to any officer, employee or ceremonial office holder of any government or instrumentality thereof, political party or supra-national organization (such as the United Nations), any political candidate, any royal family member or any other person who is connected or associated personally with any of the foregoing that is prohibited under any Law for the purpose of influencing any act or decision of such payee in his official capacity, inducing such payee to do or omit to do any act in violation of his lawful duty, securing any improper advantage or inducing such payee to use his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

"***Proportionate Share***" means, with respect to any Lender, the percentage obtained by dividing (i) the Commitment (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of the Commitments (or, if the

Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

"Public Subsidiary" is any Subsidiary the Equity Interests of which are traded on any public market or exchange.

"***Qualified Equity Interest***" means, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest.

"***Qualified Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Borrower or any ERISA Affiliate thereof or to which the Borrower or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code.

"***Qualifying Avenue Sale***" has the meaning set forth on Schedule 9.09(b).

"***Qualifying*** [*] ***Sale***" has the meaning set forth on Schedule 9.09(c).

"***Recipient***" means the Administrative Agent or any Lender.

"***Refinanced Indebtedness***" means the Indebtedness incurred under (a) the Amended and Restated Credit Facility Agreement, dated as of March 12, 2018, by and among Borrower, Opus Point Healthcare Innovations Fund, LP and each other lender from time to time party thereto (the "Opus Debt"), (b) those Notes issued pursuant to that certain Confidential Private Placement Memorandum, dated as of January 16, 2018 (the "Venture Debt"), and (c) those Notes issued pursuant to that certain Confidential Private Placement Memorandum, dated as of March 24, 2017 (the "2017 Subordinated Debt").

"***Register***" has the meaning set forth in **Section 13.05(d)**.

"***Regulation T***" means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation X***" means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

"***Reinvestment***" has the meaning set forth in **Section 3.01**.

"***Reinvestment Period***" has the meaning set forth in **Section 3.03(b)**.

"***Related Parties***" has the meaning set forth in **Section 13.16**.

"***Resignation Effective Date***" has the meaning set forth in **Section 12.09**.

"***Responsible Officer***" of any Person means each of the president, chief executive officer, chief financial officer and similar officer of such Person.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to any Equity Interests of the Borrower or any of its Subsidiaries, or any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of the Borrower or any of its Subsidiaries, any payment of interest, principal or fees in respect of any Indebtedness owed by the Borrower or any of its Subsidiaries to any holder of any Equity Interests of the Borrower or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of the Borrower or any of its Subsidiaries.

"***Restrictive Agreement***" means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of the Borrower or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its properties or assets (other than customary provisions in Contracts (including without limitation leases and in-bound licenses of Intellectual Property) restricting the assignment thereof), or (ii) the ability of the Borrower or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to the Borrower or any of its Subsidiaries or to Guarantee Indebtedness of the Borrower or any of its Subsidiaries.

"***Revenue***" means, with respect to any Person for any relevant fiscal period, the consolidated total revenues of such Person for such fiscal period, as recognized on the income statement of such Person, determined on a consolidated basis in accordance with GAAP.

"***Revenue Cure Payment***" means, with respect to any fiscal quarter of the Borrower in which the Minimum Revenue Covenant applies, a payment of $6,000,000 in cash.

"***Sanction***" means any international economic or financial sanction or trade embargo imposed, administered or enforced from time to time by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union or its Member States, Her Majesty's Treasury or other relevant sanctions authority where the Borrower is located or conducts business.

"***Secured Parties***" means the Lenders, the Administrative Agent and any of their respective permitted transferees or assigns.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Security Agreement***" means the Security Agreement, delivered pursuant to **Section 6.01(h)**, between the Borrower and the Administrative Agent, granting a security interest in the Borrower's personal property in favor of the Administrative Agent, for the benefit of the Secured Parties.

"***Security Documents***" means, collectively, the Security Agreement, each Short-Form IP Security Agreement, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Secured Parties for purposes of securing the Obligations.

"***Short-Form IP Security Agreements***" means short-form copyright, patent or trademark (as the case may be) security agreements, substantially in the form of Exhibit C, D and E to the Security Agreement, entered into by the Borrower in favor of the Secured Parties, each in form and substance satisfactory to the Administrative Agent (and as amended, modified or replaced from time to time).

"***Solvent***" means, as to any Person as of any date of determination, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person's property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"***Specified Return Shortfall***" has the meaning set forth in the Fee Letter.

"***Subsidiary***" means, with respect to any Person (the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (i) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly, or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more direct or indirect subsidiaries of the parent or by the parent and one or more direct or indirect subsidiaries of the parent. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"***Taxes***" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"***Title IV Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the

Borrower or any ERISA Affiliate thereof or to which the Borrower or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Trademarks***" means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including (i) all renewals of trademark and service mark registrations and (ii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof.

"***Transactions***" means (a) the negotiation, preparation, execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the making of the Loans hereunder, and all other transactions contemplated pursuant to this Agreement and the other Loan Documents, including the creation of the Liens pursuant to the Security Documents, (b) the repayment in full and termination of the Refinanced Indebtedness and (c) the payment of all fees and expenses incurred or paid by the Borrower in connection with the foregoing.

"***UCC***" means, with respect to any applicable jurisdictions, the Uniform Commercial Code as in effect in such jurisdiction, as may be modified from time to time.

"***United States***" or "***U.S.***" means the United States of America, its fifty states and the District of Columbia.

"***U.S. Person***" means a "United States Person" within the meaning of Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" has the meaning set forth in **Section 5.03(f)(ii)(B)(3)**.

"***VWAP***" has the meaning set forth in the Warrant.

"***Warrant***" means that certain Warrant, dated as of the Closing Date and delivered pursuant to **Section 6.01(k)**, evidenced by an instrument substantially the form of **Exhibit F** hereto, as amended, replaced or otherwise modified pursuant to the terms thereof.

"***Warrant Obligations***" means all Obligations of Borrower arising out of, under or in connection with the Warrant.

"***Withdrawal Liability***" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

"***Withholding Agent***" means the Borrower or the Administrative Agent.

"***Write-Down and Conversion Powers***" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.02 Accounting Terms and Principles. Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under **Section 10** and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication. If the Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in each case, occurring after the date of this Agreement, then the Lenders and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders and Borrower after such change or issuance conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such change or issuance has occurred and (ii) the Borrower shall provide to the Lenders a written reconciliation in form and substance reasonably satisfactory to the Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to such change or issuance.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires,

(a) the terms defined in this Agreement include the plural as well as the singular and vice versa;

(b) words importing gender include all genders;

(c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;

(d) any reference to "this Agreement" refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;

(e) references to days, months and years refer to calendar days, months and years, respectively;

(f) all references herein to "include" or "including" shall be deemed to be followed by the words "without limitation";

(g) the word "from" when used in connection with a period of time means "from and including" and the word "until" means "to but not including";

(h) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or

intangible, real or personal, including cash, securities, rights under contractual obligations and permits and any right or interest in any such assets or property;

(i) accounting terms not specifically defined herein (other than "property" and "asset") shall be construed in accordance with GAAP;

(j) the word "will" shall have the same meaning as the word "shall";

(k) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or, to the knowledge of such Person, indirectly; and

(l) references to any Lien granted or created hereunder or pursuant to any other Loan Document securing any Obligations shall deemed to be a Lien for the benefit of the Secured Parties.

Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto permitted by the Loan Documents. Any definition or reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

If any payment required to be made pursuant to the terms and conditions of any Loan Document falls due on a day which is not a Business Day, then such required payment date shall be extended to the immediately following Business Day. For purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries will be deemed to be equal to 100% of the outstanding principal amount thereof or payment obligations with respect thereto at the time of determination thereof.

1.04 Division. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws) (a "**Division**"), if (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

SECTION 2.
THE COMMITMENT AND THE LOANS

2.01 Loans.

(a) On the terms and subject to the conditions of this Agreement, each Lender agrees to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Commitment on the Closing Date.

(b) No amounts paid or prepaid with respect to any Loan may be reborrowed.

(c) Any term or provision hereof (or of any other Loan Document) to the contrary notwithstanding, Loans made to the Borrower will be denominated solely in Dollars and will be repayable solely in Dollars and no other currency.

2.02 Borrowing Procedures. At least one (1) Business Day prior to the Closing Date (or such shorter period agreed by the Administrative Agent), the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice in the form of **Exhibit B** signed by a duly authorized representative of the Borrower (which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. (Eastern time) on a Business Day, shall be deemed to have been delivered on the next Business Day). Each Borrowing Notice shall be for the full amount of the Commitments and no Borrowing Notice for less than such full amount shall be permitted.

2.03 Notes. If requested by any Lender, the Loan of such Lender shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to the Lender such promissory note(s) substantially in the form attached hereto as **Exhibit A**.

2.04 Use of Proceeds . The Borrower shall use the proceeds of the Loans (i) for repaying the Refinanced Indebtedness and (ii) for working capital and general corporate purposes, including the payment of fees and expenses associated with this Agreement.

SECTION 3.
PAYMENTS OF PRINCIPAL AND INTEREST, ETC.

3.01 Scheduled Repayments and Prepayments Generally; Application. The Borrower hereby promises to pay to the Administrative Agent for the account of each Lender (as such amounts may in each case be reduced from time to time in accordance with **Section 3.03**) on the Maturity Date, all outstanding Obligations in full (together with accrued and unpaid interest and any other accrued and unpaid charges thereon and all other obligations due and payable by the Borrower under this Agreement, including any Specified Return Shortfall). Except as otherwise provided in this Agreement, each payment (including each repayment and prepayment) by the Borrower (other than fees payable pursuant to the Fee Letter) will be deemed to be made ratably in accordance with the Lenders' Proportionate Shares. On any date occurring prior to the Maturity Date that payment or prepayment in full of the Loans hereunder occurs, the Borrower shall pay in full all outstanding Obligations, which shall include the Prepayment Fee, if applicable, and any Specified Return Shortfall.

3.02 Interest.

(a) **Interest Generally**. The outstanding principal amount of the Loans shall accrue interest from the date made to repayment (whether by acceleration or otherwise and whether voluntary or mandatory) at the Interest Rate.

(b) **Default Interest**. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Interest Rate shall increase automatically by two and a half percent (2.5%) *per annum* (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the "***Default Rate***"). If any Obligation (other than Warrant Obligations but including, without limitation, fees, costs and expenses payable hereunder) is not paid when due (giving effect to any applicable grace period) under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

(c) **Interest Payment Dates**. Accrued interest on the Loans shall be payable in arrears on each Payment Date in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate shall also be payable in cash from time to time on demand by the Administrative Agent.

3.03 Prepayments.

(a) **Optional Prepayments**.

(i) Subject to prior written notice pursuant to **clause (ii)** below, the Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Business Day for an amount equal to the sum of (A) the aggregate principal amount of the Loans being prepaid, (B) any accrued but unpaid interest on the principal amount of the Loans being prepaid, (C) any applicable Prepayment Fee and (D) if applicable, other unpaid amounts then due and owing pursuant to this Agreement and the other Loan Documents (such aggregate amount, the "***Prepayment Price***"); provided that each partial prepayment of principal of Loans shall be in an aggregate amount at least equal to $5,000,000 and integral multiples of $1,000,000 in excess thereof.

(ii) A notice of optional prepayment shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (Eastern time) on a date not less than three (3) (nor more than five (5)) Business Days prior to the proposed prepayment date. Each notice of optional prepayment shall specify the proposed prepayment date, the Prepayment Price, the principal amount to be prepaid and any conditions to prepayment (if applicable).

(b) **Mandatory Prepayments for Casualty Events and Monetization Events**. Within five (5) Business Days following Borrower's receipt of Net Proceeds from any Casualty Event or Monetization Event (other than an Asset Sale permitted pursuant to **Sections 9.09(a)**, **(b)**, **(c)**, **(d)** or **(h)** or any Asset Sale related to the Equity Interests in, or assets of, [*] that is not a Qualifying [*] Sale), the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) the Applicable Prepayment Percentage of the Net Proceeds received by the Borrower with respect to such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, as the case may be, (ii) any accrued but

unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee; provided that, so long as no Default has occurred and is continuing or shall result therefrom, if, within five (5) Business Days following Borrower's receipt of Net Proceeds from any such Casualty Event or Monetization Event as a result of which the Borrower receives Net Proceeds in an aggregate amount less than $5,000,000, a Responsible Officer of the Borrower delivers to the Administrative Agent a notice to the effect that the Borrower intends to apply the Net Proceeds from such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, to reinvest in the business of the Borrower (a "***Reinvestment***"), then such Net Proceeds of such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event may be applied for such purpose in lieu of such mandatory prepayment to the extent such Net Proceeds of such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event are actually applied for such purpose; provided, further, that, in the event that Net Proceeds have not been so applied within three hundred sixty-five (365) days (the "***Reinvestment Period*** ") following the occurrence of such Casualty Event or Monetization Event, the Borrower shall no later than the end of such period make a mandatory prepayment of the Loans in an aggregate amount equal to the sum of (i) the Applicable Prepayment Percentage of the unused balance of such Net Proceeds received by the Borrower with respect to such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee; provided, further, that other than as provided in **clause (d)** below, Borrower shall not be required to prepay more than $10 million of principal amount of the Loans in the aggregate with respect to any Asset Sale(s) and/or other Monetization Event(s) related to the Equity Interests in, or assets of, any individual Subsidiary.

(c) **Mandatory Prepayments for Debt Issuances**. Immediately upon receipt by the Borrower or any of its Subsidiaries of proceeds from any issuance, incurrence or assumption of Indebtedness other than Indebtedness permitted by **Section 9.01**, on or after the Closing Date, the Borrower shall prepay the Loans and other Obligations in an amount equal to 100% of the cash proceeds received, *plus* the Prepayment Fee, if applicable.

(d) **Other Mandatory Prepayments**. Within five (5) Business Days following Borrower's receipt of Net Proceeds from any Qualifying Avenue Sale or Qualifying [*] Sale, the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) the Net Proceeds received by the Borrower with respect to such Qualifying Avenue Sale or Qualifying [*] Sale, as the case may be; provided Borrower shall not be required to prepay more than $7.5 million of principal amount of the Loans under this **clause (d)** from any Qualifying Avenue Sale or more than $12.5 million of principal amount of the Loans under this **clause (d)** from any Qualifying [*] Sale, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) an amount equal to six percent (6%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid. Within five (5) Business Days following Borrower's receipt of Net Proceeds from any Asset Sale related to the Equity Interests in, or assets of, [*] that is not a Qualifying [*] Sale, the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) $15.0 million of principal amount of the Loans, (ii) any accrued but unpaid interest on the principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee.

(e) **General.** The Borrower shall notify the Administrative Agent not later than 12:00 p.m. (Eastern time) on a date not less than two (2) Business Days (but not more than three (3) Business Days) prior to any mandatory prepayment. Notwithstanding anything in this **Section 3.03** to the contrary, any Lender may elect, by written notice to the Administrative Agent no later than 12:00 p.m. (Eastern time), one (1) Business Day prior to the prepayment date (or such later time as the Administrative Agent may agree), to decline all or any portion of any mandatory prepayment of its Loans pursuant to this **Section 3.03**. Any Lender that fails to deliver such notice to the Administrative Agent in the time frame set forth above shall be deemed to have accepted its share of any mandatory prepayment. The aggregate amount of the prepayment that would have been applied to prepay Loans but was so declined may be retained by the Borrower and used for any general corporate purpose not prohibited by this Agreement. If any Lender declines all or any portion of any mandatory prepayment of its Loans in connection with a Monetization Event, Qualifying Avenue Sale or Qualifying [*] Sale, the Borrower shall grant such Lender warrants in an amount equal to 2.50% of the principal amount of mandatory prepayment so declined, with an exercise price equal to the VWAP of the Borrower's common stock for the period beginning on the trading day that is 30 days prior to the issuance date and ending on the last trading day immediately preceding the issuance date. For the avoidance of doubt, the issuance of any warrants pursuant to this **clause (e)** shall not be deemed to be a prepayment and shall not reduce the Borrower's obligations to make any mandatory prepayment required under **clause (b)** or **clause (d)** above with respect to any Monetization Event, Qualifying Avenue Sale or Qualifying [*] Sale occurring after the issuance of such warrants.

(f) **Prepayment Fee**. Without limiting the foregoing, whenever the Prepayment Fee is in effect and payable pursuant to the terms hereof or any other Loan Document, such Prepayment Fee shall be payable on each prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise (other than any prepayment pursuant to **Section 5.02**).

(g) **Partial Prepayments**. Prepayments shall be accompanied by accrued interest to the extent required by **Section 3.02**.

SECTION 4.
PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally** . Each payment of principal, interest and other amounts to be made by the Borrower under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Administrative Agent designated by the Administrative Agent by notice to the Borrower, and (ii) not later than 2:00 p.m. (Eastern time) on the date on which such payment is due (each such payment made after such time on such due date may in the Administrative Agent's discretion be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments**. Notwithstanding anything herein to the contrary, following the occurrence and continuance of an Event of Default, all payments shall be applied as follows:

(A) first, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, expenses or other amounts (including fees and disbursements and other charges of counsel payable under **Section 13.03**) payable to the Administrative Agent in its capacity as such;

(B) second, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, costs, expenses and other amounts (other than principal and interest, but including fees and disbursements and other charges of counsel payable under **Section 13.03** and any Prepayment Fees) payable to the Lenders arising under the Loan Documents (other than the Warrant), ratably among them in proportion to the respective amounts described in this **clause (B)** payable to them;

(C) third, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (C)** payable to them;

(D) fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (D)** payable to them;

(E) fifth, in reduction of any other Obligation then due and owing, ratably among the Administrative Agent and the Lenders based upon the respective aggregate amount of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(F) sixth, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or such other Person as may be lawfully entitled to or directed by the Borrower to receive the remainder.

(c) **Non-Business Days**. If the due date of any payment under this Agreement (whether in respect of principal, interest, fees, costs or otherwise) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day and, in the case of any payment accruing interest, interest thereon shall continue to accrue and be payable for the period of such extension; provided that if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and actual days elapsed during the period for which payable. Interest is calculated from and including the date of the Borrowing of each Loan to, but excluding, the date of repayment or prepayment of such Loan.

4.03 Set-Off.

(a) **Set-Off Generally**. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Administrative Agent, any Lender and any of their Affiliates to or for the credit or the account of the Borrower against any and all of the Obligations, whether or not such Person shall have made any demand and although such obligations may be unmatured. Any Person exercising rights of set off hereunder agrees promptly to notify the Borrower after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, the Lenders and each of their Affiliates under this **Section 4.03** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required**. Nothing contained in **Section 4.03(a)** shall require the Administrative Agent, any Lender or any of their Affiliates to exercise any such right or shall affect the right of such Persons to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower.

(c) **Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff pursuant to this **Section 4.03**, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

SECTION 5.
YIELD PROTECTION, TAXES, ETC.

5.01 Additional Costs.

(a) **Change in Law Generally**. If, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law, or any change in any Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or

administration thereof, or compliance by the Administrative Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall (i) impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office), (ii) impose on a Lender (or its lending office) any other condition (other than Taxes) affecting the Loans or the Commitment, or (iii) subject any Lender to any Taxes on its Loan, Commitment or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, by an amount reasonably deemed by such Lender in good faith to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements**. If a Lender shall have determined that, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender**. Each Lender promptly will notify the Borrower of any event of which it has knowledge, occurring after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

(e) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to this **Section 5.1** shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this **Section 5.1** for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender **Section 5.1** notifies the Borrower of the event giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the event giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) the adoption of or any change in any Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof, following which if such Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Law in an amount equal to the Prepayment Price (notwithstanding anything herein to the contrary, without any Prepayment Fee) applicable on such prepayment date in accordance with **Section 3.03(a)**.

5.03 Taxes. For purposes of this **Section 5.03**, the term "applicable Law" includes FATCA.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by any applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5.03**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower**. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent or each Lender, timely reimburse it for the payment of any Other Taxes.

(c) **Evidence of Payments**. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 5.03** , the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) **Indemnification by the Borrower**. The Borrower shall reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5.03**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(e) **Indemnification by the Lender** . Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), and (ii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **Section 5.03(e)**.

(f) **Status of Lenders**.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that, other than in the case of U.S. federal withholding Taxes, such Lender has received written notice from the Borrower advising it of the availability of such exemption or reduction and containing all

applicable documentation. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Law as reasonably requested by the Borrower as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.03(f)(ii)(A), (ii)(B),** and **(ii)(D)**) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit C-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "***U.S. Tax Compliance Certificate***") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate, substantially in the form of **Exhibit C-2** or **C-3**, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit C-4** on behalf of each such direct and indirect partner.

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this **clause (D)**, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) The Administrative Agent (including any successor Administrative Agent) shall deliver to Borrower on or prior to the date on which it becomes an Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed copies of IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding tax.

Each Lender and the Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) **Treatment of Certain Tax Benefits**. If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5** (including by the payment of additional amounts pursuant to this **Section 5**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 5.03(g)** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(g)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(g)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 5.03(g)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Each party hereto hereby acknowledges and agrees that the Loans made on the Closing Date are part of an investment unit within the meaning of Section 1273(c)(2) of the Code, which includes the Warrant. For federal income tax purposes, pursuant to Treasury Regulations § 1.1273-2(h), the Borrower, the Administrative Agent and the Lenders acknowledge that the "issue price" of the Loans is 97% of the stated principal amount of the Loans minus the fair market value and purchase price of the Warrants (as determined in accordance with the terms of the Warrants) . Each of the Borrower, the Administrative Agent and the Lenders agree to use the foregoing issue price, fair market value and purchase price for U.S. federal income tax purposes with respect to the transactions contemplated hereby (unless otherwise required by a final determination by the IRS or a court of competent jurisdiction).

5.04 Mitigation Obligations. (a) If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or **Section 5.03** , then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

(b) If any Lender requests compensation under **Section 5.01**, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 5.03** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (a) of this **Section 5.04**, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 13.05**), all of its interests, rights (other than its existing rights to payments pursuant to **Section 5.01** or **Section 5.03**) and obligations under this Agreement and the related Loan Documents to an Eligible Transferee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(ii) in the case of any such assignment resulting from a claim for compensation under **Section 5.01** or payments required to be made pursuant to **Section 5.03**, such assignment will result in a reduction in such compensation or payments thereafter; and

(iii) such assignment does not conflict with applicable Law;

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

5.05 Survival. Each party's obligations under this **Section 5** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 6.
CONDITIONS

6.01 Conditions to the Borrowing of the Loans. The obligation of each Lender to make its Loans shall be subject to the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, and the prior or concurrent satisfaction or waiver of each of the conditions precedent set forth below in this **Section 6.01**.

(a) **Loan Documents**. The Administrative Agent shall have received each Loan Document required to be executed by the Borrower on the Closing Date and delivered by the Borrower (which may be delivered by facsimile or other electronic means for the purposes of satisfying this clause (a) on the Closing Date) and such Loan Documents shall be in form and substance satisfactory to the Administrative Agent and the Lenders and their respective counsels.

(b) **Secretary's Certificate, Etc.** The Administrative Agent shall have received from the Borrower (x) a copy of a good standing certificate, dated a date reasonably close to the Closing Date and (y) a certificate, dated as of the Closing Date, duly executed and delivered by the Borrower's Responsible Officer, as to:

(i) resolutions of the Borrower's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by the Borrower and the Transactions;

(ii) the incumbency and signatures of Responsible Officers authorized to execute and deliver each Loan Document to be executed by the Borrower; and

(iii) the full force and validity of each Organic Document of the Borrower and copies thereof;

upon which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the Responsible Officer of any such Person cancelling or amending the prior certificate of such Person.

(c) **Information Certificate**. The Administrative Agent shall have received a fully completed Information Certificate in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of the Borrower. All documents and agreements required to be appended to the Information Certificate, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties and shall be in full force and effect.

(d) **Funding Date Certificate**. The Administrative Agent shall have received a Funding Date Certificate, dated as of the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower.

(e) **Delivery of Notes**. The Administrative Agent shall have received a Note to the extent requested by any Lender pursuant to **Section 2.03** for the Loans duly executed and delivered by a Responsible Officer of the Borrower.

(f) **Financial Information, Etc.** The Administrative Agent shall have received:

(i) audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2019; and

(ii) unaudited consolidated balance sheets of the Borrower and its Subsidiaries for the fiscal quarters ended March 31, 2020 and June 30, 2020, together with the related consolidated statement of operations, shareholder's equity and cash flows for such fiscal quarters.

(g) **Solvency**. The Administrative Agent shall have received a solvency certificate, substantially in the form of **Exhibit G**, duly executed and delivered by the chief financial officer of the Borrower, dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent.

(h) **Security Documents**. The Administrative Agent shall have received executed counterparts of a Security Agreement, in form and substance reasonably acceptable to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by the Borrower, together with all documents (including share certificates, transfers and stock transfer forms, notices or any other instruments) required to be delivered or filed under the Security Documents and evidence satisfactory to it that arrangements have been made with respect to all registrations, notices or actions required under the Security Documents to be effected, given or made in order to establish a valid and perfected first priority security interest in the Collateral in accordance with the terms of the Security Documents, including:

(i) delivery of all certificates (in the case of Equity Interests that are certificated securities (as defined in the UCC)) evidencing the issued and outstanding capital securities owned by the Borrower that are required to be pledged and so delivered under the Security Agreement, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Equity Interests that are uncertificated securities (as defined in the UCC), confirmation and evidence reasonably satisfactory to the Administrative Agent and the Lenders that the security interest required to be pledged therein under the Security Agreement has been transferred to and perfected by the Administrative Agent and the Lenders in accordance with Articles 8 and 9 of the NY UCC and all laws otherwise applicable to the perfection of the pledge of such Equity Interests;

(ii) financing statements naming the Borrower as a debtor and the Administrative Agent as the secured party, or other similar instruments or documents, in each case suitable for filing, filed under the UCC (or equivalent law) of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Liens of the Secured Parties pursuant to the Security Agreement; and

(iii) UCC-3 termination statements, if any, necessary to release all Liens and other rights of any Person in any collateral described in the Security Agreement previously granted by any Person.

(i) **Lien Searches**. The Administrative Agent shall be satisfied with Lien searches regarding the Borrower made as of a date reasonably close to the Closing Date.

(j) **Warrant**. The Administrative Agent shall have received an executed counterpart of the Warrant.

(k) **Insurance**. The Administrative Agent shall have received certified copies of the insurance policies (or binders in respect thereof), from one or more insurance companies satisfactory to the Administrative Agent, evidencing coverage required to be maintained pursuant to each Loan Document.

(l) **Opinions of Counsel**. The Administrative Agent shall have received an opinion, dated as of the Closing Date and addressed to the Administrative Agent and the Lenders, from independent legal counsel to the Borrower, in form and substance reasonably acceptable to the Administrative Agent.

(m) **Fee Letter**. The Administrative Agent shall have received an executed counterpart of the Fee Letter, duly executed and delivered by the Borrower.

(n) **Closing Fees, Expenses, Etc** . Each of the Administrative Agent and each Lender shall have received for its own account, (i) the upfront fee as set forth in the Fee Letter, which shall be paid by way of the Administrative Agent retaining such amount from the proceeds of the Loan and (ii) all fees, costs and expenses due and payable to it pursuant to the Fee Letter and **Section 13.03**, including all reasonable closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' legal fees and expenses) in each case, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Closing Date.

(o) **Material Adverse Change**. Since December 31, 2019, no event, circumstance or change has occurred that has caused or could reasonably be expected to cause, either individually or in the aggregate, a Material Adverse Change, both before and after giving effect to the Loans to be made on the Closing Date.

(p) **Know Your Customer**. The Administrative Agent shall have received, a duly executed W-9 (or other applicable tax form) of the Borrower, and, as applicable, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and Anti-Terrorism Laws, including, without limitation, the Patriot Act.

(q) **No Default**. No event shall have occurred or be continuing or would result from the making of the Loans that would constitute a Default or Event of Default.

(r) **Representations and Warranties**. The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to 6.01*(*a) shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date.

(s) **Payoff of Existing Indebtedness**. The Opus Debt and 2017 Subordinated Debt (other than contingent obligations (including indemnification obligations) that by their terms are to survive the termination of the relevant loan documentation and debt instruments evidencing the Opus Debt and 2017 Subordinated Debt, as applicable) shall have been (or substantially concurrently with the making of the Loans on the Closing Date shall be) repaid or satisfied and

discharged, and in connection therewith all guarantees and liens shall have been released, on or prior to the Closing Date.

(t) **Beneficial Ownership Certificate**. To the extent requested by any Lender or the Administrative Agent, the Borrower shall have provided to such Lender and the Administrative Agent all documentation and other information so requested, including a duly executed W-9 of the Borrower (or such other applicable tax form), in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, and if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification, in each case prior to the Closing Date.

SECTION 7.
REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Administrative Agent and each Lender on the Closing Date, and any other date such representation and warranty is required to be made under the Loan Documents, as set forth below:

7.01 Power and Authority . The Borrower and each of its Subsidiaries (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) has all requisite corporate or other power, and has all Governmental Approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted, except to the extent that failure to have the same could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary except where failure so to qualify could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (iv) has full power, authority and legal right to enter into and perform its obligations under each of the Loan Documents and to borrow the Loans hereunder.

7.02 Authorization; Enforceability . Each Transaction is within the Borrower's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational action including, if required, approval by all necessary holders of Equity Interests. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each of the other Loan Documents when executed and delivered by the Borrower will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts . None of the execution, delivery and performance by the Borrower of the Loan Documents or the consummation by the Borrower of the Transactions (i) requires any Governmental Approval of, registration or filing with, or any other action by, any Governmental Authority or any other Person, except for (x) such as have been obtained or made and are in full force and effect and (y) filings and recordings in respect of

perfecting or recording the Liens created pursuant to the Security Documents, (ii) will violate (1) any Law, (2) any Organic Document of the Borrower or any of its Subsidiaries or (3) any order of any Governmental Authority, that in the case of **clause (ii)(1)** or **clause (ii)(3)**, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (iii) will violate or result in a default under any Material Agreement binding upon the Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or (iv) will result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of the Borrower or any of its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements**. The Borrower has heretofore furnished to the Administrative Agent (who shall forward to the Lenders) certain consolidated financial statements as provided for in **Section 6.01(f)**. Such financial statements, and all other financial statements delivered by the Borrower pursuant to this Agreement present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements of the type described in **Section 8.01(a)**. Neither the Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements.

(b) **No Material Adverse Change**. Since December 31, 2019, no event, circumstance or change has occurred that has caused or could reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change.

7.05 Properties.

(a) **Property Generally**. The Borrower and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal property material to its business, subject only to Permitted Liens and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property**.

(i) The Borrower is the sole and exclusive beneficial owner of all right, title and interest in and to all Intellectual Property that is owned or purported to be owned by the Borrower, free and clear of any Liens or Claims other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)(i)**:

(A) to the knowledge of the Borrower, the operation and conduct of the business of the Borrower or any of its Subsidiaries, including the use of their respective material Intellectual Property in such Person's Ordinary Course does not violate, infringe or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person in a manner that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect;

(B) Except as has not resulted in and would not be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries has received any notice from, or Claim by, any Person that the operation and conduct of the business of the Borrower or any of its Subsidiaries (including their respective use of material Intellectual Property) infringes upon, violates or constitutes a misappropriation of, any Intellectual Property of any other Person in any material respect;

(C) the Borrower does not have knowledge that any material Intellectual Property is being infringed, violated, or misappropriated by any other Person in a manner that has resulted in, or is reasonably expected to result in, a Material Adverse Effect;

(D) except as would not reasonably be expected to result in a Material Adverse Effect, the Borrower owns or has a valid and enforceable license or right to use all material Intellectual Property used in or necessary for the conduct of its business as conducted as of the date hereof; and

(E) all current and former employees and contractors that have developed material Intellectual Property for or on behalf of the Borrower or any of its Subsidiaries have executed written confidentiality and invention assignment Contracts with the Borrower or such Subsidiary, as applicable, that irrevocably and presently assign to the Borrower or such Subsidiary, as applicable, or its designee all rights of such employees and contractors to any such material Intellectual Property, except as would vest initially in the Borrower or its Subsidiary by operation of Law.

7.06 No Actions or Proceedings.

(a) **Litigation** . There is no litigation, investigation or proceeding pending or, to the knowledge of the Borrower or any of its Subsidiaries threatened in writing, with respect to the Borrower or any such Subsidiaries by or before any Governmental Authority or arbitrator that, (i) if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (ii) involves this Agreement or any other Loan Document.

(b) **Environmental Matters**. Except with respect to any matters that (either individually or in the aggregate) could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received any Environmental Claim, or has knowledge that any is threatened, (iv) has entered into any agreement in which the Borrower or any of its Subsidiaries has assumed or undertaken responsibility or obligations of any other person with respect to any Environmental Liability or (v) has knowledge of any basis for any other Environmental Liability.

(c) **Labor Matters** . Neither the Borrower nor any of its Subsidiaries has engaged in unfair labor practices as defined in 29 U.S.C. § §152(8) and 158 of the National Labor Relations Act and there are no pending or threatened in writing labor actions, disputes, grievances,

arbitration proceedings, or similar Claims or actions involving the employees of the Borrower or any of its Subsidiaries, in each case that could reasonably be expected to have a Material Adverse Effect. There are no strike or work stoppages in existence or threatened in writing against the Borrower and to the knowledge of the Borrower, no union organizing activity is taking place. There are no collective bargaining agreements covering employees of the Borrower or any of its Subsidiaries.

7.07 Compliance with Laws and Agreements . The Borrower is in compliance with (i) all Laws binding on it and orders of any Governmental Authority applicable to it, its operations or its property and (ii) and all obligations binding upon it, its operations or its property pursuant to any Contract, in each case except for such failures to comply which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

7.08 Taxes. Except as set forth on **Schedule 7.08** , the Borrower and its Subsidiaries have timely filed or caused to be filed all tax returns and reports required to have been filed and have paid or caused to be paid all taxes required to have been paid by it, except (a) taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

7.09 Full Disclosure. None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower or any of its Subsidiaries to the Administrative Agent (on behalf of itself and the Lenders) in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time, and it being understood that such projected financial information and all other forward looking information are not to be viewed as facts and that actual results during the period or periods covered thereby may differ from such projected results and that the differences may be material.

7.10 Investment Company Act and Margin Stock Regulation.

(a) **Investment Company Act**. Neither the Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(b) **Margin Stock**. The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and the Borrower and its Subsidiaries do not own or hold any Margin Stock, with the exception of Equity Interests held by the Borrower in Avenue Therapeutics, Inc., Checkpoint Therapeutics, Inc. and Mustang Bio, Inc..

The Borrowing of the Loans by the Borrower, and the use of the proceeds thereof, will not violate Regulation U or X.

7.11 Solvency. The Borrower is and, immediately after giving effect to the making of the Loans, the use of proceeds thereof, and the consummation of the Transactions, will be, Solvent.

7.12 Subsidiaries. Set forth on **Schedule 7.12** is a complete and correct list of all direct and indirect Subsidiaries of the Borrower. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by the Borrower in each such Subsidiary thereof on an issued and outstanding basis is as shown in said **Schedule 7.12**.

7.13 Indebtedness and Liens. Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness of the Borrower and each of its Subsidiaries outstanding as of the Closing Date. Set forth on **Schedule 7.13(b)** is a complete and correct list of all Liens granted by the Borrower and each of its Subsidiaries with respect to their respective property and outstanding as of the Closing Date.

7.14 Material Agreements. Except as set forth on **Schedule 7.14**, neither the Borrower nor any Subsidiary is in material default under any Material Agreement, nor does the Borrower have any knowledge of (i) any Claim against it or any of its Subsidiaries for any material breach of any such Material Agreement or (ii) any material default by any party to any such Material Agreement.

7.15 Restrictive Agreements . Except as set forth in **Schedule 7.15** , as of the Closing Date, neither the Borrower nor any of its Subsidiaries is subject to any Restrictive Agreement, except (i) those permitted under **Section 9.11**, (ii) restrictions and conditions imposed by Law or by this Agreement, (iii) any stockholder agreement, charter, by-laws, or other organizational documents of the Borrower or any of its Subsidiaries as in effect on the date hereof and (iv) limitations associated with Permitted Liens.

7.16 Real Property. **Schedule 7.16** correctly sets forth all real property that is owned or leased by the Borrower, indicating in each case whether the respective property is owned or leased, the identity of the owner and lessee (if applicable) and the location of the respective property. Except as set forth in **Schedule 7.16**, the Borrower does not own or lease (as tenant thereof) any real property as of the Closing Date.

7.17 Pension Matters . To Borrower's knowledge, each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Laws so qualifies. Except for those that could not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Laws, (y) there are no existing or pending (or to the knowledge of the Borrower or any of its Subsidiaries, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which the Borrower or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event has

occurred. The Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and neither the Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent valuation date. As of the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate has incurred any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Transactions with Affiliates . Except as set forth on **Schedule 7.18** and for Arm's Length Transactions, neither the Borrower nor any of its Subsidiaries has entered into, renewed, extended or been a part to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate.

7.19 OFAC; Anti-Terrorism Laws.

(a) Neither the Borrower nor any of its Subsidiaries is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws.

(b) Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers, or employees (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction in violation of Sanctions, or (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction, in violation of Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or, to the knowledge of the Borrower, indirectly, to lend, contribute or provide to, or has been or will be otherwise made available for the purpose of funding, any activity or business in any Designated Jurisdiction in violation of Sanctions or for the purpose of funding any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, in violation of Sanctions, or in any other manner that will result in any violation by any party to this Agreement of Sanctions.

7.20 Anti-Corruption . Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers or employees, directly or, to the knowledge of the Borrower, indirectly, has (i) materially violated or is in material violation of any applicable anti-corruption Law, or (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or, to the knowledge of the Borrower, indirectly, any Prohibited Payment.

7.21 Priority of Obligations. The Obligations constitute unsubordinated obligations of the Borrower, and except for any obligations which have priority under applicable Law, rank at least pari passu in right of payment with all other unsubordinated Indebtedness of the Borrower.

SECTION 8.
AFFIRMATIVE COVENANTS

The Borrower covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made) including the Prepayment Fee, if applicable, have been indefeasibly paid in full in cash:

8.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent:

(a) as soon as available and in any event within forty-five (45) days after the end of the first three (3) fiscal quarters of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate of a Responsible Officer of the Borrower stating that (x) such financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at such date and (y) the results of operations of the Borrower and its Subsidiaries for the period ended on such date have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this Section **8.01(a)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR" (with the related certificate separately delivered);

(b) as soon as available and in any event within ninety (90) days after the end of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal year and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of BDO USA, LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or emphasis of matter of going concern footnote or any qualification or exception as to the scope of such audit; provided that documents required to be furnished pursuant to this Section **8.01(b)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(c) together with the financial statements required pursuant to **8.01(a)** and **(b)**, a compliance certificate signed by the chief financial or accounting Responsible Officer of the Borrower as of the end of the applicable accounting period (which delivery may be by electronic communication including fax or email and shall be deemed to be an original, authentic counterpart thereof for all purposes) substantially in the form of **Exhibit D** (a "***Compliance Certificate***") including (i) details of any issues that are material that are raised by auditors and any occurrence or existence of any event, circumstance, act or omission that would cause any representation or warranty contained in **Section 7.07** to be incorrect in any material respect (or in any respect if such representation or warranty is qualified by materiality or by reference to Material Adverse Effect or Material Adverse Change) if such representation or warranty were to be made at the time of delivery of a Compliance Certificate and (ii) for any fiscal period when the Minimum Revenue Covenant is in effect, a certification that the Borrower is in compliance with the Minimum Revenue Covenant as of the last day of such period.;

(d) after being prepared by the Borrower and approved by its Board, and promptly following the Administrative Agent's request therefor, a consolidated financial forecast for the Borrower and its Subsidiaries for the fiscal year to which such forecast relates; provided that, for each fiscal year, on or before the sixtieth (60th) day following the beginning of such fiscal year, the Borrower shall prepare, and its Board shall approve such consolidated financial forecast for such fiscal year, and the Borrower shall notify the Administrative Agent promptly after the Board has given such approval;

(e) promptly after the same are released, copies of all press releases; provided that documents required to be furnished pursuant to this Section **8.01(e)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(f) promptly, and in any event within five (5) Business Days after receipt thereof by the Borrower, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which the Borrower may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Borrower; provided that documents required to be furnished pursuant to this Section **8.01(f)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(g) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower and its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which the Borrower or such Subsidiary, as applicable, may become subject from time to time; provided that documents required to be furnished pursuant to this Section **8.01(g)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(h) the information regarding insurance maintained by the Borrower and its Subsidiaries as required under **Section 8.05**;

(i) together with the delivery of the Compliance Certificate, evidence satisfactory to the Administrative Agent, based upon the Borrower's bank account statements that the Borrower has met its minimum liquidity requirement set out in **Section 10.01**; and

(j) such other information respecting the businesses, financial performance, operations condition of the assets or liabilities of the Borrower (including with respect to the Collateral), taken as a whole, as the Administrative Agent may from time to time reasonably request.

8.02 Notices of Material Events . The Borrower will furnish to the Administrative Agent written notice of the following (x) with respect to **clause (a)** below within three (3) Business Days and (y) with respect to **clause (b)** through **(j)** below, within five (5) Business Days:

(a) the occurrence of any Default or Event of Default;

(b) the occurrence of any event with respect to the property or assets of the Borrower or any of its Subsidiaries resulting in an actual loss in excess of insurance or for which the insurer has denied coverage, in an aggregate amount of $2,000,000 (or the Equivalent Amount in other currencies) or more;

(c) (i) any proposed acquisition of stock, assets or property by the Borrower or any of its Subsidiaries that could reasonably be expected to result in material Environmental Liability, and (ii) any spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material by the Borrower or any of its Subsidiaries required to be reported to any Governmental Authority and that could reasonably be expected to result in material Environmental Liability;

(d) the assertion of any Claim under any Environmental Law by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged liability or non-compliance with any Environmental Laws or any permits, licenses or authorizations issued pursuant to Environmental Laws which could reasonably be expected to involve damages in excess of $2,000,000 (or the Equivalent Amount in other currencies) other than any such Claim or alleged violation that, if adversely determined, could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect;

(e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that could reasonably be expected to result in a Material Adverse Effect;

(f) (i) the intention of any ERISA Affiliate to file any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) the filing by any ERISA Affiliate of a request for a minimum funding waiver under Section 412 of the Code with respect to any Title IV Plan, in writing and in reasonable detail (including a description of any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto);

(g) any material change in accounting policies or financial reporting practices by the Borrower or any of its Subsidiaries;

(h) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving the Borrower;

(i) any change to the Borrower's or any of its Subsidiaries' ownership of any Controlled Account, by delivering the Administrative Agent a notice setting forth a complete and correct list of all such accounts as of the date of such change; and

(j) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this **Section 8.02** is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

8.03 Existence. The Borrower shall, and shall cause each of its Subsidiaries to, preserve, renew and maintain in full force and effect its legal existence; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations . The Borrower will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries, except (A) to the extent such Taxes, fees, assessments or governmental charges or levies or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP or (B) to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect, and (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien.

8.05 Insurance . The Borrower will, and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses. Upon the request of the Administrative Agent, the Borrower shall furnish the Administrative Agent from time to time with (i) material information as to the insurance carried by it and, if so requested, copies of all such insurance policies and (ii) a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Secured Parties to

renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case, the Borrower will be responsible for the reasonable and documented cost of such insurance (to be payable on demand). The amount of any such reasonable and documented expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations."

8.06 Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct (in all material respects) entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and for so long as JMC is a Subsidiary will cause JMC to, permit any representatives designated by the Administrative Agent or the Lenders, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and independent accountants, during normal business hours (but not more often than twice per year unless an Event of Default has occurred and is continuing) as the Administrative Agent or the Lenders may request; provided that such representative shall use its commercially reasonable efforts to minimize disruption to the business and affairs of the Borrower or JMC, as applicable, as a result of any such visit, inspection, examination or discussion. Notwithstanding anything to the contrary contained herein, neither the Borrower nor JMC will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to any Lender (or their respective representatives or contractors) is prohibited by any applicable Law or any binding agreement with a third party (so long as such agreement is not entered into in contemplation of this Agreement) or (iii) that is subject to attorney-client or similar privilege, which could reasonably be expected to be lost or forfeited if disclosed to the Administrative Agent or any Lender. The Borrower shall pay all reasonable and documented costs of all such inspections.

8.07 Compliance with Laws and Other Obligations . The Borrower will, and will cause each of its Subsidiaries to, (i) comply with all Laws (including Anti-Terrorism Laws, Sanctions and Environmental Laws) applicable to it and its business activities, (ii) comply in all material respects with all Governmental Approvals applicable to it and its business activities and (iii) maintain in full force and effect, remain in compliance with, and perform all obligations under all Material Agreement to which it is a party, except, in the case of **clause (i)** and **(iii)** above, where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Borrower shall maintain in effect and enforce policies and procedures reasonably designed to promote compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and Sanctions.

8.08 Maintenance of Properties, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, necessary or useful in the conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from

casualty or condemnation excepted and except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

8.09 Licenses. The Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

8.10 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.04**. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.11 Further Assurances.

(a) Subject to **clauses (b)** and **(c)** below:

(i) the Borrower will take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement and the Security Agreement; and

(ii) without limiting the generality of the foregoing, the Borrower will take such action from time to time (including delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) as shall be reasonably requested by the Administrative Agent to create, in favor of the Secured Parties, perfected security interests and Liens in substantially all of the personal property (other than Excluded Assets (as defined in the Security Agreement)) of the Borrower as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents; provided, further that, without limiting the right of the Administrative Agent to require a Lien or security interest in any newly acquired or created Subsidiary or asset, upon the prior written request of the Borrower, the Borrower and the Administrative Agent shall consult, in good faith, as to whether the cost of obtaining a Lien or security interest thereon would be unreasonably excessive relative to the benefit thereof.

(b) **CFCs, etc**. Any term or provision of this **Section 8.11** to the contrary notwithstanding, the Borrower shall not be required to pledge (or cause to be pledged) to the Administrative Agent, for the benefit of the Secured Parties, Equity Interests of any Subsidiary representing, in the aggregate, more than sixty-five percent (65%) of the Equity Interests of any CFC or CFC Holding Company; provided, that the above restrictions shall apply only to the extent the Borrower reasonably determines (after consultation with the Administrative Agent) that the failure to impose such restrictions could reasonably be expected to generate a current or future income inclusion, or other adverse tax consequence, to the Borrower or any of its Subsidiaries (as determined in good faith from time to time).

(c) **Limitations on Certain Obligations**. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Borrower shall not be required to

enter into or obtain any mortgage, deed of trust, leasehold mortgage or any similar agreement in respect to any fee interest or leasehold interest in real property.

8.12 Termination of Non-Permitted Liens. In the event that the Borrower shall become aware of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of the Borrower or any of its Private Subsidiaries, which Lien is not a Permitted Lien, the Borrower shall use its commercially reasonable efforts to promptly terminate or cause the termination of such Lien.

8.13 Board Materials; Oaktree Lender Board Observer.

(a) The Borrower shall deliver to the Administrative Agent copies of any agenda and other written materials provided to the board of directors (or any committee thereof) of the Borrower prior to any meeting of the board of directors (or such committee thereof), at or promptly after such materials are furnished to the members of the board of directors (or such committee thereof), (b) copies of all minutes of meetings of the board of directors (or any committee thereof) of the Borrower at or promptly after such minutes are furnished to the members of the board of directors (or such committee thereof), (c) copies of all material written consents duly passed by the board of directors (or any committee thereof) of the Borrower and (d) promptly upon presentation of any regular periodic materials to the board of directors (or any committee thereof) of the Borrower reporting on the current, past or future financial performance and business and operations of the Borrower or any of its Subsidiaries (which shall include, among other things, updates with respect to material events relating to other Material Agreements), copies of such materials shall be delivered to the Administrative Agent; provided that any such material may be redacted by the Borrower to exclude information that directly relates to either the Lenders in their capacities as debt lenders or future debt refinancing transactions.

(b) Upon the request of the Oaktree Lender, the Borrower shall permit a single designee of the Oaktree Lender to be an observer to the board of directors of the Borrower (the "**Board Observer**"). In such capacity, the Board Observer shall be entitled to attend all meetings of the board of directors of the Borrower. The Borrower shall ensure that the Board Observer is invited to each such meeting at the same time as each other member of the board of directors and that such Board Observer receives all board materials at the same time as each other member of the board of directors; provided that any such material may be redacted by the Borrower, and the Borrower may exclude the Board Observer from meetings of the board of directors, in order to prevent the Board Observer from receiving or learning information that directly relates to either the Oaktree Lender in its capacity as a debt lender or future debt refinancing transactions. If appointed, the Board Observer may resign or withdraw at any time, or, at the request of the Oaktree Lender, be replaced by a designee of the Oaktree Lender.

8.14 ERISA Compliance. The Borrower shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA with respect to any Plans to which the Borrower or such Subsidiary is a party as an employer in all material respects.

8.15 Cash Management. The Borrower shall:

(a) maintain at all times an aggregate amount of cash of the Borrower equal to the Minimum Liquidity Amount in deposit accounts, disbursement accounts, investment accounts (and other similar accounts) and lockboxes with a bank or financial institution within the U.S. that has executed and delivered to the Administrative Agent an account control agreement, in form and substance reasonably acceptable to the Administrative Agent (each such deposit account, disbursement account, investment account (or similar account) and lockbox, a "***Controlled Account***"); each such Controlled Account shall be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and the Borrower shall have granted a Lien to the Administrative Agent, for the benefit of the Secured Parties, over such Controlled Accounts; and

(b) deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other rights and interests into Controlled Accounts.

8.16 Post-Closing Obligations.

(a) **Controlled Accounts.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion) (the "**Account Control Agreement Completion Date**"), the Administrative Agent shall have received evidence that (i) all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts of the Borrower located within the U.S. are Controlled Accounts and (ii) such Controlled Accounts are subject to one or more account control agreements, in favor of, and satisfactory in form and substance to, the Administrative Agent that (A) ensures, to the extent necessary under applicable law, the perfection of a first priority security interest in favor of the Administrative Agent on such Controlled Account, (B) provides that, upon written notice from the Administrative Agent, such bank or financial institution shall comply with instructions originated by the Administrative Agent directing disposition of the funds in such Controlled Account without further consent by the Borrower, and (C) may not be terminated without the prior written consent of the Administrative Agent.

(b) **Financial Covenant Compliance**. On the Account Control Agreement Completion Date, the Administrative Agent shall have received written evidence reasonably satisfactory to it that, as of the Account Control Agreement Completion Date, the Borrower is in compliance with **Section 10.01** and **Section 8.15(a)**.

(c) **Insurance**. Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), all such insurance policies required to be maintained by the Borrower pursuant to the Loan Documents shall name the Administrative Agent (for its benefit and the benefit of the Lenders) loss payee or additional insured, as applicable, and provide that no cancellation of the policies will be made without at least ten (10) days prior written notice to the Administrative Agent and the Administrative Agent shall have received certified copies of such insurance policies (or binders in respect thereof).

(d) **Payoff of Venture Debt**. The Venture Debt (other than contingent obligations (including indemnification obligations) that by their terms are to survive the termination of the relevant loan documentation and debt instruments evidencing the Venture Debt) shall be repaid or satisfied and discharged, and in connection therewith all guarantees and liens shall have been released, as soon as permitted under the terms thereof, and in no event later than September 29, 2020. The Borrower shall provide evidence of the payoff of the Venture Debt to the Administrative Agent, in form and substance satisfactory to the Administrative Agent, promptly after the repayment thereof.

(e) **Stockholder Rights and Other Waivers**. Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Administrative Agent shall have received evidence of Borrower's receipt of (i) the waiver by its Subsidiaries and/or the requisite stockholders of its Subsidiaries of any option, right of first refusal, or rights under any stockholders or similar agreement that would prohibit, impair, delay or otherwise affect the pledge of the Pledged Collateral under the Security Agreement, the sale or disposition thereof pursuant thereto or the exercise by the Administrative Agent of rights and remedies thereunder and (ii) the waiver by Alexion Pharmaceuticals, Inc. of the restrictions set forth in Section 9.7 of the Amended and Restated Development, Option and Stock Purchase Agreement (the "***DOSPA***"), dated as of December 31, 2019, by and among Alexion Pharmaceuticals, Inc., Caelum Biosciences, Inc., the Sellers (as defined therein) and the Borrower, in substantially the form agreed to between the Administrative Agent and the Borrower prior to the Closing Date.

SECTION 9.
NEGATIVE COVENANTS

The Borrower covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made), including the Prepayment Fee, if applicable, have been indefeasibly paid in full in cash:

9.01 Indebtedness. The Borrower will not, and will not permit any of its Private Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) the Obligations;

(b) Indebtedness existing on the date hereof and set forth on **Schedule 7.13(a)** and Permitted Refinancings thereof;

(c) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of the Borrower's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(d) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the ordinary course of business;

(e) Indebtedness in respect of working capital facilities of the Borrower (which Indebtedness is secured by accounts receivable of JMC) in an aggregate outstanding principal amount not to exceed $7,500,000 (or the Equivalent Amount in other currencies) and an all-in-yield not to exceed at any time 7% per annum (provided that, if the interest rate for such Indebtedness is a floating rate, the 7% limitation shall not be deemed to be exceeded solely as a result of an increase in the applicable benchmark rate or the application of the benchmark rate floor, if any, set forth in the documentation governing such Indebtedness, in each case, following the incurrence of such Indebtedness); provided that the documentation governing such Indebtedness shall be in form and substance reasonably satisfactory to the Administrative Agent in its sole discretion;

(f) Indebtedness of any Subsidiary permitted under Section 9.05(f);

(g) other Indebtedness in an aggregate outstanding principal amount not to exceed $5,000,000 (or the Equivalent Amount in other currencies).

9.02 Liens. The Borrower will not, and will not permit any of its Private Subsidiaries to, create, incur, assume or permit to exist any Lien on any property now owned by it or such Private Subsidiary, except:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of the Borrower or any of its Subsidiaries existing on the date hereof and set forth on **Schedule 7.13(b)** and renewals and extensions thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien; provided that (i) no such Lien (including any renewal or extension thereof) shall extend to any other property or asset of the Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and renewals, extensions and replacements thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien that do not increase the outstanding principal amount thereof;

(c) Liens imposed by any Law arising in the ordinary course of business, including (but not limited to) carriers', warehousemen's, landlords', and mechanics' liens, liens relating to leasehold improvements and other similar Liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP;

(d) pledges or deposits made in the Ordinary Course in connection with bids, contract leases, appeal bonds, workers' compensation, unemployment insurance or other similar social security legislation;

(e) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(f) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any Law and Liens consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Borrower or any of its Subsidiaries; and

(g) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to all applicable Laws; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any Law, which, in the aggregate for **clauses (i)**, **(ii)** and **(iii)**, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Borrower or its Subsidiaries;

(h) bankers liens, rights of setoff and similar Liens incurred on deposits made in the Ordinary Course;

(i) Liens on accounts receivable of JMC securing Indebtedness permitted under Section 9.01(e);

(j) Any judgment lien or lien arising from decrees or attachments not constituting an Event of Default;

(k) Liens arising from precautionary UCC financing statement filings regarding operating leases of personal property and consignment arrangements entered into in the Ordinary Course in an Arm's-Length Transaction;

(l) Liens in connection with the financing of insurance premiums; and

(m) other Liens, which secure obligations in an aggregate amount not to exceed $2,500,000 (or the Equivalent Amount in other currencies) at any time outstanding.

Notwithstanding anything in this Agreement to the contrary, the Borrower shall not create, incur, assume or permit to exist any Lien on any Equity Interests owned by it in any other Person, except such as are set forth on **Schedule 9.02**.

9.03 Fundamental Changes and Acquisitions . The Borrower will not, and will not permit any of its Private Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any Equity Interests (other than common Equity Interests), or (iv) other than

Permitted Acquisitions, make any Acquisition or otherwise acquire any business or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except:

(a) the merger, amalgamation or consolidation of (i) any Subsidiary with or into the Borrower; provided that with respect to any such transaction involving the Borrower, the Borrower must be the surviving or successor entity of such transaction or (ii) any Subsidiary with or into any other Subsidiary;

(b) the sale, lease, transfer or other disposition by any Subsidiary of any or all of its property (upon voluntary liquidation or otherwise) to the Borrower or any other Subsidiary;

(c) the sale, transfer or other disposition of the Equity Interests of any Subsidiary (1) to the Borrower, and (2) in accordance with **Section 9.09**;

(d) the sale or issuance of (i) preferred Equity Interests by the Borrower in an amount in the aggregate no greater than $30,000,000 *minus* the amount of preferred Equity Interests issued pursuant to subclause (ii) and (ii) preferred Equity Interests in connection with the Cyprium Financing in an amount no greater than $8,000,000; and

(e) in connection with any Monetization Event.

9.04 Lines of Business. The Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the date hereof by such Persons or a business reasonably related, incidental or complementary thereto or reasonable extensions thereof.

9.05 Investments. The Borrower will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments outstanding on the date hereof and identified in **Schedule 9.05** and any renewals, amendments and replacements thereof that do not increase the amount thereof of any such Investment or require that any additional Investment be made (unless otherwise permitted hereunder);

(b) operating deposit accounts with banks (or similar deposit-taking institutions) that, in the case maintained by the Borrower, are Controlled Accounts;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the Ordinary Course in an Arm's-Length Transaction;

(d) Permitted Cash Equivalent Investments that, in the case maintained by the Borrower, are in Controlled Accounts;

(e) Investments by the Borrower in connection with a Permitted Acquisition;

(f) Investments (i) by the Borrower (x) in any Subsidiary in the form of advances, loans or other extensions of credit, in each case, in the ordinary course of business consistent with past practice, (y) in any Public Subsidiary in the form of capital contributions, or (z) in any Private Subsidiary in the form of capital contributions in an amount not to exceed $20,000,000 in the aggregate; provided, in each case, that at the time of any such Investment, (A) the Borrower shall have, on a *Pro Forma* Basis and after giving effect to any cash interest payments on Indebtedness and dividend payments on preferred equity payable by the Borrower in the ninety (90) days following such Investment, at least $25,000,000 in cash in one or more Controlled Accounts that are free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent and (B) such Investments shall be pledged to the Administrative Agent, and provided, further, that, notwithstanding any of the foregoing or any other provision hereof, any Indebtedness owed to the Borrower by any Subsidiary (or accrued Management Services Agreement fees owed to the Borrower by any Subsidiary) that is incurred in compliance with this Agreement may be subsequently converted into such Subsidiary's common stock in connection with a bona fide, third party common equity financing of such Subsidiary, or (ii) by a Subsidiary in any other Subsidiary;

(g) Investments consisting of prepaid expenses, negotiable instruments held for collection or deposit, security deposits with utilities, landlords and other like Persons and deposits in connection with workers' compensation and similar deposits, in each case, made in the Ordinary Course;

(h) employee loans, travel advances and guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by applicable Laws) which in the aggregate shall not exceed $1,000,000 outstanding at any time (or the Equivalent Amount in other currencies);

(i) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(j) the increase in value of any Investment otherwise permitted pursuant to this **Section 9.05**;

(k) other Investments (other than Investments by the Borrower in any Subsidiary) in an aggregate amount not to exceed $2,500,000 (or the Equivalent Amount in other currencies);

(l) Investments permitted under **Section 9.03**; and

(m) Investments of any Person in existence at the time such Person becomes a Subsidiary; provided such Investment was not made in connection with or in anticipation of such Person becoming a Subsidiary and any modification, replacement, renewal or extension thereof.

9.06 Restricted Payments. The Borrower will not, and will not permit any of its Private Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; provided that the following Restricted Payments shall be permitted so long as no Event

of Default has occurred and is continuing or could reasonably be expected to occur or result from such Restricted Payment:

(a) dividends with respect to the Borrower's Equity Interests payable solely in shares of its Qualified Equity Interests (or the equivalent thereof);

(b) the Borrower's purchase, redemption, retirement, or other acquisition of shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests;

(c) dividends or other distributions paid by any Subsidiary to the Borrower and dividends paid by any Subsidiary ratably (or less than ratably) to each other holder of Equity Interests of such Subsidiary (including, without limitation, as part of, or immediately following, a Monetization Event);

(d) any purchase, redemption, retirement or other acquisition of Equity Interests of the Borrower held by officers, directors and employees or former officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of Borrower and its Subsidiaries not to exceed $1,000,000 (or the Equivalent Amount in other currencies) in any fiscal year;

(e) cashless exercises of options and warrants;

(f) cash payments made by the Borrower to redeem, purchase, repurchase or retire its obligations under warrants issued by it (in the nature of cash payments in lieu of fractional shares) in accordance with the terms thereof;

(g) dividends with respect to shares of the Borrower's 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock outstanding as of the date hereof pursuant to the terms thereof as in effect as of the date hereof;

(h) dividends paid in cash with respect to preferred Equity Interests issued pursuant to **Section 9.03(d)**, in an aggregate amount not to exceed $2,500,000 in any fiscal year;

(i) cash payments made to redeem, purchase, repurchase or retire any preferred Equity Interest in Cyprium issued pursuant to **Section 9.03(d)**, provided that, after giving effect to any such payment, the Borrower shall have on a *Pro Forma* Basis at least $25,000,000 in cash in one or more Controlled Accounts that are free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent; and

(j) other Restricted Payments in an aggregate amount not to exceed $1,000,000 (or the Equivalent Amount in other currencies) in any fiscal year.

Notwithstanding anything in this Agreement to the contrary, (i) the Borrower shall not declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment in the form of Equity Interests owned by the Borrower in any other Person, (ii) any dividends paid in cash with respect to preferred Equity Interests issued pursuant to **Section 9.03(d)** shall only be made

pursuant to **clause (h)** above (and not any other clause of this **Section 9.06**) and (iii) any cash payments made to redeem, purchase, repurchase or retire any Equity Interest in Cyprium issued pursuant to the Cyprium Financing shall only be made pursuant to **clause (i)** above (and not any other clause of this **Section 9.06**).

9.07 Payments of Indebtedness . The Borrower will not, and will not permit any of its Private Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, and (ii) scheduled payments of other Indebtedness to the extent permitted to be incurred pursuant to **Section 9.01**.

9.08 Change in Fiscal Year. The Borrower will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Borrower.

9.09 Sales of Assets, Etc. The Borrower will not, and will not permit any of its Private Subsidiaries to, sell, lease or sublease (as lessor or sub-lessor), sale and leaseback, assign, convey, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its businesses, assets or property of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired (including accounts receivable and Equity Interests of Subsidiaries), or forgive, release or compromise any amount owed to the Borrower or any of its Subsidiaries, in each case, in one transaction or series of transactions (any thereof, an "***Asset Sale***"), except:

(a) sales, transfers and other dispositions of receivables in connection with the compromise, settlement or collection thereof in the Ordinary Course;

(b) sales of inventory or licenses of Intellectual Property in the Ordinary Course in an Arm's-Length Transaction;

(c) the forgiveness, release or compromise of any amount owed to the Borrower or any of its Subsidiaries in the Ordinary Course;

(d) dispositions (including by way of abandonment or cancellation) of any equipment and other tangible property that is obsolete or worn out or no longer used or useful in the Business disposed of in the Ordinary Course in an Arm's-Length Transaction;

(e) dispositions resulting from Casualty Events;

(f) in connection with any transaction permitted under **Section 9.03** or **9.05**;

(g) dispositions identified in **Schedule 9.09(a)**;

(h) any Qualifying [*] Sale or Qualifying Avenue Sale; and

(i) so long as no Event of Default has occurred and is continuing, (1) other Asset Sales with a fair market value not in excess of $5,000,000 (or the Equivalent Amount in other

currencies) in the aggregate in any fiscal year, and (2) other Asset Sales by Borrower with a fair market value in excess of $5,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year and as to which Borrower has complied with the mandatory prepayment provisions of **Section 3.03(b)**, so long as the consideration for any such Asset Sale is at least equal to the fair market value of the assets being sold and the Borrower has sufficient cash on hand to comply with the mandatory prepayment provisions of **Section 3.03(b)**.

Notwithstanding anything in this Agreement to the contrary, the Borrower shall not sell or otherwise dispose of any Equity Interests owned by it in another Person unless the consideration for such sale or disposition is at least equal to the fair market value of such Equity Interests being sold.

9.10 Transactions with Affiliates . The Borrower will not, and will not permit any of its Private Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction to sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, unless such arrangement or transaction (i) is an Arm's-Length Transaction that is of the kind which would be entered into by a prudent Person in the position of the Borrower with another Person that is not an Affiliate, (ii) is permitted under **Section 9.01, 9.03, 9.05, 9.06, 9.07** or **9.09** , (iii) constitutes customary compensation and indemnification of, and other employment arrangements with, directors, officers, and employees of the Borrower or its Subsidiaries in the ordinary course of business, (iv) constitutes payment of customary fees, reimbursement of expenses, and payment of indemnification to officers and directors and customary payment of insurance premiums on behalf of officers and directors by the Borrower or its Subsidiaries, in each case, in the ordinary course of business or (v) are the transactions set forth on **Schedule 7.18**. Notwithstanding the foregoing or any other provision hereof, the Borrower may, without the Lenders' or Administrative Agent's prior written consent, but with notice to the Administrative Agent, terminate its Founders Agreement or Management Services Agreement with any Private Subsidiary in connection with the offering or potential offering of common stock by such Private Subsidiary.

9.11 Restrictive Agreements . The Borrower will not, and will not permit any of its Private Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents, (ii) Restrictive Agreements listed on **Schedule 7.15** or (iii) limitations associated with Permitted Liens.

9.12 Modifications and Terminations of Organic Documents . The Borrower will not, and will not permit any of its Private Subsidiaries to, waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document in any way or manner materially adverse to the interests of the Lenders in their capacities as Lenders hereunder.

9.13 Sales and Leasebacks . The Borrower will not, and will not permit any of its Private Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which such Person has sold or transferred or is to

sell or transfer to any other Person and (ii) which the Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.14 Hazardous Material. The Borrower will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. If the Administrative Agent at any time has a reasonable basis to believe that there is any material violation by the Borrower of any Environmental Law or the presence or release of any Hazardous Material which could result in material Environmental Liability, the Borrower shall, and shall cause each Subsidiary to, (i) cause the performance of such environmental audits and testing, and preparation of such environmental reports, at the Borrower's sole cost and expense, as the Administrative Agent may from time to time reasonably request with respect to any parcel of real property subject to a Collateral Document that is a mortgage, deed of trust or similar instrument, which shall be conducted by Persons reasonably acceptable to the Administrative Agent and shall be in form and substance reasonably acceptable to the Administrative Agent, and (ii) permit the Administrative Agent or its representatives to have access to all such real property for the purpose of conducting, at the Borrower's sole cost and expense, such environmental audits and testing as the Administrative Agent shall reasonably deem appropriate.

9.15 Accounting Changes. The Borrower will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.16 Compliance with ERISA . No ERISA Affiliate shall cause or suffer to exist (i) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that could, in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

9.17 Restriction of Amendments to Certain Documents. The Borrower will not, nor will it permit any of its Private Subsidiaries to, amend or otherwise modify, or waive any rights under, any other Contract if, in any case, such amendment, modification or waiver could reasonably be expected to be materially adverse to, a Lien on any Collateral securing the Obligations.

9.18 Sanctions; Anti-Corruption Use of Proceeds.

(a) Neither the Borrower or any of its Subsidiaries or their respective agents shall (i) conduct any business or engage in any transaction or dealing with any Sanctioned Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or

avoiding, or attempts to violate, any of the prohibitions set forth any Sanctions, the Patriot Act or any other Anti-Terrorism Law.

(b) The Borrower will not, directly or, to the knowledge of the Borrower, indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) for the purpose of funding any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of country- or territory-wide Sanctions, in violation of Sanctions or (B) in any other manner that would result in a violation of Sanctions by any party to this Agreement.

9.19 Closing Date Equity Interests. The Borrower will not, at any time, cease to directly own the Equity Interests that it owns as of the date hereof as set forth on **Schedule 9.19** (the "**Closing Date Equity Interests**"); provided, however, that the Borrower may sell or otherwise dispose of such Closing Date Equity Interests in a transaction permitted under **Section 9.09** so long as the consideration for such sale or disposition is at least equal to the fair market value of the Closing Date Equity Interests being sold and the Borrower has sufficient cash on hand to comply with the mandatory prepayment provisions of **Section 3.03**.

9.20 Margin Stock. The Borrower shall not, nor shall it permit any of its Subsidiaries to, purchase or carry Margin Stock, with the exception of the Equity Interests held by the Borrower in Avenue Therapeutics, Inc., Checkpoint Therapeutics, Inc., Mustang Bio, Inc. or any Private Subsidiary that becomes a Public Subsidiary from time to time.

SECTION 10.
FINANCIAL COVENANTS

10.01 Minimum Liquidity. The Borrower shall at all times maintain the Minimum Liquidity Amount in cash and, after the Account Control Agreement Completion Date, in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent.

10.02 Minimum Revenue . Beginning with the fiscal quarter of the Borrower ending on March 31, 2021, as of the last day of each fiscal quarter of the Borrower, and for so long as JMC is a Subsidiary of Borrower, the Revenue of JMC for the twelve (12) consecutive month period ending on the last day of such fiscal quarter, shall not be less than the corresponding amount set forth opposite such fiscal quarter on Schedule 3 (the "***Minimum Revenue Covenant***").

SECTION 11.
EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an "***Event of Default***":

(a) **Principal or Interest Payment Default**. The Borrower shall fail to pay any principal of or interest on the Loan, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise.

(b) **Other Payment Defaults**. The Borrower shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) **Representations and Warranties** . Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier.

(d) **Certain Covenants**. The Borrower shall fail to observe or perform any covenant, condition or agreement contained in **8.02**, **8.03** (with respect to the Borrower's existence), **8.10**, **8.11**, **8.13**, **8.15**, **8.16**, **Section 9** or **Section 10**.

(e) **Other Covenants**. The Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a)** , **(b)** or **(d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days.

(f) **Payment Default on Other Indebtedness**. The Borrower or any of its Private Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness.

(g) **Other Defaults on Other Indebtedness** . (i) Any material breach of, or "event of default" or similar event under, any Contract governing any Material Indebtedness shall occur and such breach or "event of default" or similar event shall continue unremedied, uncured or unwaived after the expiration of any grace or cure period thereunder, or (ii) any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment,

repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this **Section 11.01(g)** shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness.

(h) **Insolvency, Bankruptcy, Etc**.

(i) The Borrower or any of its Material Subsidiaries becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors.

(ii) The Borrower or any of its Material Subsidiaries commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so).

(iii) The Borrower or any of its Material Subsidiaries institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding.

(iv) The Borrower or any of its Material Subsidiaries applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property.

(v) Any petition is filed, application made or other proceeding instituted against or in respect of the Borrower or any of its Material Subsidiaries:

(A) seeking to adjudicate it as insolvent;

(B) seeking a receiving order against it;

(C) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(D) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator,

custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property,

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of forty-five (45) days after the institution thereof; provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against the Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; provided, further, that if the Borrower or Material Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply.

(vi) Any other event occurs which, under the Laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in this **Section 11.01(h)**.

(i) **Judgments**. One or more judgments for the payment of money in an aggregate amount in excess of $5,000,000 (or the Equivalent Amount in other currencies) (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) shall be rendered against the Borrower or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of forty-five (45) calendar days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(j) **ERISA**. An ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount in excess of $5,000,000 (or the Equivalent Amount in other currencies).

(k) **Change of Control**. A Change of Control shall have occurred.

(l) **[Reserved]**.

(m) **Impairment of Security, Etc.** If any of the following events occurs: (i) Any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens) except due to the action or inaction of the Administrative Agent, (ii) except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason cease to be in full force and effect or (iii) the Borrower shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability of any such Lien or any Loan Document.

11.02 Remedies.

(a) **Defaults Other Than Bankruptcy Defaults**. Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**), and at any time thereafter during the continuance of such event, the Administrative Agent may, by notice to the Borrower, declare the Loans then outstanding to be due and payable

in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, including any applicable Prepayment Fee, shall become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

(b) **Bankruptcy Defaults**. In case of an Event of Default described in **Section 11.01(h)**, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, including any applicable Prepayment Fee, shall automatically become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

11.03 [Reserved].

11.04 Minimum Revenue Covenant Cure.

(a) Notwithstanding anything to the contrary contained in **Section 11.02**, in the event the Borrower fails to comply with the requirements of the Minimum Revenue Covenant, during the period from the end of the relevant fiscal quarter until the expiration of the tenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)**, the Borrower shall have the right to make a Revenue Cure Payment (the "***Minimum Revenue Cure Right***"); provided, that the Borrower may exercise the Minimum Revenue Cure Right on a maximum of two (2) occasions while the Obligations remain outstanding. Upon the Administrative Agent's receipt of the applicable Revenue Cure Payment, the Borrower shall then be in compliance with the requirements of the Minimum Revenue Covenant and the Borrower shall be deemed to have satisfied the requirements of the Minimum Revenue Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Revenue Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement. Any Revenue Cure Payment shall be applied to the prepayment of the Loans.

(b) Upon the Administrative Agent's receipt of a notice from the Borrower that it intends to exercise the Minimum Revenue Cure Right (a "***Notice of Intent to Cure Revenue Covenant***"), until the tenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)** to which such Notice of Intent to Cure Revenue Covenant relates, neither the Administrative Agent nor any Lender shall exercise the right to accelerate payment of the Loans or terminate the Commitments and neither the Administrative Agent nor any other Lender shall exercise any right to foreclose on or take possession of the Collateral solely on the basis of an allegation of an Event of Default having occurred and being continuing under **Section 11.01(d)** due to failure by the Borrower to comply with the requirements of the Minimum Revenue Covenant for the applicable period but no Lender shall be required to extend any credit pursuant to its Commitment during such period. If within such ten Business Day period, the Oaktree Lender declines the exercise by the Borrower

of the Minimum Revenue Cure Right by written notice to the Administrative Agent and the Borrower to that effect, then the Borrower shall be deemed to have satisfied the requirements of the Minimum Revenue Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Revenue Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

11.05 Payment of Prepayment Fee and Specified Return Shortfall. Notwithstanding anything in this Agreement to the contrary, the Prepayment Fee and Specified Return Shortfall shall automatically be due and payable at any time the Obligations become due and payable prior to the Maturity Date in accordance with the terms hereof as though such Indebtedness was voluntarily prepaid and shall constitute part of the Obligations, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Borrower in accordance with **Section 11.02(a)**, or automatically, in accordance with **Section 11.02(b)**), by operation of law or otherwise (including, without limitation, on account of any bankruptcy filing), in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such acceleration, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lenders as a result thereof. Any Prepayment Fee payable pursuant to this Agreement and Specified Return Shortfall payable pursuant to the Fee Letter shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, acceleration or prepayment and the Borrower agrees that such Prepayment Fee and Specified Return Shortfall are reasonable under the circumstances currently existing. The Prepayment Fee and Specified Return Shortfall shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. THE BORROWER HEREBY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT FEE OR SPECIFIED RETURN SHORTFALL AND ANY DEFENSE TO PAYMENT, WHETHER SUCH DEFENSE MAY BE BASED IN PUBLIC POLICY, AMBIGUITY, OR OTHERWISE. The Borrower, the Administrative Agent and the Lenders acknowledge and agree that any Prepayment Fee and Specified Return Shortfall due and payable in accordance with this Agreement shall not constitute unmatured interest, whether under Section 5.02(b)(3) of the Bankruptcy Code or otherwise. The Borrower further acknowledges and agrees, and waives any argument to the contrary, that payment of such amount does not constitute a penalty or an otherwise unenforceable or invalid obligation. The Borrower expressly agrees that (i) the Prepayment Fee and Specified Return Shortfall are reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) the Prepayment Fee and Specified Return Shortfall shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Fee and Specified Return Shortfall, (iv) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this **Section 11.05**, (v) their agreement to pay the Prepayment Fee and Specified Return Shortfall is a material inducement to the Lenders to make the Loans, and (vi) the Prepayment Fee and Specified Return Shortfall represent a good faith, reasonable estimate and

calculation of the lost profits, losses or other damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such event.

SECTION 12.
THE ADMINISTRATIVE AGENT

12.01 Appointment and Duties. Subject in all cases to clause (c) below:

(a) **Appointment of the Administrative Agent**. Each of the Lenders hereby irrevocably appoints Oaktree Fund Administration, LLC (together with any successor Administrative Agent pursuant to **Section 12.09**) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from the Borrower or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto. Except as expressly set forth herein, the provisions of this **Section 12** are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any Affiliate thereof shall have rights as a third-party beneficiary of any such provisions.

(b) **Duties as Collateral and Disbursing Agent**. Without limiting the generality of **Section 12.01(a)** , the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of acquiring, holding, enforcing and perfecting all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by the Borrower with, and cash and Permitted Cash Equivalents Investments held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for

purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties** . The Lenders and the Borrower hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in **Section 12.09** , may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature, notwithstanding the use of the defined term "the Administrative Agent", the terms "agent", "administrative agent" and "collateral agent" and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any duty or obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), in each case, regardless of whether a Default has occurred and is continuing, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this **clause (c)**. Without in any way limiting the foregoing, the Administrative Agent shall not, except as expressly set forth in this Agreement and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

12.02 Binding Effect . Each Lender agrees that (i) any action taken by the Administrative Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

12.03 Use of Discretion.

(a) **No Action without Instructions**. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **clause (b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to written instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions**. Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12** , the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Party thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Loan Document, Law or the best interests of the Administrative Agent or any of its Affiliates or Related Parties, including, for the avoidance of doubt, any action that may be in violation of the automatic stay in connection with any Insolvency Proceeding.

12.04 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). The Administrative Agent and any such Person may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Any such Person and its Related Parties shall benefit from this **Section 12** to the extent provided by the Administrative Agent; provided, however, that the exculpatory provisions of this **Section 12** shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and of any such sub-agent, and shall apply to their respective activities in connection with their activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

12.05 Reliance and Liability.

(a) the Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, the Borrower) and (ii) rely and act upon any notice, request, certificate, consent, statement, instrument, document or other writing (including and electronic message, Internet or intranet website posting or other distribution), telephone message or conversation or oral conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Borrower hereby waive and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the

fraudulent conduct or behavior of the Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of, or with the consent of, the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in **Section 13.04**) or for the actions or omissions of any of its Related Parties selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the (a) validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (b) due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for, and shall not have any duty to ascertain or inquire into, any statement, document, information, certificate, report, representation or warranty made or furnished by or on behalf of any Related Party, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents, including, for the avoidance of doubt, the satisfaction of any condition set forth in **Section 6** of this Agreement or elsewhere herein (other than to confirm receipt of items expressly required to be delivered to the Administrative Agent); and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document or whether any condition set forth in any Loan Document is satisfied or waived, including, without limiting the generality of the foregoing, as to the financial condition of the Borrower or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in **clauses (i)** through **(iv)** above, each Lender and the Borrower hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent based thereon.

12.06 Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, accept

deposits from, act as the financial advisor for or in any other advisory capacity for, or engage in any kind of business with, the Borrower or Affiliate thereof as though it were not acting as the Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Majority Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

12.07 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Parties or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Related Parties, conducted its own independent investigation of the financial condition and affairs of the Borrower and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.08 Expenses; Indemnities.

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Parties (to the extent not reimbursed by the Borrower) promptly upon demand for such Lender's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, the Borrower) that may be incurred by the Administrative Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent (or any sub-agent thereof) and any Related Parties of the Administrative Agent (or any such sub-agent) (to the extent not indefeasibly paid by the Borrower), from and against such Lender's aggregate Proportionate Share of the liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Related Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) to the extent such liability has

resulted primarily from the gross negligence or willful misconduct of the Administrative Agent (or any sub-agent thereof) or, as the case may be, such Related Parties of the Administrative Agent (or any sub-agent thereof), as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

12.09 Resignation of the Administrative Agent.

(a) At any time upon not less than 30 days' prior written notice, the Administrative Agent may resign as the "the Administrative Agent" hereunder, in whole or in part (in the sole and absolute discretion of the Administrative Agent). If the Administrative Agent delivers any such notice, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be (i) a Lender holding at least thirty percent (30%) of the outstanding principal amount of the Loans or any Affiliate thereof or (ii) any other financial institution consented to by the Borrower (provided that the consent of the Borrower shall not be required to the extent an Event of Default has occurred and is continuing). If a successor Administrative Agent has not been appointed on or before the effectiveness of the resignation of the resigning Administrative Agent (or such earlier date as shall be agreed by the Majority Lenders) (the "***Resignation Effective Date***"), then the resigning Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor Administrative Agent, notwithstanding whether the Majority Lenders have appointed a successor or the Borrower has consented to such successor. Whether or not a successor has been appointed, such resignation shall become effective on the Resignation Effective Date.

(b) Effective from the Resignation Effective Date, (i) the resigning Administrative Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the resigning Administrative Agent and its Related Parties shall no longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Administrative Agent was, or because the Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents or (y) any continuing duties such resigning Administrative Agent will continue to perform, and (iv) subject to its rights under **Section 12.04**, the resigning Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Administrative Agent under the Loan Documents.

12.10 Release of Collateral or Guarantors . Each Lender hereby consents to the release and hereby directs the Administrative Agent to release any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by the Borrower in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), and (ii) all of the Collateral, upon (x) termination of the Commitments and (y) payment

and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made).

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guarantees and Liens when and as directed in this **Section 12.10**.

12.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this **Section 12** and the decisions and actions of the Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by **Section 12.08** only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (ii) each of the Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

12.12 Agent May File Proofs of Claim. In case of the pendency of any Insolvency Proceeding or any other judicial proceeding relating to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention or such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under **Section 13.03**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under **Section 13.03**.

SECTION 13.
MISCELLANEOUS

13.01 No Waiver. No failure on the part of the Administrative Agent or the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

13.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication).

13.03 Expenses, Indemnification, Etc.

(a) **Expenses** . The Borrower agrees to pay or reimburse (i) the Administrative Agent and the Lenders and their respective Affiliates for all of their reasonable and documented out of pocket costs and expenses (including the reasonable and documented out of pocket fees, expenses, charges and disbursements of Sullivan & Cromwell LLP, counsel to the Lenders, the fees (if necessary) of local counsel for both of the Administrative Agent and the Lenders in each relevant material jurisdiction, and any sales, goods and services or other similar taxes applicable thereto, and reasonable and documented printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs (including, without limitation, costs of the administration of this Agreement and the other Loan Documents) and (z) the negotiation or

preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) each of the Administrative Agent and the Lenders for all of their documented out of pocket costs and expenses (including the fees and expenses of any legal counsel) in connection with the enforcement, exercise or protection of their rights in connection with this Agreement and the other Loan Documents, including their rights under this **Section 13.03**, or in connection with the Loans made hereunder, including such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) **Indemnification**. The Borrower hereby agrees to indemnify the Administrative Agent (and any sub-agent thereof), the Lenders and their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an "***Indemnified Party***") from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind including reasonable and documented out of pocket fees and disbursements of any counsel for each Indemnified Party, joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to (i) this Agreement or any of the other Loan Documents or the Transactions, (ii) any use made or proposed to be made with the proceeds of the Loans, (ii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, whether or not such investigation, litigation or proceeding is brought by the Borrower, any of its Subsidiaries, shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. The Borrower shall not assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. The Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a "***Borrower Party***". No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. This Section shall not apply to Taxes other than Taxes relating to a non-Tax Claim or Loss governed by this **Section 13.03(b)**.

13.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document (except for the Warrant, which may be amended, waived or supplemented in accordance with the terms thereof) may be modified or supplemented only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders; provided that:

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender;

(b) the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Document if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or Commitment, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal (it being understood that the waiver of any prepayment of Loans shall not constitute an extension of any date fixed for payment of principal), interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans; provided, for the avoidance of doubt, that any waiver or amendment relating to an Event of Default or Default arising out of breach or prospective breach of the Minimum Revenue Covenant shall only require the consent of the Majority Lenders;

(ii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release all or substantially all of the Collateral subject thereto other than pursuant to the terms hereof or thereof; or

(iii) amend this **Section 13.04** or the definition of "Majority Lenders".

13.05 Successors and Assigns.

(a) **General**. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder (except in connection with an event permitted under **Section 9.03**) without the prior written consent of the Administrative Agent. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the provisions of **Section 13.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 13.05(e)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 13.05(f)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 13.05(e)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender**. Any Lender may at any time assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to the Borrower, any Affiliate of the Borrower, any employees or directors of the Borrower at any time and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent. The consent of the Borrower (such consent not to

be unreasonably withheld, conditioned or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to an Eligible Transferee; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received written notice thereof. Subject to the recording thereof by the Lender pursuant to **Section 13.05(d)**, from and after the recordation date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 13.03**. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this **Section 13.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 13.05(e)**. The parties to each such Assignment and Assumption shall execute and deliver to the Administrative Agent, for the Administrative Agent's acceptance, an Assignment and Assumption, together with (i) a processing and recordation fee of $3,500, and (ii) all "know your customer" documentation and Patriot Act documentation requested by the Administrative Agent.

(c) **Amendments to Loan Documents**. Each of the Administrative Agent, the Lenders and the Borrower agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Administrative Agent, the Lenders and the Borrower, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 13.05**.

(d) **Register**. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "***Register***"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice.

(e) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Eligible Transferee (other than a natural person or the Borrower or any of its Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other

parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 13.05(f)**, the Borrower agrees that each Participant shall be entitled to the benefits of **Section 5.01** or **5.03** (subject to the requirements and limitations therein, including the requirements under **Section 5.03(f)** (it being understood that the documentation required under **Section 5.03(f)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.05(b)**; provided that such Participant (a) agrees to be subject to the provisions of **Section 5.04** as if it were an assignee under **Section 13.05(b)** and (b) shall not be entitled to receive any greater payment under **Section 5.01** or **5.03**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of **Section 5.04(b)** with respect to any Participant. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) **Limitations on Rights of Participants**. A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **5.03** than such Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) **Certain Pledges**. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

13.06 Survival. The obligations of the Borrower under Sections **5.01**, **5.02**, **5.03**, **13.03**, **13.05**, **13.06**, **13.09**, **13.10**, **13.11**, **13.12**, **13.13** and **13.14** shall survive the repayment of the Obligations and the termination of the Commitments and, in the case of the Lenders' assignment of any interest in the Commitments or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a Borrowing Notice, herein or pursuant hereto shall survive the making of such representation and warranty.

13.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

13.08 Counterparts, Effectiveness. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower, the Administrative Agent and the Lender shall have been received by the Administrative Agent.

13.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York.

13.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction**. Each party hereby irremovably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, against such other party in any way relating to this Agreement or any Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) **Waiver of Venue, Etc**. Each party hereto irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such party is or may be subject, by suit upon judgment.

13.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

13.12 Waiver of Immunity. To the extent that the Borrower may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

13.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. THE BORROWER ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

13.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

13.15 No Fiduciary Relationship. The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

13.16 Confidentiality. All information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses (the "***Information***") shall be deemed non-public information for purposes of this **Section 13.16** unless marked "Public." Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning Borrower or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws. The Administrative Agent and each Lender agree to keep confidential all non-public information provided to them by the Borrower pursuant to this Agreement in accordance with its customary procedures for handling material non-public information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) to the Administrative Agent, any other Lender, any Affiliate of a Lender or any Eligible Transferee or other assignee permitted under **Section 13.05(b)**, (ii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its "***Related Parties*** "), (iii) upon the request or demand of any Governmental Authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iv) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Law, (v) if requested or required to do so in connection with any litigation or similar proceeding, (vi) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 13.16**), (vii) to the extent necessary in connection with the exercise of any remedy hereunder or under any other Loan Document, (viii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (ix) to any other party hereto; provided that, in the case of disclosure pursuant to **clause (iii), (iv)** and **(v)** above, the Administrative Agent or applicable Lender, as applicable, shall promptly provide notice to the Borrower to the extent reasonable and not prohibited by Law or any applicable Governmental Authority, so that Borrower may seek a protective order.

13.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable Law (collectively, "***charges***"), shall exceed the maximum lawful rate (the "***Maximum Rate***") that may be contracted for, charged, taken, received or reserved by the Administrative Agent and the Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction

of the principal balance of such Loan so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

13.18 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Borrower in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower.

13.19 USA PATRIOT Act . The Administrative Agent and the Lenders hereby notify the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Patriot Act***"), they are required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Person to identify the Borrower in accordance with the Patriot Act.

13.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(i) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

FORTRESS BIOTECH, INC.

By: /s/ Robyn Hunter
Name: Robyn Hunter
Title: Chief Financial Officer

Address for Notices:
Fortress Biotech, Inc
95 Sawyer Road, Suite 110
Waltham MA 02453
Attn: Chief Financial Officer
Phone: 781.652.4507
Email: rhunter@fortressbiotech.com

ADMINISTRATIVE AGENT:

OAKTREE FUND ADMINISTRATION, LLC

By: **Oaktree Capital Management, L.P.**
Its: Managing Member

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

By: /s/ Peter Boos
Name: Peter Boos
Title: Assistant Vice President

Address for Notices:
Oaktree Fund Administration, LLC
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Oaktree Agency
Email: Oaktreeagency@alterdomus.com

With a copy to:
Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

LENDER:

By: **/s/**

By: /s/
Name:
Title:

By: /s/
Name:
Title:

Address for Notices:

Attn:
Email:

[Signature Page to Credit Agreement]

Exhibit 31.1

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Lindsay A. Rosenwald, M.D., certify that:

(1) I have reviewed this Quarterly Report on Form 10-Q of Fortress Biotech, Inc. (the "Registrant");

(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(s) 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 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 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(s) 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 controls over financial reporting.

Dated: November 9, 2020

By: /s/ Lindsay A. Rosenwald, M.D.
Lindsay A. Rosenwald, M.D.
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Robyn M. Hunter, certify that:

(1) I have reviewed this Quarterly Report on Form 10-Q of Fortress Biotech, Inc. (the "Registrant");

(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(s) 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 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 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(s) 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 controls over financial reporting.

Dated: November 9, 2020

By: /s/ Robyn M. Hunter
Robyn M. Hunter
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

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 Quarterly Report on Form 10-Q of Fortress Biotech, Inc. (the "Company") for the quarterly period ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Lindsay A. Rosenwald, M.D., Chairman, President, and Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company, as of, and for, the periods presented in the Report.

Dated: November 9, 2020

By: /s/ Lindsay A. Rosenwald, M.D.
Lindsay A. Rosenwald, M.D.
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

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 Quarterly Report on Form 10-Q of Fortress Biotech, Inc. (the "Company") for the quarterly period ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robyn M. Hunter, Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company, as of, and for, the periods presented in the Report.

Dated: November 9, 2020

By: /s/ Robyn M. Hunter
Robyn M. Hunter
Chief Financial Officer
(Principal Financial Officer)