
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2019

OR

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

FOR THE TRANSITION PERIOD FROM TO

Commission File Number 0-29889

Rigel Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

94-3248524
(I.R.S. Employer Identification No.)

**1180 Veterans Blvd.
South San Francisco, CA**
(Address of principal executive offices)

94080
(Zip Code)

(650) 624-1100
(Registrant's telephone number, including area code)

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

| Title of each class: | Trading Symbol | Name of each exchange on which registered: |
|---|-----------------------|---|
| Common Stock, par value \$0.001 per share | RIGL | The Nasdaq Global 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, a 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
Non-accelerated filer
Emerging Growth Company

Accelerated filer
Smaller reporting company

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

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

As of November 1, 2019, there were 167,610,502 shares of the registrant's Common Stock outstanding.

RIGEL PHARMACEUTICALS, IN C.
QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2019

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PART I. FINANCIAL INFORMATION**Item 1. Financial Statements**

RIGEL PHARMACEUTICALS, INC.
CONDENSED BALANCE SHEETS
(In thousands)

| | September 30, 2019 (unaudited) | December 31, 2018(1) |
|---|--------------------------------------|-------------------------|
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 39,093 | \$ 76,322 |
| Short-term investments | 68,387 | 52,215 |
| Accounts receivable, net | 11,552 | 4,077 |
| Inventories | 1,181 | 894 |
| Prepaid and other current assets | 5,789 | 3,479 |
| Total current assets | 126,002 | 136,987 |
| Property and equipment, net | 1,718 | 1,387 |
| Operating lease right-of-use asset | 27,646 | — |
| Other assets | 695 | 735 |
| | <u>\$ 156,061</u> | <u>\$ 139,109</u> |
| Liabilities and stockholders' equity | | |
| Current liabilities: | | |
| Accounts payable | \$ 2,661 | \$ 6,391 |
| Accrued compensation | 7,066 | 9,952 |
| Accrued research and development | 5,631 | 6,763 |
| Other accrued liabilities | 6,806 | 3,598 |
| Lease liabilities, current portion | 7,255 | — |
| Deferred revenue, current portion | 1,587 | 1,030 |
| Total current liabilities | 31,006 | 27,734 |
| Long-term portion of deferred revenue | 25,176 | 1,408 |
| Long-term portion of deferred rent | — | 90 |
| Long-term portion of lease liabilities | 21,179 | — |
| Loans payable, net of discount | 9,789 | — |
| Commitments | | |
| Stockholders' equity: | | |
| Preferred stock | — | — |
| Common stock | 168 | 167 |
| Additional paid-in capital | 1,327,735 | 1,319,068 |
| Accumulated other comprehensive income (loss) | 36 | (24) |
| Accumulated deficit | (1,259,028) | (1,209,334) |
| Total stockholders' equity | 68,911 | 109,877 |
| | <u>\$ 156,061</u> | <u>\$ 139,109</u> |

(1) The balance sheet at December 31, 2018 has been derived from the audited financial statements included in Rigel's Annual Report on Form 10-K for the year ended December 31, 2018.

See Accompanying Notes.

RIGEL PHARMACEUTICALS, INC.**CONDENSED STATEMENTS OF OPERATION S****(In thousands, except per share amounts)****(unaudited)**

| | <u>Three Months Ended September 30,</u> | | <u>Nine Months Ended September 30,</u> | |
|---|---|--------------------|--|--------------------|
| | <u>2019</u> | <u>2018</u> | <u>2019</u> | <u>2018</u> |
| Revenues: | | | | |
| Product sales, net | \$ 11,716 | \$ 4,865 | \$ 29,943 | \$ 6,652 |
| Contract revenues from collaborations | 9,141 | — | 13,945 | — |
| Total revenues | <u>20,857</u> | <u>4,865</u> | <u>43,888</u> | <u>6,652</u> |
| Costs and expenses: | | | | |
| Cost of product sales | 310 | 69 | 728 | 99 |
| Research and development | 14,463 | 11,097 | 38,638 | 33,136 |
| Selling, general and administrative | 18,121 | 18,069 | 56,276 | 48,632 |
| Total costs and expenses | <u>32,894</u> | <u>29,235</u> | <u>95,642</u> | <u>81,867</u> |
| Loss from operations | (12,037) | (24,370) | (51,754) | (75,215) |
| Interest income | 555 | 604 | 2,068 | 1,507 |
| Interest expense | (8) | — | (8) | — |
| Net loss | <u>\$ (11,490)</u> | <u>\$ (23,766)</u> | <u>\$ (49,694)</u> | <u>\$ (73,708)</u> |
| Net loss per share, basic and diluted | <u>\$ (0.07)</u> | <u>\$ (0.14)</u> | <u>\$ (0.30)</u> | <u>\$ (0.47)</u> |
| Weighted average shares used in computing net loss per share, basic and diluted | <u>167,609</u> | <u>166,464</u> | <u>167,326</u> | <u>158,456</u> |

See Accompanying Notes.

RIGEL PHARMACEUTICALS, INC.
CONDENSED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands)
(unaudited)

| | <u>Three Months Ended September 30,</u> | | <u>Nine Months Ended September 30,</u> | |
|--|---|--------------------|--|--------------------|
| | <u>2019</u> | <u>2018</u> | <u>2019</u> | <u>2018</u> |
| Net loss | \$ (11,490) | \$ (23,766) | \$ (49,694) | \$ (73,708) |
| Other comprehensive income (loss): | | | | |
| Net unrealized gain (loss) on short-term investments | (7) | 24 | 60 | 57 |
| Comprehensive loss | <u>\$ (11,497)</u> | <u>\$ (23,742)</u> | <u>\$ (49,634)</u> | <u>\$ (73,651)</u> |

See Accompanying Notes.

RIGEL PHARMACEUTICALS, INC.
CONDENSED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except share amounts)
(unaudited)

| | Common Stock | | Additional Paid-in Capital | Accumulated Other Comprehensive Income (Loss) | Accumulated Deficit | Total Stockholders' Equity |
|--|--------------|--------|----------------------------------|--|------------------------|----------------------------------|
| | Shares | Amount | | | | |
| Balance at January 1, 2019 | 167,171,505 | \$ 167 | \$ 1,319,068 | \$ (24) | \$(1,209,334) | \$ 109,877 |
| Net loss | — | — | — | — | (17,598) | (17,598) |
| Net unrealized gain on short-term investments | — | — | — | 34 | — | 34 |
| Issuance of common stock upon exercise of options and participation in Purchase Plan | 7,583 | — | 16 | — | — | 16 |
| Stock compensation expense | — | — | 2,986 | — | — | 2,986 |
| Balance at March 31, 2019 | 167,179,088 | \$ 167 | \$ 1,322,070 | \$ 10 | \$(1,226,932) | \$ 95,315 |
| Net loss | — | — | — | — | (20,606) | (20,606) |
| Net unrealized gain on short-term investments | — | — | — | 33 | — | 33 |
| Issuance of common stock upon exercise of options and participation in Purchase Plan | 425,331 | 1 | 855 | — | — | 856 |
| Stock compensation expense | — | — | 2,693 | — | — | 2,693 |
| Balance at June 30, 2019 | 167,604,419 | \$ 168 | \$ 1,325,618 | \$ 43 | \$(1,247,538) | \$ 78,291 |
| Net loss | — | — | — | — | (11,490) | (11,490) |
| Net unrealized gain on short-term investments | — | — | — | (7) | — | (7) |
| Issuance of common stock upon exercise of options and participation in Purchase Plan | 4,625 | — | 9 | — | — | 9 |
| Stock compensation expense | — | — | 2,108 | — | — | 2,108 |
| Balance at September 30, 2019 | 167,609,044 | \$ 168 | \$ 1,327,735 | \$ 36 | \$(1,259,028) | \$ 68,911 |

| | Common Stock | | Additional Paid-in Capital | Accumulated Other Comprehensive Loss | Accumulated Deficit | Total Stockholders' Equity |
|--|--------------|--------|----------------------------------|---|------------------------|----------------------------------|
| | Shares | Amount | | | | |
| Balance at January 1, 2018 | 146,814,906 | \$ 147 | \$ 1,239,435 | \$ (82) | \$(1,138,854) | \$ 100,646 |
| Net loss | — | — | — | — | (24,385) | (24,385) |
| Net unrealized gain on short-term investments | — | — | — | (5) | — | (5) |
| Issuance of common stock upon exercise of options and participation in Purchase Plan | 652,891 | 1 | 2,010 | — | — | 2,011 |
| Stock compensation expense | — | — | 1,540 | — | — | 1,540 |
| Balance at March 31, 2018 | 147,467,797 | \$ 148 | \$ 1,242,985 | \$ (87) | \$(1,163,239) | \$ 79,807 |
| Net loss | — | — | — | — | (25,557) | (25,557) |
| Net unrealized gain on short-term investments | — | — | — | 38 | — | 38 |
| Issuance of common stock upon exercise of options and participation in Purchase Plan | 18,895,356 | 18 | 68,131 | — | — | 68,149 |
| Stock compensation expense | — | — | 1,130 | — | — | 1,130 |
| Balance at June 30, 2018 | 166,363,153 | \$ 166 | \$ 1,312,246 | \$ (49) | \$(1,188,796) | \$ 123,567 |
| Net loss | — | — | — | — | (23,766) | (23,766) |
| Net unrealized gain on short-term investments | — | — | — | 24 | — | 24 |
| Issuance of common stock upon exercise of options and participation in Purchase Plan | 265,319 | — | 635 | — | — | 635 |
| Stock compensation expense | — | — | 3,013 | — | — | 3,013 |
| Balance at September 30, 2018 | 166,628,472 | \$ 166 | \$ 1,315,894 | \$ (25) | \$(1,212,562) | \$ 103,473 |

RIGEL PHARMACEUTICALS, INC.
CONDENSED STATEMENTS OF CASH FLOWS
(In thousands)
(unaudited)

| | Nine Months Ended September 30, | |
|--|--|------------------|
| | 2019 | 2018 |
| Operating activities | | |
| Net loss | \$ (49,694) | \$ (73,708) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Stock-based compensation expense | 7,704 | 5,647 |
| Depreciation and amortization | 503 | 431 |
| Non-cash operating lease expense | 5,181 | — |
| Net amortization of discount on short-term investments | (917) | (541) |
| Changes in assets and liabilities: | | |
| Accounts receivable, net | (7,475) | (3,273) |
| Inventories | (195) | (498) |
| Prepaid and other current assets | (2,000) | 120 |
| Other assets | 40 | 151 |
| Accounts payable | (3,730) | 5 |
| Accrued compensation | (2,886) | 440 |
| Accrued research and development | (1,132) | 773 |
| Other accrued liabilities | 3,207 | 425 |
| Lease liability | (4,793) | — |
| Deferred revenue | 24,326 | — |
| Deferred rent and other long-term liabilities | — | (442) |
| Net cash used in operating activities | <u>(31,861)</u> | <u>(70,470)</u> |
| Investing activities | | |
| Purchases of short-term investments | (100,501) | (50,058) |
| Maturities of short-term investments | 85,306 | 73,966 |
| Capital expenditures | (844) | (1,037) |
| Net cash (used in) provided by investing activities | <u>(16,039)</u> | <u>22,871</u> |
| Financing activities | | |
| Net proceeds from term loan financing | 9,789 | — |
| Net proceeds from issuances of common stock upon exercise of options and participation in employee stock purchase plan | 882 | 3,633 |
| Proceeds from sale and issuance of common stock, net of offering costs | — | 67,162 |
| Net cash provided by financing activities | <u>10,671</u> | <u>70,795</u> |
| Net (decrease) increase in cash and cash equivalents | <u>(37,229)</u> | <u>23,196</u> |
| Cash and cash equivalents at beginning of period | 76,322 | 38,290 |
| Cash and cash equivalents at end of period | <u>\$ 39,093</u> | <u>\$ 61,486</u> |

See Accompanying Notes.

Rigel Pharmaceuticals, In c.
Notes to Condensed Financial Statements
(unaudited)

In this report, “Rigel,” “we,” “us” and “our” refer to Rigel Pharmaceuticals, Inc.

1. Nature of Operations

We were incorporated in the state of Delaware on June 14, 1996. We are a biotechnology company dedicated to discovering, developing and providing novel small molecule drugs that significantly improve the lives of patients with immune and hematologic disorders, cancer and rare diseases. Our pioneering research focuses on signaling pathways that are critical to disease mechanisms.

Our first U.S. Food and Drug Administration (FDA) approved product, TAVALISSE® (fostamatinib disodium hexahydrate), an oral spleen tyrosine kinase (SYK) inhibitor, for the treatment of adult patients with chronic immune thrombocytopenia (ITP) who have had an insufficient response to a previous treatment, was approved by the FDA in April 2018, which we launched in May 2018.

Our current clinical programs include the ongoing Phase 3 study of fostamatinib in warm autoimmune hemolytic anemia (AIHA) and Phase 1 study for our interleukin receptor associated kinase (IRAK) program. In addition, we have product candidates in development with partners BerGenBio ASA (BerGenBio), Daiichi Sankyo (Daiichi), Aclaris Therapeutics (Aclaris), and AstraZeneca AB (AZ).

2. Basis of Presentation

Our accompanying unaudited condensed financial statements have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP), for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities Act of 1933, as amended (Securities Act). Accordingly, they do not include all the information and notes required by U.S. GAAP for complete financial statements. These unaudited condensed financial statements include only normal and recurring adjustments that we believe are necessary to fairly state our financial position and the results of our operations and cash flows. Interim-period results are not necessarily indicative of results of operations or cash flows for a full-year or any subsequent interim period. The balance sheet at December 31, 2018 has been derived from audited financial statements at that date but does not include all disclosures required by U.S. GAAP for complete financial statements. Because certain disclosures required by U.S. GAAP for complete financial statements are not included herein, these interim unaudited condensed financial statements and the notes accompanying them should be read in conjunction with our audited financial statements and the notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2018.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ from these estimates.

3. Summary of Significant Accounting Policies

Recent Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02—*Leases, (Topic 842)* (ASU 2016-02), as amended, which generally requires lessees to recognize operating and financing lease liabilities and corresponding right-of-use assets on the balance sheet and to provide enhanced disclosures surrounding the amount, timing and uncertainty of cash flows arising from leasing arrangements. In July 2018, the FASB issued ASU No. 2018-11, *Leases (Topic 842): Targeted Improvements*, or ASU No. 2018-11. In issuing ASU No. 2018-11, the FASB is permitting another transition

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method for ASU 2016-02, which allows the transition to the new lease standard by recognizing a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption.

We adopted this new standard on January 1, 2019 using a modified retrospective approach and elected the transition method and the package of practical expedients permitted under the transition guidance, which allowed us to carryforward our historical lease classification and our assessment on whether a contract is or contains a lease. We also elected to combine lease and non-lease components, such as common area maintenance charges, as single lease, and elected to use the short-term lease exception permitted by the standard.

As a result of the adoption of Topic 842 on January 1, 2019, we recognized \$32.8 million in operating right-of-use asset and \$33.2 million in lease liability, and derecognized \$399,000 of deferred rent in the balance sheet at adoption date. These were calculated using the present value of our remaining lease payments using an estimated incremental borrowing rate of 9%. There was no cumulative-effect adjustment on our accumulated deficit as of January 1, 2019.

For our sublease agreement wherein we are the lessor, the same practical expedients apply to both lessor and lessee. Therefore the sublease is classified as an operating lease under Topic 842. Further, the adoption of Topic 842 did not have an impact on our sublease on the date of adoption as all the expected sublease income is equal to the expected lease costs for the head leases over the remaining period of the lease term, and therefore, no impairment of the operating right-of-use asset is needed upon the adoption of Topic 842.

In June 2018, the FASB issued ASU 2018-07—*Compensation-Stock Compensation Improvements to Nonemployee Share-Based Payment Accounting (Topic 718)*. This standard substantially aligns accounting for share-based payments to employees and non-employees. This standard is effective for annual periods beginning after December 15, 2018, including interim periods within that period, and early adoption is permitted. We adopted this new standard on January 1, 2019 and our adoption did not have a material effect on our financial statements.

In June 2016, the FASB issued ASU 2016-13—*Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which represents a new credit loss standard that will change the impairment model for most financial assets and certain other financial instruments. Specifically, this guidance will require entities to utilize a new “expected loss” model as it relates to trade and other receivables. In addition, entities will be required to recognize an allowance for estimated credit losses on available-for-sale debt securities, regardless of the length of time that a security has been in an unrealized loss position. This guidance will be effective for annual reporting periods beginning after December 15, 2019, including interim periods within those annual reporting periods. Early adoption is permitted. We are currently evaluating the impact of this new standard on our financial statements and related disclosures.

In August 2018, the FASB issued ASU 2018-13—*Fair Value Measurement (Topic 820): Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement (ASU 2018-13)*, which modifies the disclosure requirements on fair value measurements. This guidance is effective for fiscal years beginning after December 15, 2019, and interim periods therein. Early adoption is permitted. We are currently evaluating the impact of adoption of this new standard on our related disclosures.

In November 2018, the FASB issued ASU 2018-18—*Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606*. This standard provides guidance on the interaction between Revenue Recognition (Topic 606) and Collaborative Arrangements (Topic 808) by aligning the unit of account guidance between the two topics and clarifying whether certain transactions between collaborative participants should be accounted for as revenue under Topic 606. ASU 2018-18 is effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. Early adoption is permitted. We plan to adopt this new standard on January 1, 2020. We are currently evaluating the impact ASU 2018-18 will have on our financial statements and related disclosures, but do not expect it to have a material impact on our financial statements.

Inventories

Inventories are stated at the lower of cost or estimated net realizable value. We determine the cost of inventories using the standard cost method, which approximates actual cost based on a first-in, first out basis. Inventories consist primarily of third-party manufacturing costs and allocated internal overhead costs. We began capitalizing inventory costs associated with our product upon regulatory approval when, based on management's judgment, future commercialization was considered probable and the future economic benefit was expected to be realized.

Prior to FDA approval of TAVALISSE, all manufacturing costs were charged to research and development expense in the period incurred. At September 30, 2019 and December 31, 2018, our physical inventory included active pharmaceutical product of which costs have been previously charged to research and development expense. However, manufacturing of drug product, finished bottling and other labeling activities that occurred post FDA approval are included in the inventory value at each balance sheet date.

We provide reserves for potential excess, dated or obsolete inventories based on an analysis of forecasted demand compared to quantities on hand and any firm purchase orders, as well as product shelf life.

Cost of Product Sales

Cost of product sales consists of third-party manufacturing costs, transportation and freight, and indirect overhead costs associated with the manufacture and distribution of TAVALISSE. A portion of the cost of producing the product sold to date was expensed as research and development prior to the Company's New Drug Application (NDA) approval for TAVALISSE and therefore is not included in the cost of product sales during this period.

Accounts Receivable

Accounts receivable are recorded net of customer allowances for prompt payment discounts and any allowance for doubtful accounts. We estimate the allowance for doubtful accounts based on existing contractual payment terms, actual payment patterns of our customers and individual customer circumstances. To date, we have determined that an allowance for doubtful accounts is not required.

Revenue Recognition

We recognize revenue in accordance with ASC Topic 606, *Revenue From Contracts with Customers (ASC 606)*, when our customer obtains control of promised goods or services, in an amount that reflects the consideration which we expect to receive in exchange for those goods or services. To determine whether arrangements are within the scope of ASC 606, we perform the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the Company satisfies its performance obligation. We apply the five-step model to contracts when it is probable that we will collect the consideration we are entitled to in exchange for the goods or services we transfer to the customer. At contract inception, once the contract is determined to be within the scope of this new guidance, we assess the goods or services promised within each contract and identify, as a performance obligation, and assess whether each promised good or service is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

Product Sales

Revenues from product sales are recognized when the specialty distributors (SDs), who are our customers, obtain control of our product, which occurs at a point in time, upon delivery to such SDs. These SDs subsequently resell our products to specialty pharmacy providers, health care providers, hospitals and clinics. In addition to distribution agreements with these SDs, we also enter into arrangements with specialty pharmacy providers, in-office dispensing

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providers, group purchasing organizations, and government entities that provide for government-mandated and/or privately-negotiated rebates, chargebacks and discounts with respect to the purchase of our products.

Under ASC 606, we are required to estimate the transaction price, including variable consideration that is subject to a constraint, in our contracts with our customers. Variable consideration is included in the transaction price to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur. Revenue from product sales are recorded net of certain variable consideration which includes estimated government-mandated rebates and chargebacks, distribution fees, estimated product returns and other deductions.

Provisions for returns and other adjustments are provided for in the period the related revenue is recorded. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from our estimates, we will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

The following are our significant categories of sales discounts and allowances:

Sales Discounts. We provide our customers prompt payment discounts that are explicitly stated in our contracts and are recorded as a reduction of revenue in the period the related product revenue is recognized.

Product Returns. We offer our SDs a right to return product purchased directly from us, which is principally based upon the product's expiration date. Product return allowances are estimated and recorded at the time of sale.

Government Rebates: We are subject to discount obligations under the state Medicaid programs and Medicare prescription drug coverage gap program. We estimate our Medicaid and Medicare prescription drug coverage gap rebates based upon a range of possible outcomes that are probability-weighted for the estimated payor mix. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability that is included as part of Other Accrued Liabilities account in the Balance Sheet. Our liability for these rebates consists primarily of estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period.

Chargebacks and Discounts: Chargebacks for fees and discounts represent the estimated obligations resulting from contractual commitments to sell products to certain specialty pharmacy providers, in-office dispensing providers, group purchasing organizations, and government entities at prices lower than the list prices charged to our SDs who directly purchase the product from us. These SDs charge us for the difference between what they pay for the product and our contracted selling price to these specialty pharmacy providers, in-office dispensing providers, group purchasing organizations, and government entities. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue. Actual chargeback amounts are generally determined at the time of resale to the specialty pharmacy providers, in-office dispensing providers, group purchasing organizations, and government entities by our SDs. The estimated obligations arising from these chargebacks and discounts are included as part of Other Accrued Liabilities in the balance sheet.

Co-Payment Assistance: We offer co-payment assistance to commercially insured patients meeting certain eligibility requirements. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that we expect to receive associated with product that has been recognized as revenue.

Contract Revenues from Collaborations

In the normal course of business, we conduct research and development programs independently and in connection with our corporate collaborators, pursuant to which we license certain rights to our intellectual property to third parties. The terms of these arrangements typically include payment to us for a combination of one or more of the following: upfront license fees; development, regulatory and commercial milestone payments; product supply services; and royalties on net sales of licensed products.

Upfront License Fees: If the license to our intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, we recognize revenues from upfront license fees allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other promises, we determine whether the combined performance obligation is satisfied over time or at a point in time. If the combined performance obligation is satisfied over time, we use judgment in determining the appropriate method of measuring progress for purposes of recognizing revenue from the up-front license fees. We evaluate the measure of progress each reporting period and, if necessary, adjust the measure of performance and related revenue recognition.

Development, Regulatory or Commercial Milestone Payments: At the inception of each arrangement that includes payments based on the achievement of certain development, regulatory and commercial or launch events, we evaluate whether the milestones are considered probable of being achieved and estimate the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. Milestone payments that are not within our or the licensee's control, such as regulatory approvals, are not considered probable of being achieved until uncertainty associated with the approvals has been resolved. The transaction price is then allocated to each performance obligation, on a relative standalone selling price basis, for which we recognize revenue as or when the performance obligations under the contract are satisfied. At the end of each subsequent reporting period, we re-evaluate the probability of achieving such development and regulatory milestones and any related constraint, and if necessary, adjust our estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, and recorded as part of contract revenues from collaborations during the period of adjustment.

Product Supply Services: Arrangements that include a promise for future supply of drug product for either clinical development or commercial supply at the licensee's discretion are generally considered as options. We assess if these options provide a material right to the licensee and if so, they are accounted for as separate performance obligations.

Sales-based Milestone Payments and Royalties: For arrangements that include sales-based royalties, including milestone payments based on the volume of sales, we determine whether the license is deemed to be the predominant item to which the royalties or sales-based milestones relate to and if such is the case, we recognize revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied).

Leases

We currently lease our research and office space under a noncancelable lease agreement with our landlord through January 2023. In December 2014, we entered into a sublease agreement with an unrelated third party to occupy a portion of our research and office space through January 2023.

As described above, we adopted the Topic 842 as of January 1, 2019. Pursuant to Topic 842, all of our leases outstanding on January 1, 2019 continued to be classified as operating leases. With the adoption of Topic 842, we recorded an operating lease right-of-use asset and an operating lease liability on our balance sheet. Right-of-use lease assets represent our right to use the underlying asset for the lease term and the lease obligation represents our commitment to make the lease payments arising from the lease. Right-of-use lease assets and obligations are recognized at the commencement date based on the present value of remaining lease payments over the lease term. As our lease does not provide an implicit rate, we have used an estimated incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. The operating lease right-of-use asset includes any lease payments made prior to commencement. The lease term may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Operating lease expense is recognized on a straight-line basis over the lease term, subject to any changes in the lease or expectations regarding the terms. Variable lease costs such as common area costs and property taxes are expensed as incurred. Leases with an initial term of 12 months or less are not recorded on the balance sheet.

For our sublease agreement wherein we are the lessor, sublease income will be recognized on a straight-line basis over the term of the sublease. The difference between the cash received, and the straight-line lease income recognized, if any, will be recorded as part of prepaid and other current assets in the balance sheet.

Prior to our adoption of Topic 842, we recorded a deferred rent asset or liability equal to the difference between the rent expense and the future minimum lease payments due. We recorded lease expense on a straight-line basis for our lease, net of sublease income, wherein such arrangements contain scheduled rent increases over the term of the lease and sublease, respectively.

Research and Development Accruals

We have various contracts with third parties related to our research and development activities. Costs that are incurred but not billed to us as of the end of the period are accrued. We make estimates of the amounts incurred in each period based on the information available to us and our knowledge of the nature of the contractual activities generating such costs. Clinical trial contract expenses are accrued based on units of activity. Expenses related to other research and development contracts, such as research contracts, toxicology study contracts and manufacturing contracts are estimated to be incurred generally on a straight-line basis over the duration of the contracts. Raw materials and study materials not related to our approved drug, purchased for us by third parties are expensed at the time of purchase.

4. Stock Award Plans

On May 16, 2018, our stockholders approved the adoption of the Company's 2018 Equity Incentive Plan (2018 Plan). The 2018 Plan is the successor plan to the 2011 Equity Incentive Plan, the 2000 Equity Incentive Plan, and the 2000 Non-Employee Directors' Stock Option Plan.

To date, we have two stock option plans, our 2018 Plan and the Inducement Plan (collectively, the Equity Incentive Plans), that provide for granting to our officers, directors and all other employees and consultants options to purchase shares of our common stock. We also have our Employee Stock Purchase Plan (Purchase Plan), wherein eligible employees can purchase shares of our common stock at a price per share equal to the lesser of 85% of the fair market value on the first day of the offering period or 85% of the fair market value on the purchase date. The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model which considered our stock price, as well as assumptions regarding a number of complex and subjective variables. These variables include, but are not limited to, volatility, expected term, risk-free interest rate and dividends. We estimate volatility over the expected term of the option using historical share price performance. For expected term, we take into consideration our historical data of options exercised, cancelled and expired. The risk-free rate is based on the U.S. Treasury constant maturity rate. We have not paid and do not expect to pay dividends in the foreseeable future. We use the straight-line attribution method over the requisite employee service period for the entire award in recognizing stock-based compensation expense. We account for forfeitures as they occur.

We granted performance-based stock options to purchase shares of our common stock which will vest upon the achievement of certain corporate performance-based milestones. We determined the fair values of these performance-based stock options using the Black-Scholes option pricing model at the date of grant. For the portion of the performance-based stock options of which the performance condition is considered probable of achievement, we recognize stock-based compensation expense on the related estimated grant date fair values of such options on a straight-line basis from the date of grant up to the date when we expect the performance condition will be achieved. For the performance conditions that are not considered probable of achievement at the grant date or upon quarterly re-evaluation, prior to the event actually occurring, we recognize the related stock-based compensation expense when the event occurs or when we can determine that the performance condition is probable of achievement. In those cases, we recognize the change in estimate at the time we determine the condition is probable of achievement (by recognizing stock-based compensation expense as cumulative catch-up adjustment as if we had estimated at the grant date that the performance condition would have been achieved) and recognize the remaining compensation cost up to the date when we expect the performance condition will be achieved, if any.

5. Net Loss Per Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding during the period and the number of additional shares of common stock that would have been outstanding if potentially dilutive securities had been issued. Because the Company was in a loss position for all periods presented, basic net loss per share is the same as diluted net loss per share for all periods as the inclusion of all potential common shares outstanding would have been antidilutive. Potentially dilutive securities include stock options and shares issuable under our stock award plans. The dilutive effect of these potentially dilutive securities is reflected in diluted earnings per share by application of the treasury stock method. Under the treasury stock method, an increase in the fair market value of our common stock can result in a greater dilutive effect from potentially dilutive securities.

We had securities which could potentially dilute basic loss per share, but were excluded from the computation of diluted net loss per share, as their effect would have been antidilutive. These securities consist of the following (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---------------------------|-------------------------------------|--------|------------------------------------|--------|
| | 2019 | 2018 | 2019 | 2018 |
| Outstanding stock options | 22,665 | 21,044 | 22,665 | 21,044 |
| Purchase Plan | 125 | 109 | 125 | 109 |
| Total | 22,790 | 21,153 | 22,790 | 21,153 |

6. Stock-Based Compensation

Total stock-based compensation related to all of our share-based payments that we recognized for the three and nine months ended September 30, 2019 and 2018 were as follows (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|----------|------------------------------------|----------|
| | 2019 | 2018 | 2019 | 2018 |
| Selling, general and administrative | \$ 1,611 | \$ 2,194 | \$ 5,519 | \$ 3,913 |
| Research and development | 487 | 801 | 2,185 | 1,734 |
| Total stock-based compensation expense | \$ 2,098 | \$ 2,995 | \$ 7,704 | \$ 5,647 |

The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model. We have segregated option awards into the following three homogenous groups for the purposes of determining fair values of options: officers and directors, all other employees, and consultants. We account for forfeitures as they occur.

We determined weighted-average valuation assumptions separately for each of these groups as follows:

- Volatility—We estimated volatility using our historical share price performance over the expected life of the option. We also considered other factors, such as implied volatility, our current clinical trials and other company activities that may affect the volatility of our stock in the future. We determined that at this time historical volatility is more indicative of our expected future stock performance than implied volatility.
- Expected term—For options granted to consultants, we use the contractual term of the option, which is generally ten years, for the initial valuation of the option and the remaining contractual term of the option for the succeeding periods. We analyzed various historical data to determine the applicable

expected term for each of the other option groups. This data included: (1) for exercised options, the term of the options from option grant date to exercise date; (2) for cancelled options, the term of the options from option grant date to cancellation date, excluding non-vested option forfeitures; and (3) for options that remained outstanding at the balance sheet date, the term of the options from option grant date to the end of the reporting period and the estimated remaining term of the options. The consideration and calculation of the above data gave us reasonable estimates of the expected term for each employee group. We also considered the vesting schedules of the options granted and factors surrounding exercise behavior of the option groups, our current market price and company activity that may affect our market price. In addition, we considered the optionee type (i.e., officers and directors or all other employees) and other factors that may affect the expected term of the options.

- Risk-free interest rate—The risk-free interest rate is based on U.S. Treasury constant maturity rates with similar terms to the expected term of the options for each option group.
- Dividend yield—The expected dividend yield is 0% as we have not paid and do not expect to pay dividends in the future.

The following table summarizes the weighted-average assumptions relating to options granted pursuant to our equity incentive plans for the three and nine months ended September 30, 2019 and 2018:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--------------------------|-------------------------------------|--------|------------------------------------|--------|
| | 2019 | 2018 | 2019 | 2018 |
| Risk-free interest rate | 1.7 % | 2.9 % | 2.5 % | 2.7 % |
| Expected term (in years) | 6.0 | 6.0 | 6.5 | 6.7 |
| Dividend yield | 0.0 % | 0.0 % | 0.0 % | 0.0 % |
| Expected volatility | 63.0 % | 67.9 % | 65.6 % | 65.1 % |

The exercise price of stock options granted under our stock plans is equal to the fair market value of the underlying shares on the date of grant. Options become exercisable at varying dates and generally expire 10 years from the date of grant.

We granted options to purchase 6,780,575 shares of common stock during the nine months ended September 30, 2019 with a grant-date weighted-average fair value of \$1.26 per share. As of September 30, 2019, we had 100,000 shares of outstanding performance-based stock options wherein the achievement of the corresponding corporate-based milestones was not considered as probable. Accordingly, none of the stock-based compensation expense of \$192,000 has been recognized as expense as of September 30, 2019.

As of September 30, 2019, there were approximately \$10.7 million of unrecognized stock-based compensation cost related to time-based stock options and performance-based stock options, wherein achievement of the corresponding corporate-based milestones was considered as probable.

At September 30, 2019, there were 16,829,605 shares of common stock available for future grant under our equity incentive plans and 34,897 options to purchase shares were exercised during the nine months ended September 30, 2019.

Employee Stock Purchase Plan

Our Purchase Plan permits eligible employees to purchase common stock at a discount through payroll deductions during defined offering periods. The price at which the stock is purchased is equal to the lesser of 85% of the

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fair market value of our common stock on the first day of the offering or 85% of the fair market value of our common stock on the purchase date. The initial offering period commenced on the effective date of our initial public offering.

The fair value of awards granted under our Purchase Plan is estimated on the date of grant using the Black-Scholes option pricing model, which uses weighted-average assumptions. Our Purchase Plan provides for a twenty-four-month offering period comprised of four six-month purchase periods with a look-back option. A look-back option is a provision in our Purchase Plan under which eligible employees can purchase shares of our common stock at a price per share equal to the lesser of 85% of the fair market value on the first day of the offering period or 85% of the fair market value on the purchase date. Our Purchase Plan also includes a feature that provides for a new offering period to begin when the fair market value of our common stock on any purchase date during an offering period falls below the fair market value of our common stock on the first day of such offering period. This feature is called a “reset.” Participants are automatically enrolled in the new offering period. We had a “reset” on January 2, 2019 because the fair market value of our stock on December 31, 2018 was lower than the fair market value of our stock on July 1, 2018, the first day of the offering period. We applied modification accounting in accordance with the relevant accounting guidance. The total incremental fair value associated with this Purchase Plan “reset” was approximately \$879,000 and is being recognized as expense from January 1, 2019 to December 31, 2020.

As of September 30, 2019, there were 928,942 shares reserved for future issuance under the Purchase Plan and there was \$771,000 of unrecognized stock-based compensation cost related to our Purchase Plan. The following table summarizes the weighted-average assumptions related to our Purchase Plan for the three and nine months ended September 30, 2019 and 2018. Expected volatilities for our Purchase Plan are based on the historical volatility of our stock. Expected term represents the weighted-average of the purchase periods within the offering period. The risk-free interest rate for periods within the expected term is based on U.S. Treasury constant maturity rates.

| | Nine Months Ended September 30, | |
|--------------------------|------------------------------------|--------|
| | 2019 | 2018 |
| Risk-free interest rate | 2.8 % | 2.4 % |
| Expected term (in years) | 1.7 | 1.3 |
| Dividend yield | 0.0 % | 0.0 % |
| Expected volatility | 63.0 % | 66.2 % |

7. Revenues

Revenues disaggregated by category were as follows (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|----------|------------------------------------|----------|
| | 2019 | 2018 | 2019 | 2018 |
| Product sales: | | | | |
| Gross product sales | \$ 14,348 | \$ 6,132 | \$ 36,745 | \$ 8,419 |
| Discounts and allowances | (2,632) | (1,267) | (6,802) | (1,767) |
| Product sales, net | \$ 11,716 | \$ 4,865 | \$ 29,943 | \$ 6,652 |
| Revenues from collaborations: | | | | |
| License revenues | 7,750 | — | 12,249 | — |
| Research and development services and others | 1,391 | — | 1,696 | — |
| Total revenues from collaborations | 9,141 | — | 13,945 | — |
| Total revenues | \$ 20,857 | \$ 4,865 | \$ 43,888 | \$ 6,652 |

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The following table summarizes revenues from each of our customers who individually accounted for 10% or more of our total revenues (as a percentage of total revenues):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|------|------------------------------------|------|
| | 2019 | 2018 | 2019 | 2018 |
| ASD Healthcare and Oncology Supply | 28% | 58% | 34% | 53% |
| McKesson Specialty Care Distribution Corporation | 22% | 33% | 27% | 38% |
| Aclaris | 19% | — | 9% | — |
| Celgene | 18% | — | 9% | — |
| Grifols | 0% | — | 11% | — |

Our first and only FDA approved product, TAVALISSE®, was approved by the U.S. FDA in April 2018. We commenced commercial sale of TAVALISSE in the U.S. in May 2018.

In addition to the distribution agreements with our customers, the SDs, we also enter into arrangements with specialty pharmacy providers, in-office dispensing providers, group purchasing organizations, and government entities that provide for government-mandated and/or privately-negotiated rebates, chargebacks and discounts with respect to the purchase of our products which reduced our gross product sales. Also refer to Revenue Recognition policy discussion in Note 3.

The following table summarizes activity in each of the product revenue allowance and reserve categories for the nine months ended September 30, 2019 (in thousands):

| | Chargebacks, Discounts and Fees | Government and Other Rebates | Returns | Total |
|---|---------------------------------------|------------------------------------|---------|----------|
| Balance at January 1, 2019 | \$ 622 | \$ 843 | \$ 170 | \$ 1,635 |
| Provision related to current period sales | 3,561 | 2,296 | 99 | 5,956 |
| Credit or payments made during the period | (2,932) | (1,298) | — | (4,230) |
| Balance at September 30, 2019 | \$ 1,251 | \$ 1,841 | \$ 269 | \$ 3,361 |

The discounts and allowances for the nine months ended September 30, 2019 of \$6.8 million in the first table, which includes the provision for current period sales of \$6.0 million, are included as part of Other Accrued Liabilities in the balance sheet of which \$3.1 million remained outstanding as of September 30, 2019. The remaining \$810,000 in discounts and allowances related to current period sales not included in the table above is recorded as reduction of accounts receivable and prepaid and other current assets in the balance sheet.

8. Sponsored Research and License Agreements

We conduct research and development programs independently and in connection with our corporate collaborators. As of September 30, 2019, we are a party to collaboration agreements with ongoing performance obligations with Kissei Pharmaceutical Co., Ltd. (Kissei) for the development and commercialization of fostamatinib in Japan, China, Taiwan and the Republic of Korea and with Grifols, S.A. (Grifols) to commercialize fostamatinib in all indications, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. As of September 30, 2019, we are also a party to collaboration agreements, but do not have ongoing performance obligations, with Aclaris for the development and commercialization of JAK inhibitors for the treatment of alopecia areata and other dermatological conditions, AZ for the development and commercialization of R256, an inhaled JAK inhibitor, BerGenBio for the development and commercialization of AXL inhibitors in oncology, and Daiichi to pursue research related to MDM2 inhibitors, a novel class of drug targets called ligases.

Grifols License Agreement

In January 2019, we entered into an exclusive license agreement with Grifols to commercialize fostamatinib in all indications, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. Under the agreement, we received an upfront payment of \$30.0 million, with the potential for \$297.5 million in total regulatory and commercial milestones, which included a \$20 million payment upon approval from the European Medicines Agency (EMA) for fostamatinib in chronic ITP. We will also receive stepped double-digit royalty payments based on tiered net sales which may reach 30% of net sales. In return, Grifols will receive exclusive rights to fostamatinib in human diseases, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. In the event that, in 2021, after the second anniversary of the agreement, fostamatinib has not been approved by the EMA for the treatment of ITP in Europe, Grifols will have the option, during a six-month time-frame, to terminate the entire agreement, which would terminate all their rights to ITP, AIHA and all other indications. In this limited circumstance, we will pay Grifols \$25.0 million and regain all rights to fostamatinib in Europe and other territories. The agreement also requires us to continue to conduct our long term open-label extension study on patients with ITP through EMA approval of ITP in Europe as well as conduct the Phase 3 trial in AIHA in the U.S.

We accounted for this agreement under ASC 606 and identified the following distinct performance obligations at inception of the agreement: (a) granting of the license, (b) performance of research and regulatory services related to our ongoing long-term open-label extension study on patients with ITP, and (c) performance of research services related to our Phase 3 study in AIHA. In addition, we will enter into a commercial supply agreement for the licensed territories. We concluded each of these performance obligations is distinct. We based our assessment on the following: (i) our assessment that Grifols can benefit from the license on its own by developing and commercializing the underlying product using its own resources, and (ii) the fact that the manufacturing services are not highly specialized in nature and can be performed by other vendors. Moreover, we determined that the upfront fee of \$5.0 million, which is the non-refundable portion of the \$30.0 million upfront fee, represented the transaction price, and was allocated to the performance obligations based on our best estimate of the relative standalone selling price as follows: (a) for the license, we estimated the standalone selling price using the adjusted market assessment approach to estimate its standalone selling price in the licensed territories; (b) for the research and regulatory services, we estimated the standalone selling price using the cost plus expected margin approach.

The remaining \$25 million of the upfront payment which is potentially refundable and the future variable consideration of \$297.5 million related to future regulatory and commercial milestones were fully constrained due to the fact that it was probable that a significant reversal of cumulative revenue would occur, given the inherent uncertainty of success with these future milestones. We will recognize revenues related the research and regulatory services throughout the term of the respective clinical programs using the input method. For sales-based milestones and royalties, we determined that the license is the predominant item to which the royalties or sales-based milestones relate. Accordingly, we will recognize revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied). We will re-evaluate the transaction price in each reporting period and as uncertain events are resolved or other changes in circumstances occur.

Additionally, during the three and nine months ended September 30, 2019, we recognized \$71,000 and \$215,000, respectively, in revenues related to the research and regulatory services performed. Deferred revenues as of September 30, 2019 was \$25.4 million.

Kissei License Agreement

In October 2018, we entered into an exclusive license and supply agreement with Kissei to develop and commercialize fostamatinib in all current and potential indications in Japan, China, Taiwan and the Republic of Korea. Kissei is responsible for performing and funding all development activities for fostamatinib in the above-mentioned territories. We received an upfront cash payment of \$33.0 million, with the potential for up to an additional \$147.0 million in development, regulatory and commercial milestone payments, and will receive mid to upper twenty percent, tiered, escalated net sales-based payments for the supply of fostamatinib. Under the agreement, we granted Kissei the license rights to fostamatinib in the territories above and are obligated to supply Kissei with drug product for

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use in clinical trials and pre-commercialization activities. We are also responsible for the manufacture and supply of fostamatinib for all future development and commercialization activities under the agreement.

We accounted for this agreement under ASC 606 and identified the following distinct performance obligations at inception of the agreement: (a) granting of the license, (b) supply of fostamatinib for clinical use and (c) material right associated with discounted fostamatinib that are supplied for use other than clinical or commercial. In addition, we will provide commercial product supply if the product is approved in the licensed territory. We concluded that each of these performance obligations is distinct. We based our assessment on the following: (i) our assessment that Kissei can benefit from the license on its own by developing and commercializing the underlying product using its own resources and (ii) the fact that the manufacturing services are not highly specialized in nature and can be performed by other vendors. Moreover, we determined that the upfront fee of \$33.0 million represented the transaction price and was allocated to the performance obligations based on our best estimate of the relative standalone selling price as follows: (a) for the license, we estimated the standalone selling price using the adjusted market assessment approach to estimate its standalone selling price in the licensed territories; (b) for the supply of fostamatinib and the material right associated with discounted fostamatinib, we estimated the standalone selling price using the cost plus expected margin approach. Variable consideration of \$147.0 million related to future development and regulatory milestones was fully constrained due to the fact that it was probable that a significant reversal of cumulative revenue would occur, given the inherent uncertainty of success with these future milestones. We will recognize revenues related to the supply of fostamatinib and material right upon delivery of fostamatinib to Kissei. For sales-based milestones and royalties, we determined that the license is the predominant item to which the royalties or sales-based milestones relate to. Accordingly, we will recognize revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied). We will re-evaluate the transaction price in each reporting period and as uncertain events are resolved or other changes in circumstances occur.

As of December 31, 2018, we had granted Kissei the license rights to fostamatinib. Accordingly, we recognized \$30.6 million of the \$33.0 million upfront fee as allocated revenue for the delivered license during the fourth quarter of 2018. During the three and nine months ended September 30, 2019, we recognized \$1.4 million and \$1.6 million, respectively, as revenue related to the supply of fostamatinib for clinical use and the material right associated with discounted fostamatinib. At September 30, 2019, deferred revenues related to the unsatisfied performance obligations related to the supply of fostamatinib and material right associated with discounted fostamatinib supply was \$1.4 million.

Other license agreements

In September 2019, we received a \$4.0 million development milestone payment from Aclaris for the achievement of a certain event in accordance with the Rigil and Aclaris License and Collaboration Agreement dated August 27, 2015. In September 2019, we also earned \$3.8 million in a commercial launch milestone payment from Impact Biomedicines, Inc., which was acquired by Celgene. All deliverable under the agreement had been previously delivered, as such, the above payments of \$4.0 million from Aclaris and \$3.8 million from Celgene, triggered by the above events were recognized as revenue during the three and nine months ended September 30, 2019.

9. Inventories

The following table summarizes inventories as of September 30, 2019 and December 31, 2018 (in thousands):

| | September 30, 2019 | December 31, 2018 |
|-----------------|-----------------------|----------------------|
| Work in process | \$ 808 | \$ 530 |
| Finished goods | 373 | 364 |
| Total | <u>\$ 1,181</u> | <u>\$ 894</u> |

10. Cash, Cash Equivalents and Short-Term Investments

Cash, cash equivalents and short-term investments consisted of the following (in thousands):

| | September 30, 2019 | December 31, 2018 |
|--|-----------------------|----------------------|
| Cash | \$ 1,637 | \$ 2,626 |
| Money market funds | 26,915 | 9,106 |
| U.S. treasury bills | 8,045 | — |
| Government-sponsored enterprise securities | 15,164 | 7,872 |
| Corporate bonds and commercial paper | 55,719 | 108,933 |
| | <u>\$ 107,480</u> | <u>\$ 128,537</u> |
| Reported as: | | |
| Cash and cash equivalents | \$ 39,093 | \$ 76,322 |
| Short-term investments | 68,387 | 52,215 |
| | <u>\$ 107,480</u> | <u>\$ 128,537</u> |

Cash equivalents and short-term investments include the following securities with gross unrealized gains and losses (in thousands):

| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
|--|-------------------|------------------------------|-------------------------------|-------------------|
| September 30, 2019 | | | | |
| U.S. treasury bills | \$ 8,040 | \$ 5 | \$ — | \$ 8,045 |
| Government-sponsored enterprise securities | \$ 15,159 | \$ 7 | \$ (1) | \$ 15,165 |
| Corporate bonds and commercial paper | 55,695 | 27 | (2) | 55,720 |
| Total | <u>\$ 78,894</u> | <u>\$ 39</u> | <u>\$ (3)</u> | <u>\$ 78,930</u> |
| December 31, 2018 | | | | |
| Government-sponsored enterprise securities | \$ 7,873 | \$ — | \$ (1) | \$ 7,872 |
| Corporate bonds and commercial paper | 108,957 | 2 | (26) | 108,933 |
| Total | <u>\$ 116,830</u> | <u>\$ 2</u> | <u>\$ (27)</u> | <u>\$ 116,805</u> |

As of September 30, 2019, our cash equivalents and short-term investments, which have contractual maturities within one year, had a weighted-average time to maturity of approximately 113 days. We view our short-term investments portfolio as available for use in current operations. We have the ability to hold all investments as of September 30, 2019 through their respective maturity dates. At September 30, 2019, we had no investments that had been in a continuous unrealized loss position for more than 12 months. As of September 30, 2019, a total of 13 individual securities had been in an unrealized loss position for 12 months or less, and the losses were determined to be temporary. The gross unrealized losses above were caused by interest rate increases. No significant facts or circumstances have arisen to indicate that there has been any significant deterioration in the creditworthiness of the issuers of the securities held by us. Based on our review of these securities, including the assessment of the duration and severity of the unrealized losses and our ability and intent to hold the investments until maturity, there were no other-than-temporary impairments for these securities at September 30, 2019.

The following table shows the fair value and gross unrealized losses of our investments in individual securities that are in an unrealized loss position, aggregated by investment category (in thousands):

| <u>September 30, 2019</u> | <u>Fair Value</u> | <u>Unrealized Losses</u> |
|--|-------------------|--------------------------|
| Government-sponsored enterprise securities | \$ 3,199 | \$ (1) |
| Corporate bonds and commercial paper | 18,762 | (2) |
| Total | <u>\$ 21,961</u> | <u>\$ (3)</u> |

11. Fair Value

Under FASB ASC 820, *Fair Value Measurements and Disclosures*, fair value is defined as the price at which an asset could be exchanged, or a liability transferred in a transaction between knowledgeable, willing parties in the principal or most advantageous market for the asset or liability. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or parameters are not available, valuation models are applied.

Assets and liabilities recorded at fair value in our financial statements are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels directly related to the amount of subjectivity associated with the inputs to fair valuation of these assets and liabilities, are as follows:

Level 1—Inputs are unadjusted, quoted prices in active markets for identical assets at the reporting date. Active markets are those in which transactions for the asset or liability occur in sufficient frequency and volume to provide pricing information on an ongoing basis.

The fair valued assets we hold that are generally included under this Level 1 are money market securities where fair value is based on publicly quoted prices.

Level 2—Inputs, other than quoted prices included in Level 1, that are either directly or indirectly observable for the asset or liability through correlation with market data at the reporting date and for the duration of the instrument's anticipated life.

The fair valued assets we hold that are generally assessed under Level 2 included government-sponsored enterprise securities, U.S. treasury bills and corporate bonds and commercial paper. We utilize third party pricing services in developing fair value measurements where fair value is based on valuation methodologies such as models using observable market inputs, including benchmark yields, reported trades, broker/dealer quotes, bids, offers and other reference data. We use quotes from external pricing service providers and other on-line quotation systems to verify the fair value of investments provided by our third-party pricing service providers. We review independent auditor's reports from our third-party pricing service providers particularly regarding the controls over pricing and valuation of financial instruments and ensure that our internal controls address certain control deficiencies, if any, and complementary user entity controls are in place.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities and which reflect management's best estimate of what market participants would use in pricing the asset or liability at the reporting date. Consideration is given to the risk inherent in the valuation technique and the risk inherent in the inputs to the model.

We do not have fair valued assets and liabilities classified under Level 3.

Fair Value on a Recurring Basis

Financial assets measured at fair value on a recurring basis are categorized in the tables below based upon the lowest level of significant input to the valuations (in thousands):

| | Assets at Fair Value as of September 30, 2019 | | | |
|--|---|------------------|-------------|-------------------|
| | Level 1 | Level 2 | Level 3 | Total |
| Money market funds | \$ 26,915 | \$ — | \$ — | \$ 26,915 |
| U.S. treasury bills | — | 8,045 | — | 8,045 |
| Government-sponsored enterprise securities | — | 15,165 | — | 15,165 |
| Corporate bonds and commercial paper | — | 55,720 | — | 55,720 |
| Total | \$ 26,915 | \$ 78,930 | \$ — | \$ 105,845 |

| | Assets at Fair Value as of December 31, 2018 | | | |
|--|--|-------------------|-------------|-------------------|
| | Level 1 | Level 2 | Level 3 | Total |
| Money market funds | \$ 9,106 | \$ — | \$ — | \$ 9,106 |
| Government-sponsored enterprise securities | — | 7,872 | — | 7,872 |
| Corporate bonds and commercial paper | — | 108,933 | — | 108,933 |
| Total | \$ 9,106 | \$ 116,805 | \$ — | \$ 125,911 |

12. Lease Agreements

We currently lease our research and office space under a noncancelable lease agreement with our landlord, HCP BTC, LLC (formerly known as Slough BTC, LLC) which was originally set to expire in 2018. The lease term provides for renewal option for up to two additional periods of five years each. In July 2017, we exercised our option to extend the term of our lease for another five years through January 2023 and modified the amount of monthly base rent during such renewal period.

In December 2014, we entered into a sublease agreement, which was amended in 2017, with an unrelated third party to occupy approximately 57,000 square feet of our research and office space. In February 2017, we entered into an amendment to the sublease agreement to increase the subleased research and office space for an additional 9,328 square feet under the same term of the sublease. Effective July 2017, the sublease agreement was amended primarily to extend the term of the sublease through January 2023 and modified the monthly base rent to equal the amount we will pay our landlord. Because the future sublease income under the extended sublease agreement is the same as the amount we will pay our landlord, we did not recognize any loss on sublease relative to this amendment. We expect to receive approximately \$15.1 million in future sublease income (excluding our subtenant's share of facilities operating expenses) through January 2023.

We adopted Topic 842 on January 1, 2019 using a modified retrospective approach and elected the transition method and the package of practical expedients permitted under the transition guidance, which allowed us to carryforward our historical lease classification and our assessment on whether a contract is or contains a lease. We also elected to combine lease and non-lease components, such as common area maintenance charges, as single lease, and elected to use the short-term lease exception permitted by the standard.

As a result of the adoption of Topic 842 on January 1, 2019, we recognized \$32.8 million in operating right-of-use asset and \$33.2 million in lease liability, and derecognized \$399,000 of deferred rent in the balance sheet at adoption date. These were calculated using the present value of our remaining lease payments using an estimated incremental borrowing rate of 9%, which represented the weighted average discount rate for our lease. There was no cumulative-effect adjustment on our accumulated deficit as of January 1, 2019. As of September 30, 2019, we had operating lease right-of-use asset of \$27.6 million and lease liability of \$28.4 million in the balance sheet. The weighted average remaining term of our lease as of September 30, 2019 was 3.33 years.

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For the three and nine months ended September 30, 2019, the components of our operating lease expense were as follows (in thousands):

| | Three Months Ended September 30, 2019 | Nine Months Ended September 30, 2019 |
|----------------------------------|---|--|
| Fixed operating lease expense | \$ 1,340 | \$ 3,908 |
| Variable operating lease expense | 242 | 620 |
| Total operating lease expense | <u>\$ 1,582</u> | <u>\$ 4,528</u> |

Supplemental information related to the Company's operating lease for the three and nine months ended September 30, 2019 were as follow (in thousands):

| | | |
|--|----------|----------|
| Cash payments included in the measurement of operating lease liabilities | \$ 2,338 | \$ 6,984 |
| Right-of-use asset obtained in exchange for operating lease obligations | — | — |

The following table presents the future lease payments of our operating lease liabilities as of September 30, 2019 (in thousands):

| | |
|-----------------------------------|------------------|
| Remainder of 2019 | \$ 2,338 |
| 2020 | 9,694 |
| 2021 | 10,082 |
| 2022 | 10,485 |
| 2023 | 877 |
| Total operating lease payments | 33,476 |
| Less: imputed interest | (5,042) |
| Total operating lease liabilities | <u>\$ 28,434</u> |

At the time of adoption, we did not have any additional significant lease that had not yet commenced.

For the three and nine months ended September 30, 2019, we have the following operating sublease information (in thousands):

| | Three Months Ended September 30, 2019 | Nine Months Ended September 30, 2019 |
|---------------------------|---|--|
| Fixed sublease expense | \$ 1,096 | \$ 3,286 |
| Variable sublease expense | 210 | 618 |
| Sublease income | (1,306) | (3,904) |
| Net | <u>\$ —</u> | <u>\$ —</u> |

The following table presents the future lease payments we expect to receive under our sublease as of September 30, 2019 (in thousands):

| | |
|-----------------------------------|------------------|
| Remainder of 2019 | \$ 1,051 |
| 2020 | 4,360 |
| 2021 | 4,534 |
| 2022 | 4,716 |
| 2023 | 394 |
| Total operating lease liabilities | <u>\$ 15,055</u> |

13. Debt

On September 27, 2019, we entered into a Credit and Security Agreement (Credit Agreement), dated as of September 27, 2019 (the Closing Date) with MidCap Financial Trust (MidCap). The Credit Agreement provides for a \$60.0 million term loan credit facility with the following tranches: (i) on the Closing Date, \$10.0 million aggregate principal amount of term loans, (ii) until December 31, 2020, an additional \$10.0 million term loan facility at our option, (iii) until March 31, 2021, an additional \$20.0 million term loan facility subject to the satisfaction of certain conditions and at our option and (iv) until March 31, 2022, an additional \$20.0 million term loan facility subject to the satisfaction of certain conditions and at our option. The obligations under the Credit Agreement are secured by a perfected security interest in all of our assets except for intellectual property and certain other customary excluded property pursuant to the terms of the Credit Agreement.

The outstanding principal balance of the loan bears interest at an annual rate of one-month LIBOR plus 5.65%, subject to a LIBOR floor of 1.50% and is payable monthly in arrears. Commencing on October 1, 2019, we initially will make interest-only payments for 24 months followed by 36 months of amortization payments. The interest-only period will be extended to 36 months and again to 48 months upon the satisfaction of certain conditions set forth in the Credit Agreement. All unpaid principal and accrued interest is due and payable no later than September 1, 2024. A final payment fee of 2.5% of principal is due on the final payment of the term loan.

We may make voluntary prepayments, in whole or in part, subject to certain prepayment premiums and additional interest payments. The Credit Agreement also contains certain provisions, such as event of default and change in control provisions, which, if triggered, would require us to make mandatory prepayments on the term loan, which are subject to certain prepayment premiums and additional interest payments.

As discussed above, at closing of the Credit Agreement, \$10.0 million was funded in an initial tranche. The facility also gives us the ability to access an additional \$50.0 million at our option, of which \$40.0 million is subject to the achievement of certain customary conditions. The following table presents the future minimum payments we expect to make on our outstanding loan as of September 30, 2019 (in thousands):

| <i>Year Ending December 31,</i> | |
|------------------------------------|------------------|
| 2019 (remainder) | \$ - |
| 2020 | - |
| 2021 | 556 |
| 2022 | 3,333 |
| 2023 | 3,333 |
| 2024 | 2,778 |
| Principal amount (initial tranche) | <u>\$ 10,000</u> |

We paid certain costs and fees totaling \$211,000 which were recorded as a direct deduction from the term loan on the balance sheet and are being amortized ratably as interest expense over the term of the loan, using the effective interest method. As of September 30, 2019, the unamortized issuance costs and debt discounts amounted to \$211,000.

Interest expense, including amortization of the debt discount, related to the Credit Agreement was \$8,000 for the three and nine months ended September 30, 2019. Accrued interest was \$7,000 as of September 30, 2019. As of September 30, 2019, the outstanding balance of the loan was \$9.8 million, inclusive of accrual of the final payment fees and net unamortized debt discount.

The Credit Agreement contains certain covenants which, among others, require us to deliver financial reports at designated times of the year and maintain minimum net revenues and \$10.0 million of cash upon the draw of tranche three or tranche four. As of September 30, 2019, we were not in violation of any covenants.

14. Subsequent Events

In October 2019, we entered into exclusive commercialization license agreements with Medison Pharma to commercialize fostamatinib in all potential indications in Canada and Israel and we received an upfront payment of \$5 million, which included an advanced royalty payment.

In October 2019, we announced that the Committee for Medicinal Products for Human Use (CHMP) of the EMA, has adopted a positive trend vote on the Marketing Authorization Application (MAA). The indication for the positive trend vote is for the treatment of chronic immune thrombocytopenia in adult patients who are refractory to other treatments. The CHMP intends to hold a final vote on their recommendation at their November meeting. Pending a formal positive CHMP opinion, the European Commission, which has the authority to approve medicines for use in Europe, would be expected to render their decision approximately 60 days after the opinion is received. Such an approval could enable a product launch in initial European markets in early 2020. Under our agreement with Grifols, we will receive a \$20.0 million payment from Grifols upon approval from the EMA for fostamatinib in chronic ITP.

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

This discussion and analysis should be read in conjunction with our financial statements and the accompanying notes included in this report and the audited financial statements and accompanying notes included in our Annual Report on Form 10-K for the year ended December 31, 2018. Operating results for the nine months ended September 30, 2019 are not necessarily indicative of results that may occur in future interim periods or for the full fiscal year.

This Quarterly Report on Form 10-Q contains statements indicating expectations about future performance and other forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, that involve risks and uncertainties. We usually use words such as “may,” “will,” “should,” “could,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “intend,” or the negative of these terms or similar expressions to identify these forward-looking statements. These statements appear throughout this Quarterly Report on Form 10-Q and are statements regarding our current expectation, belief or intent, primarily with respect to our operations and related industry developments. Examples of these statements include, but are not limited to, statements regarding the following: our business and scientific strategies; risks and uncertainties associated with the commercialization and marketing of TAVALISSE; risks that the FDA, EMA or other regulatory authorities may make adverse decisions regarding fostamatinib; the progress of our and our collaborators’ product development programs, including clinical testing, and the timing of results thereof; our corporate collaborations and revenues that may be received from our collaborations and the timing of those potential payments; our expectations with respect to regulatory submissions and approvals; our drug discovery technologies; our research and development expenses; protection of our intellectual property; sufficiency of our cash and capital resources and the need for additional capital; and our operations and legal risks. You should not place undue reliance on these forward-looking statements. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including as a result of the risks and uncertainties discussed under the heading “Risk Factors” in Item 1A of Part II of this Quarterly Report on Form 10-Q. Any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

Overview

We are a biotechnology company dedicated to discovering, developing and providing novel small molecule drugs that significantly improve the lives of patients with immune and hematologic disorders, cancer and rare diseases. Our pioneering research focuses on signaling pathways that are critical to disease mechanisms. Our first FDA approved product is TAVALISSE® (fostamatinib disodium hexahydrate), an oral SYK inhibitor, for the treatment of adult patients with chronic ITP who have had an insufficient response to a previous treatment. Our current clinical programs include a Phase 3 study of fostamatinib in autoimmune hemolytic anemia (AIHA), a Phase 1 study of R835, a proprietary molecule from our interleukin receptor associated kinase (IRAK) program and a Phase 1 study of R552, a proprietary molecule from our receptor interacting protein 1 (RIP1) program. In addition, we have product candidates in development with partners BerGenBio, Daiichi, Aclaris, and Astra Zeneca.

Business Updates

In April 2018, we received FDA approval of our first product TAVALISSE®, an oral SYK inhibitor, for the treatment of adult patients with chronic immune thrombocytopenia who have had an insufficient response to a previous treatment. TAVALISSE was launched in the U.S. on May 29, 2018. For the three months ended September 30, 2019, we reported \$11.7 million in net product sales of TAVALISSE. Net product sales increased by approximately \$1.5 million or 15% in the third quarter of 2019 compared to the second quarter of 2019, which was driven, in part, by continued uptake and use of the product as an early treatment option in steroid refractory patients, as well as strong continuation of therapy among patients. With our fully integrated commercial team consisting of sales, marketing, market access, and

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commercial operations functions, we continue to execute on our commercial strategy to access the U.S. ITP market, which is estimated to be over \$1.0 billion annually as of 2019.

Execution of our global strategy for commercialization of fostamatinib outside of the U.S. has made significant progress. Our recent commercial collaborations with Kissei and Grifols lay the groundwork for us to advance fostamatinib globally and to access the worldwide ITP market, which is estimated to be over \$1.8 billion annually as of 2019. Kissei is a leading Japanese pharmaceutical company with significant development experience and a track record of commercial success in Asian markets. Grifols is one of the largest intravenous immunoglobulin (IVIG) providers globally and has established relationships with European hematologists and hematologist/oncologists, as well as a distribution infrastructure across the E.U.

In October 2018, we entered into an exclusive license and supply agreement with Kissei to develop and commercialize fostamatinib in all current and potential indications in Japan, China, Taiwan and the Republic of Korea. Under the agreement, we received an upfront payment of \$33.0 million with the potential for up to \$147 million in development, regulatory and commercial milestone payments. We will also receive product transfer price payments in the mid to upper twenty percent range based on tiered net sales for the exclusive supply of fostamatinib to Kissei.

In January 2019, we entered into an exclusive license agreement with Grifols to commercialize fostamatinib in all indications, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. Under the agreement, we received an upfront payment of \$30.0 million, with the potential for \$297.5 million in total regulatory and commercial milestones, which includes a \$20.0 million payment upon approval from the EMA for fostamatinib in chronic ITP. We will also receive stepped double-digit royalty payments based on tiered net sales which may reach 30% of net sales. In the event that, in 2021, after the second anniversary of the agreement, fostamatinib has not been approved by the EMA for the treatment of ITP in Europe, Grifols will have the option, during a six-month time-frame, to terminate the entire agreement which would terminate all their rights to ITP, AIHA, and all other indications. In this limited circumstance, we will pay Grifols \$25.0 million and regain all rights to fostamatinib in Europe and other territories. We retain the global rights to fostamatinib outside of the Kissei, Grifols and Medison Pharma Ltd. (Medison) territories.

In May 2019, we enrolled the first patient in a pivotal Phase 3 clinical trial of fostamatinib in warm antibody autoimmune hemolytic anemia (AIHA). The clinical trial protocol calls for approximately 80 patients in a 24-week study, and we expect to report topline results in mid 2021. Results from our recent Phase 2 trial suggest that fostamatinib could potentially be an effective treatment option. Clinical trial sites for our pivotal study are open and have begun to enroll patients. For the site selection process, we are leveraging the locations and relationships from our Phase 3 trial in chronic ITP. Additionally, in January 2018, the FDA awarded Orphan Drug Designation to fostamatinib for the treatment of warm AIHA.

In September 2019, we entered into a Credit Agreement with MidCap for a \$60.0 million term loan facility. At closing, \$10.0 million was funded in an initial tranche. The facility also gives us the ability to access an additional \$50.0 million at our option, of which \$40.0 million is subject to the achievement of certain customary conditions.

In October 2019, Rigel entered into exclusive commercialization license agreements with Medison to commercialize fostamatinib in all potential indications in Canada and Israel. We received an upfront payment of \$5.0 million, which included an advanced royalty payment.

In October 2019, we announced that the CHMP of the EMA, has adopted a positive trend vote on the MAA. The indication for the positive trend vote is for the treatment of chronic immune thrombocytopenia in adult patients who are refractory to other treatments. The CHMP intends to hold a final vote on their recommendation at their November meeting. Pending a formal positive CHMP opinion, the European Commission, which has the authority to approve medicines for use in Europe, would be expected to render their decision approximately 60 days after the opinion is received. Such an approval could enable a product launch in initial European markets in early 2020. Under our agreement with Grifols, we will receive a \$20.0 million payment from Grifols upon approval from the EMA for fostamatinib in chronic ITP.

Liquidity and Capital Resources

Since inception, we have financed our operations primarily through the sale of equity securities and contract payments under our collaboration agreements. In September 2019, we entered into a \$60.0 million term loan credit facility with MidCap and drew down \$10.0 million, and we received a \$4.0 million development milestone payment from Aclaris for the achievement of a certain event in accordance with our collaboration agreement, dated August 27, 2015. In October 2019, we received a \$5.0 million upfront payment from Medison under our commercialization license agreement. Our commercialization of TAVALISSE, research and development activities, including preclinical studies and clinical trials, consume substantial amounts of capital. As of September 30, 2019, we had approximately \$107.5 million in cash, cash equivalents and short-term investments. We believe that our existing capital resources will be sufficient to support our current and projected funding requirements, including our ongoing commercialization of TAVALISSE in the U.S., through at least the next 12 months from the Form 10-Q filing date.

Our revenues have consisted of product sales from TAVALISSE and milestone and other payments from sponsored research and license agreements with our corporate partners and collaborators. Our potential future revenues may include product sales from TAVALISSE, and payments from our current partners and from new partners with whom we enter into agreements with in the future, if any, the timing and amount of which is unknown at this time.

Change in Management

In October 2019, we announced the appointment of Wolfgang Dummer as our new executive vice president and chief medical officer. Dr. Dummer has more than 20 years of clinical and drug development experience at world class institutions, as well as an extensive academic history. Most recently, he served as Chief Medical Officer at Aridis Pharmaceuticals, Inc. where he was responsible for overseeing all aspects of drug development in the field of antimicrobial immunotherapy. Prior to that, he served as Vice President of Clinical Development at BioMarin Pharmaceutical Inc. where he led the development of a deep rare disease pipeline, including the company's leading marketed product, Vimizim (elosulfase alpha). Prior to Biomarin, Dr. Dummer served for 11 years in capacities of increasing importance in Clinical Research and Development at Genentech, Inc. (now part of Roche), overseeing numerous programs, including Rituximab. Dr. Dummer is a board-certified clinical dermatologist and allergist/immunologist. Over the course of his career, he has published more than 50 peer reviewed journal articles and has more than 40 abstracts, presentations, and book contributions.

Our Product Portfolio

The following table summarizes our portfolio:

| Pipeline | Indication | Target | Pre-Clinical | Phase 1 | Phase 2 | Phase 3 | NDA/MAA Filing | Commercial | Developing Product |
|------------------------------------|-------------------|---------|--------------|---------|---------|---------|----------------|------------|--------------------|
| Commercialized | | | | | | | | | |
| TAVALISSE | Adult Chronic ITP | SYK | | | | | | | ngel |
| Global Markets | | | | | | | | | |
| Fostamatinib (Europe) | Adult Chronic ITP | SYK | | | | | | | GRIFOLS |
| Fostamatinib (Japan/Asia) | Adult Chronic ITP | SYK | | | | | | | KISSEI |
| Fostamatinib (Canada/Israel) | Adult Chronic ITP | SYK | | | | | | | MEDISON |
| Clinical Trials¹ | | | | | | | | | |
| TAVALISSE | Warm AIHA | SYK | | | | | | | ngel |
| BG83234 | Cancer | AXL | | | | | | | BerGenBio |
| R548 (ATI-501 & 502) | Dermatology | JAK | | | | | | | Aclaris |
| R835 | Immune Diseases | IRAK1/4 | | | | | | | ngel |
| DS-3032 | Cancer | MDM2 | | | | | | | Daiichi-Sankyo |
| AZ-D0449 | Chronic Asthma | JAK | | | | | | | AstraZeneca |
| R552 | Immune Diseases | RIP1 | | | | | | | ngel |

Product in Commercial Launch

TAVALISSE in ITP

Disease background. Chronic ITP affects an estimated 68,300 adult patients in the U.S. In patients with ITP, the immune system attacks and destroys the body’s own blood platelets, which play an active role in blood clotting and healing. ITP patients can suffer extraordinary bruising, bleeding and fatigue as a result of low platelet counts. Current therapies for ITP include steroids, platelet production boosters that imitate thrombopoietin (TPOs) and splenectomy.

Orally-available fostamatinib program. Taken in tablet form, fostamatinib blocks the activation of SYK inside immune cells. ITP is typically characterized by the body producing antibodies that attach to healthy platelets in the blood stream. Immune cells recognize these antibodies and affix to them, which activates the SYK enzyme inside the immune cell, and triggers the destruction of the antibody and the attached platelet. When SYK is inhibited by fostamatinib, it interrupts this immune cell function and allows the platelets to escape destruction. The results of our Phase 2 clinical trial, in which fostamatinib was orally administered to sixteen adults with chronic ITP, published in *Blood*, showed that fostamatinib significantly increased the platelet counts of certain ITP patients, including those who had failed other currently available agents.

We designed a Phase 3 clinical program, called fostamatinib in thrombocytopenia (FIT), in which a total of 150 ITP patients were randomized into two identical multi-center, double-blind, placebo-controlled clinical trials. The patients were diagnosed with persistent or chronic ITP, and had blood platelet counts consistently below 30,000 per microliter of blood with a mean platelet count of 16,000 per microliter of blood. Two-thirds of the subjects received fostamatinib orally at 100 mg bid (twice daily) and the other third received placebo on the same schedule. Subjects were expected to remain on treatment for up to 24 weeks. At week four of treatment, subjects who failed to meet certain platelet count and met certain tolerability thresholds could have their dosage of fostamatinib (or corresponding placebo) increased to 150 mg bid. The primary efficacy endpoint of this program was a stable platelet response by week 24 with platelet counts at or above 50,000 per microliter of blood for at least four of the final six qualifying blood draws. In August 2015, the FDA granted our request for Orphan Drug designation for fostamatinib for the treatment of ITP.

On August 30, 2016, we announced the results of the first study, reporting that fostamatinib met the study’s primary efficacy endpoint. The study showed that 18% of patients receiving fostamatinib achieved a stable platelet response compared to none receiving a placebo control (p=0.0261). On October 20, 2016, we announced the results of the second study, reporting that the response rate was 18%, consistent with the first study. However, one patient in the placebo group (4%) achieved a stable platelet response, therefore the difference between those on treatment and those on placebo did not reach statistical significance (p=0.152) and the study did not meet its primary endpoint. Using the most

conservative sensitivity analysis, rather than the protocol's prespecified analysis, one more patient in the second study is considered a non-responder, resulting in 8 of 50 (16%) responders on fostamatinib ($p = 0.256$ vs. placebo). When the data from both studies are combined, however, this difference is statistically significant ($p=0.007$).

Patients from the FIT studies were given the option to enroll in a long-term open-label extension study and receive treatment with fostamatinib, also a Phase 3 trial. A total of 123 patients enrolled in this study. All the patients who responded to fostamatinib in the FIT studies and enrolled in the long-term open-label extension study maintained a median platelet count of 106,500/uL at a median of 16 months. In addition, there were 44 placebo non-responders that enrolled in the long-term open-label extension study. 41 of these patients had at least 12 weeks of follow-up. Of those, 9 patients (22%) have achieved a prospectively defined stable platelet response, which is statistically significant ($p=0.0078$) and similar to the response rate fostamatinib achieved in the parent studies.

A stable response was defined as a patient achieving platelet counts of greater than 50,000/uL on more than 4 of the 6 visits between weeks 14 and 24, without rescue medication. In the post-study analysis we performed, a clinically-relevant platelet response was defined to include patients achieving one platelet count over 50,000/uL during the first 12 weeks of treatment, in absence of rescue medication, but who did not otherwise meet the stable response criteria. Once the platelet count of greater than 50,000/uL is achieved, a loss of response was defined as two consecutive platelet counts of less than 30,000/uL in any subsequent visits. In the combined dataset of both stable and clinically-relevant platelet responders for the FIT studies, the response rate was 43% (43/101), compared to 14% (7/49) for placebo ($p=0.0006$).

The most frequent adverse events were gastrointestinal-related, and the safety profile of the product was consistent with prior clinical experience, with no new or unusual safety issues uncovered.

On April 17, 2018, we announced that the FDA had approved TAVALISSE for the treatment of adult patients with chronic ITP who have had an insufficient response to a previous treatment. On April 30, 2018, we announced that the American Journal of Hematology published positive results from the FIT Phase 3 clinical program. We launched TAVALISSE in the U.S. on our own in May 2018. In October 2018, we announced that the EMA has validated the MAA for fostamatinib in adult chronic immune thrombocytopenia, which initiated the MAA review process. We anticipate a decision from the CHMP of the EMA by the fourth quarter of 2019.

In October 2019, we announced that the CHMP of the EMA, has adopted a positive trend vote on the MAA. The indication for the positive trend vote is for the treatment of chronic immune thrombocytopenia in adult patients who are refractory to other treatments. The CHMP intends to hold a final vote on their recommendation at their November meeting. Pending a formal positive CHMP opinion, the European Commission, which has the authority to approve medicines for use in Europe, would be expected to render their decision approximately 60 days after the opinion is received. This could enable a product launch in initial European markets in early 2020.

Commercial launch activities, including sales and marketing

A significant portion of our operating expenses in the three and nine months ended September 30, 2019 were related to our commercial launch activities for TAVALISSE. Specifically, our marketing and sales efforts are focused on targeting hematologists and hematologist-oncologists in the United States, who manage chronic adult ITP patients.

We have a fully integrated commercial team consisting of sales, marketing, market access, and commercial operations functions. Our sales team promotes TAVALISSE in the U.S. wherein, in the ordinary course of the business, we use customary pharmaceutical company practices to market our products in the U.S. and concentrate our efforts on hematologists and hematologists-oncologists. TAVALISSE is sold initially through third-party wholesale distribution and specialty pharmacy channels and group purchasing organizations before being ultimately prescribed to patients. To facilitate our commercial activities in the U.S., we also enter into arrangements with various third-parties, including advertising agencies, market research firms and other market access and sales-support-related services as needed. We believe that our commercial team and distribution practices are adequate to ensure that our marketing efforts reach our target customers and deliver our products to patients in a timely and compliant fashion. Also, to help ensure that all

eligible patients in the U.S. have appropriate access to TAVALISSE, we have established a comprehensive reimbursement and patient support program called RIGEL ONECARE (ROC). Through ROC, we provide co-pay assistance to qualified, commercially insured patients to help minimize out-of-pocket costs and provide free drug to uninsured or under-insured patients who meet certain clinical and financial criteria. In addition, ROC is designed to provide comprehensive reimbursement support services, such as prior authorization support, benefits investigation and appeals support.

Competitive landscape for TAVALISSE

Our industry is intensely competitive and subject to rapid and significant technological change. TAVALISSE is competing with other existing therapies. In addition, a number of companies are pursuing the development of pharmaceuticals that target the same diseases and conditions that we are targeting. For example, there are existing therapies and drug candidates in development for the treatment of ITP that may be alternative therapies to TAVALISSE.

Currently, corticosteroids remain the most common first line therapy for ITP, occasionally in conjunction with intravenous immunoglobulin (IVIg) or anti-Rh(D) to help further augment platelet count recovery, particularly in emergency situations. However, it has been estimated that frontline agents lead to durable remissions in only a small percentage of newly-diagnosed adults with ITP. Moreover, concerns with steroid-related side effects often restrict therapy to approximately four weeks. As such, many patients progress to persistent or chronic ITP, requiring other forms of therapeutic intervention. In long-term treatment of chronic ITP, patients are often cycled through several therapies over time in order to maintain a sufficient response to the disease.

Other approaches to treat ITP are varied in their mechanism of action, and there is no consensus about the sequence of their use, according to the most recent ITP guideline from the American Society of Hematology. Options include splenectomy, TPO receptor agonists (TPO-RAs) and various immunosuppressants (such as rituximab). The response rate criteria of the above-mentioned options vary, precluding a comparison of response rates for individual therapies.

Even with the above treatment options, a significant number of patients remain severely thrombocytopenic for long durations and are subject to risk of spontaneous or trauma-induced hemorrhage. The addition of fostamatinib to the treatment options could be beneficial since it has a different mechanism of action than any of the therapies that are currently available. Fostamatinib is a potent and relatively selective SYK inhibitor, and its inhibition of Fc receptors and B-cell receptors of signaling pathways make it a potentially broad immunomodulatory agent.

Other products in the U.S. that are approved by the FDA to increase platelet production through binding and TPO receptors on megakaryocyte precursors include PROMACTA® (Novartis), Nplate® (Amgen, Inc.) and DOPTELET® (Dova Pharmaceuticals).

Fostamatinib in Global Markets

Fostamatinib in Europe/Turkey

In January 2019, we entered into an exclusive commercialization license agreement with Grifols to commercialize fostamatinib for the treatment, palliation, or prevention of human diseases, including chronic or persistent ITP, AIHA, and IgAN in Europe and Turkey. Pursuant to the terms of the license agreement, Grifols received exclusive rights to commercialize, and non-exclusive rights to develop, fostamatinib in Europe and Turkey.

We are responsible for performing and funding certain development activities for fostamatinib for ITP and AIHA in Europe and Turkey and Grifols is responsible for all other development activities for fostamatinib in such territory. We will retain the global rights to fostamatinib outside the Grifols territories and those rights previously granted to Kissei. In connection with the agreement, we will enter into a supply agreement with Grifols pursuant to which we will provide commercial inventory products in the future to Grifols for use under the license agreement.

Under the terms of the agreement, we received an upfront cash payment of \$30.0 million and will be eligible to receive regulatory and commercial milestones of up to \$297.5 million, which includes a \$17.5 million payment for EMA approval of fostamatinib for the first indication, currently anticipated to be for the treatment of chronic ITP, and a \$2.5 million creditable advance royalty payment due upon EMA approval of fostamatinib in the first indication. We will also receive tiered royalty payments ranging from the mid-teens to 30% of net sales of fostamatinib in Europe and Turkey. In return, Grifols receives exclusive rights to fostamatinib in human diseases, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. In the event that, in 2021, after the second anniversary of the agreement, fostamatinib has not been approved by the EMA for the treatment of ITP in Europe, Grifols will have the option, during a six-month time-frame, to terminate the entire agreement which would terminate all their rights to ITP, AIHA, and all other indications. In this limited circumstance, we will pay Grifols \$25.0 million and regain all rights to fostamatinib in Europe and other territories. We retain the global rights to fostamatinib outside of the Kissei, Grifols and Medison territories.

On October 18, 2019, we announced that the CHMP of the EMA, has adopted a positive trend vote on the MAA. The indication for the positive trend vote is for the treatment of chronic immune thrombocytopenia in adult patients who are refractory to other treatments. The CHMP intends to hold a final vote on their recommendation at their November meeting. Pending a formal positive CHMP opinion, the European Commission, which has the authority to approve medicines for use in Europe, would be expected to render their decision approximately 60 days after the opinion is received. This could enable a product launch in initial European markets in early 2020.

Fostamatinib in Japan/Asia

In October 2018, we entered into an exclusive license and supply agreement with Kissei to develop and commercialize fostamatinib in all current and potential indications in Japan, China, Taiwan and the Republic of Korea. Kissei is a Japan-based pharmaceutical company addressing patients' unmet medical needs through its research, development and commercialization efforts, as well as through collaborations with partners.

Under the terms of the agreement, we received an upfront cash payment of \$33.0 million, with the potential for an additional \$147.0 million in development and commercial milestone payments, and will receive product transfer price payments in the mid to upper twenty percent range based on tiered net sales for the exclusive supply of fostamatinib. We granted Kissei exclusive rights to fostamatinib in ITP and all future indications in Japan, China, Taiwan, and the Republic of Korea, and are obligated to supply Kissei with drug product for use in clinical trials and pre-commercialization activities. We retain the global rights outside of the Kissei and Grifols territories.

Kissei will initially seek local country approval for fostamatinib in ITP and is conducting a Phase 3 clinical study as required by Japan's Pharmaceuticals and Medical Devices Agency. Japan has the third highest prevalence of chronic ITP in the world behind the U.S. and EU.

Fostamatinib in Canada/Israel

In October 2019, we entered into exclusive commercialization license agreements with Medison Pharma to commercialize fostamatinib in all potential indications in Canada and Israel and we received an upfront payment of \$5 million, which included an advanced royalty payment.

Clinical Stage Programs

Fostamatinib—AIHA

Disease background. AIHA is a rare, serious blood disorder where the immune system produces antibodies that result in the destruction of the body's own red blood cells. Symptoms can include fatigue, shortness of breath, rapid heartbeat, jaundice or enlarged spleen. While no medical treatments are currently approved for AIHA, physicians generally treat acute and chronic cases of the disorder with corticosteroids, other immuno-suppressants, or splenectomy.

Research has shown that inhibiting SYK with fostamatinib may reduce the destruction of red blood cells. This disorder affects an estimated 40,000 Americans, for whom no approved treatment options currently exist.

Orally available fostamatinib program. We have completed our Phase 2 clinical trial, also known as SOAR study, in patients with warm AIHA. This was an open-label, multi-center, two-stage study to evaluate the efficacy and safety of fostamatinib in patients with warm AIHA who have previously received treatment for the disorder, but have relapsed. The trial enrolled 23 patients (21 patients evaluable for efficacy) who received 150 mg of fostamatinib orally twice a day for a period of 12 weeks, with an option of entering into a long-term extension study. The patients returned to the clinic every two weeks for blood draws and medical assessment. The primary efficacy endpoint of this study was to achieve increased hemoglobin levels by week 12 of greater than 10 g/dL, and greater than or equal to 2 g/dL higher than baseline.

In December 2018, we announced that, on a top-line basis, of the 21 evaluable warm AIHA patients enrolled in the Phase 2 study, nine of 21 (43%) achieved the primary efficacy endpoint by Week 24, plus one late responder at Week 30. Increases in Hgb were generally detected at Week 2 (first visit) and sustained over time. Median Hgb of responders increased by >2.0 g/dL from baseline by Week 4 vs. no change for nonresponders. Adverse events were manageable and consistent with those previously reported with fostamatinib in other conditions.

We have begun enrolling patients in our Phase 3 trial for the treatment of warm AIHA also known as Fostamatinib Research in Warm Antibody AIHA Disease (FORWARD). This is a placebo-controlled study of approximately 80 patients with primary or secondary warm AIHA who have failed at least one prior treatment. The primary endpoint will be a durable hemoglobin response by week 24, defined as Hgb > 10 g/dL and > 2 g/dL greater than baseline and durability response, with the response not being attributed to rescue therapy. The study is currently enrolling patients and we expect topline results in mid-2021.

In January 2018, the FDA granted our request for Orphan Drug designation for fostamatinib for the treatment of AIHA.

R835, an IRAK1/4 Inhibitor for Autoimmune and Inflammatory Diseases

Orally Available IRAK 1/4 Inhibitor Program. During the second quarter of 2018, we selected R835, a proprietary molecule from our IRAK preclinical development program, for human clinical trials. This investigational candidate, R835, is an orally available, potent and selective inhibitor of IRAK1 and IRAK4 that blocks inflammatory cytokine production in response to toll-like receptor (TLR) and the interleukin-1 (IL-1R) family receptor signaling. TLRs and IL-1Rs play a critical role in the innate immune response and dysregulation of these pathways can lead to a variety of inflammatory conditions including psoriasis, rheumatoid arthritis, inflammatory bowel disease and gout (among others). R835 prevents cytokine release in response to TLR and IL-1R activation in vitro. R835 is active in multiple rodent models of inflammatory disease including psoriasis, arthritis, lupus, multiple sclerosis and gout. Preclinical studies show that R835 inhibits both the IRAK1 and IRAK4 signaling pathways, which play a key role in inflammation and immune responses to tissue damage. Dual inhibition of IRAK1 and IRAK4 allows for more complete suppression of pro-inflammatory cytokine release.

We initiated a Phase 1 study to assess safety, tolerability, pharmacokinetics and pharmacodynamics of R835 in healthy subjects in the second quarter of 2018. The Phase 1 study was a randomized, placebo-controlled, double-blind trial in 91 healthy subjects, ages 18 to 55. The study was designed to assess the tolerability and safety of R835 in both single ascending and multiple ascending doses. We completed a Phase 1 clinical trial of IRAK 1/4 inhibitor, R835, which showed inhibition of cytokine production in a proof-of-mechanism study done in-humans, and also showed tolerability and a good PK profile, supporting continued development of the molecule.

Partnered Clinical Programs

R548 (ATI-501 and ATI-502) - Aclaris

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Aclaris is developing ATI-501 and ATI-502, an oral and topical JAK 1/3 inhibitor. ATI- 501 is being developed as an oral treatment for patients with alopecia areata (AA), including the more severe forms of AA that result in total scalp hair loss, known as alopecia totalis (AT), and total hair loss on the scalp and body, known as alopecia universalis (AU). In July 2019, Aclaris announced that the Phase 2 clinical trial of ATI-501 oral (AUAT-201) in patients with AA met its primary endpoint.

In December 2018, the company also reported on the enrollment and/or results for a number of Phase 2 studies with ATI-502 for the topical treatment of AA and Vitiligo, including results from its AUATB-201 study. In June 2019, the company reported positive results from its Phase 2 clinical trial of ATI-502 topical (AGA-201) in patients with androgenetic alopecia (AGA), a condition commonly known as male/female-pattern baldness. There were no treatment-related serious adverse events. Later in June 2019, Aclaris reported that its Phase 2 clinical trial of ATI-502 topical (AA-201) in patients with AA did not meet its endpoints. ATI-502 was observed to be generally well-tolerated. Adverse events were primarily mild or moderate in severity. No treatment-related serious adverse events were reported.

BGB324 - BerGenBio

BerGenBio is conducting Phase 1/2 studies with BGB324 (bemcentinib), a first-in-class selective AXL kinase inhibitor, as a single agent in relapsed acute myeloid leukemia (AML) and myelodysplastic syndrome (MDS); and in combination with erlotinib (Tarceva®) in advanced (EGFR-positive) non-small-cell lung carcinoma. BerGenBio is also conducting Phase 2 studies with BGB324 in combination with KEYTRUDA® (pembrolizumab) in non-small cell adenocarcinoma of the lung and triple negative breast cancer in collaboration with another company.

In October 2018, BerGenBio announced that the first patient had been dosed in the second stage of the Phase 2 studies in BGB324 in combination with KEYTRUDA®. In June 2019, the company reported results from its combination study with KEYTRUDA in advanced NSCLC patients, which showed 12-month survival data surpassing historical benchmarks in second-line treatment with PD-1 inhibitor monotherapy. The combination treatment was well tolerated.

DS-3032 - Daiichi

DS-3032 is an investigational oral selective inhibitor of the murine double minute 2 (MDM2) protein currently being investigated by Daiichi in three Phase 1 clinical trials for solid and hematological malignancies including AML and MDS.

Preliminary safety and efficacy data from a Phase 1 study of DS-3032 suggests that DS-3032 may be a promising treatment for hematological malignancies including relapsed/refractory AML and high-risk MDS. Evaluation of additional dosing schedules of DS-3032 is underway and combination studies with fostamatinib are currently being conducted by Daiichi.

AZ-D0449 – AZ

AstraZeneca AB (AZ) is currently conducting a Phase 1 study in healthy volunteers and patients with mild asthma to investigate the safety, anti-inflammatory effect of inhaled AZ-D0449. The study, which follows the single and multiple ascending doses, is currently recruiting patients.

Research/Preclinical Programs

We are conducting proprietary research in the broad disease areas of inflammation/immunology, immuno-oncology and cancers. Within each disease area, our researchers are investigating mechanisms of action as well as screening compounds against potential novel targets and optimizing those leads that appear to have the greatest potential.

Commercialization and Sponsored Research and License Agreements

We conduct research and development programs independently and in connection with our corporate collaborators. As of September 30, 2019, we are a party to collaboration agreements with ongoing performance obligations, with Kissei for the development and commercialization of fostamatinib in all current and potential indications in Japan, China, Taiwan and the Republic of Korea, with Grifols to commercialize fostamatinib in all indications, including chronic ITP, AIHA, and IgAN, in Europe and Turkey and with Medison Pharma to commercialize fostamatinib in all potential indications in Canada and Israel. As of September 30, 2019, we are also a party to collaboration agreements, but do not have ongoing performance obligations with Aclaris for the development and commercialization of JAK inhibitors for the treatment of alopecia areata and other dermatological conditions, AZ for the development and commercialization of R256, an inhaled JAK inhibitor, BerGenBio for the development and commercialization of AXL inhibitors in oncology, and Daiichi to pursue research related to MDM2 inhibitors, a novel class of drug targets called ligases.

License and Supply Agreement with Kissei

In October 2018, we entered into an exclusive license and supply agreement with Kissei to develop and commercialize fostamatinib in all current and potential indications in Japan, China, Taiwan and the Republic of Korea. Kissei is responsible for performing and funding all development activities for fostamatinib in the above-mentioned territories. We received an upfront cash payment of \$33.0 million with the potential for up to an additional \$147.0 million in development, regulatory and commercial milestone payments, and will receive mid to upper twenty percent, tiered, escalated net sales-based payments for the supply of fostamatinib. Under the agreement, we granted Kissei the license rights on fostamatinib on the territories above, and are obligated to supply Kissei with drug product for use in clinical trials and pre-commercialization activities. We are also responsible for the manufacture and supply of fostamatinib for all future development and commercialization activities under the agreement.

License Agreement with Grifols

In January 2019, we entered into an exclusive license agreement with Grifols to commercialize fostamatinib in all indications, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. Under the agreement, we received an upfront payment of \$30.0 million, with the potential for \$297.5 million in total regulatory and commercial milestones, which included a \$20.0 million payment upon approval from the EMA for fostamatinib in chronic ITP. We will also receive stepped double-digit royalty payments based on tiered net sales which may reach 30% of net sales. In return, Grifols will receive exclusive rights to fostamatinib in human diseases, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. In the event that, in 2021, after the second anniversary of the agreement, fostamatinib has not been approved by the EMA for the treatment of ITP in Europe, Grifols will have the option, during a six-month time-frame, to terminate the entire agreement which would terminate all their rights to ITP, AIHA, and all other indications. In this limited circumstance, we will pay Grifols \$25.0 million and regain all rights to fostamatinib in Europe and other territories. The agreement also requires us to continue to conduct our long term open-label extension study on patients with ITP through EMA approval of ITP in Europe as well as conduct the Phase 3 trial in AIHA in the U.S. In connection with the agreement, we are under negotiation for a supply agreement with Grifols pursuant to which we will provide commercial inventory products in the future to Grifols for use under the license agreement.

Other license agreements

In September 2019, we received a \$4.0 million development milestone payment from Aclaris for the achievement of a certain event in accordance with the Rigel and Aclaris License and Collaboration Agreement dated August 27, 2015. In September 2019, we also earned \$3.8 million in a commercial launch milestone payment from Impact Biomedicines, Inc., which was subsequently acquired by Celgene. All deliverables under the agreement had been previously delivered, as such, the above payments of \$4.0 million from Aclaris and \$3.8 million from Celgene, triggered by the above events were recognized as revenue during the three and nine months ended September 30, 2019.

Results of Operations

Three and Nine Months Ended September 30, 2019 and 2018

Revenues

| | Three Months Ended September 30, | | Aggregate Change | Nine Months Ended September 30, | | Aggregate Change |
|--|-------------------------------------|-----------------|---------------------|------------------------------------|-----------------|---------------------|
| | 2019 | 2018 | | 2019 | 2018 | |
| | (in thousands) | | | (in thousands) | | |
| <i>Product sales, net</i> | \$ 11,716 | \$ 4,865 | \$ 6,851 | \$ 29,943 | \$ 6,652 | \$ 23,291 |
| <i>Contract revenues from collaborations</i> | 9,141 | — | 9,141 | 13,945 | — | 13,945 |
| Total revenues | \$ 20,857 | \$ 4,865 | \$ 15,992 | \$ 43,888 | \$ 6,652 | \$ 37,236 |

The following table summarizes revenues from each of our customers and collaboration partners who individually accounted for 10% or more of our total revenues (as a percentage of total revenues):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|------|------------------------------------|------|
| | 2019 | 2018 | 2019 | 2018 |
| ASD Healthcare and Oncology Supply | 28% | 58% | 34% | 53% |
| McKesson Specialty Care Distribution Corporation | 22% | 33% | 27% | 38% |
| Aclaris | 19% | — | 9% | — |
| Celgene | 18% | — | 9% | — |
| Grifols | 0% | — | 11% | — |

Product sales during the three and nine months ended September 30, 2019 and September 30, 2018 related to sales of TAVALISSE in the U.S. and represent increasing sales volume since we launched in May 2018. For the three and nine months ended September 30, 2019, the increase in product sales was mainly due to TAVALISSE sales volume increase of 109% and 309%, respectively, compared to the same periods in 2018. TAVALISSE has been prescribed across all lines of therapy in steroid refractory patients in ITP. It has been utilized by an increasing broad base of prescribers and community physicians, with growing early line use and continued strong refill rates.

We recognize product sales, net of discounts and allowances, that are described in “Note 3” to our “Notes to Condensed Financial Statements” contained in Part I, Item 1 of this Quarterly Report on Form 10-Q.

We recognized contract revenues of \$9.1 million and \$13.9 million during the three and nine months ended September 30, 2019, respectively, primarily related to the license and milestone revenues from our collaboration agreements with Aclaris and Celgene, as well as portions of the upfront fees from our collaboration agreements with Grifols and Kissei recognized as revenue from licenses and upon our performance of certain research and development services and supply of fostamatinib. There were no contract revenues from collaborations during the three and nine months ended September 30, 2018.

Our potential future revenues may include product sales from TAVALISSE, payments from our current partners and from new partners with whom we enter into agreements in the future, if any, the timing and amount of which is unknown at this time. As of September 30, 2019, we had deferred revenues of \$26.8 million which we will recognize as revenue upon satisfaction of our remaining performance obligations under our collaboration agreements with Grifols and Kissei.

Cost of Product Sales

| | Three Months Ended | | Aggregate Change | Nine Months Ended | | Aggregate Change |
|------------------------------|--------------------|------------------------|---------------------|-------------------|------------------------|---------------------|
| | September 30, | | | September 30, | | |
| | 2019 | 2018 (in thousands) | | 2019 | 2018 (in thousands) | |
| Cost of product sales | \$ 310 | \$ 69 | \$ 241 | \$ 728 | \$ 99 | \$ 629 |

We recognized \$310,000 and \$728,000 in cost of product sales during the three and nine months ended September 30, 2019 related to our product, TAVALISSE. Prior to the FDA approval, manufacturing and related costs were charged to research and development expense. Therefore, these costs were not capitalized and as a result, are not fully reflected in the costs of product sales during the three and nine months ended September 30, 2019. We will continue to have a lower cost of product sales that excludes the cost of the active pharmaceutical product that was produced prior to FDA approval until we sell TAVALISSE that includes newly manufactured API. We expect that this will be the case for the near-term and as a result, our cost of product sales will be less than we anticipate it will be in future periods. As we produce TAVALISSE in the future, our inventory cost in the Balance Sheet and Cost of Product Sales will increase reflecting the full cost of manufacturing.

Research and Development Expense

| | Three Months Ended | | Aggregate Change | Nine Months Ended | | Aggregate Change |
|--|--------------------|------------------------|---------------------|-------------------|------------------------|---------------------|
| | September 30, | | | September 30, | | |
| | 2019 | 2018 (in thousands) | | 2019 | 2018 (in thousands) | |
| Research and development expense | \$ 14,463 | \$ 11,097 | \$ 3,366 | \$ 38,638 | \$ 33,136 | \$ 5,502 |
| Stock-based compensation expense included in research and development expense | \$ 487 | \$ 801 | \$ (314) | \$ 2,185 | \$ 1,734 | \$ 451 |

The increase in research and development expense for the three months ended September 30, 2019, compared to the same period in 2018, was primarily due to the \$3.7 million ramp up in research and development cost for our on-going Phase 3 study in warm AIHA and the Phase 1 study of our RIP1 inhibitor program, and various other third party costs of \$300,000 partially offset by a decrease of \$732,000 in research and development costs as we wind down our Phase 3 open-label extension study in ITP.

The increase in research and development expense for the nine months ended September 30, 2019, compared to the same period in 2018, was primarily due to the increases of \$6.7 million in research and development cost for our on-going Phase 3 study in warm AIHA and the Phase 1 study of our RIP1 inhibitor program, as well as the related outside services and consultants of \$1.3 million, stock-based compensation expense of \$451,000 and allocated facility costs of \$533,000, partially offset by a \$3.3 million decrease in research and development costs as we wind down our Phase 3 open-label extension study in ITP and our Phase 1 study in our IRAK inhibitor program and \$135,000 in various other third party expenses.

We expect our research and development expense in the remainder of 2019 will increase compared to the amount reported in the previous quarters of 2019 as we continue to ramp up our activities in our Phase 3 warm AIHA study and RIP1 study.

Our research and development expenditures include costs related to preclinical and clinical trials, scientific personnel, supplies, equipment, consultants, sponsored research, stock-based compensation, and allocated facility costs.

We do not track fully burdened research and development costs separately for each of our drug candidates. We review our research and development expenses by focusing on three categories: research, development, and other. Our research team is focused on creating a portfolio of product candidates that can be developed into small molecule

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therapeutics in our own proprietary programs or with potential collaborative partners and utilizes our robust discovery engine to rapidly discover and validate new product candidates in our focused range of therapeutic indications. “Research” expenses relate primarily to personnel expenses, lab supplies, fees to third party research consultants and compounds. Our development group leads the implementation of our clinical and regulatory strategies and prioritizes disease indications in which our compounds may be studied in clinical trials. “Development” expenses relate primarily to clinical trials, personnel expenses, costs related to the submission and management of our NDA, lab supplies and fees to third party research consultants. “Other” expenses primarily consist of allocated facilities costs and allocated stock-based compensation expense relating to personnel in research and development groups.

In addition to reviewing the three categories of research and development expenses described in the preceding paragraph, we principally consider qualitative factors in making decisions regarding our research and development programs, which include enrollment in clinical trials and the results thereof, the clinical and commercial potential for our drug candidates and competitive dynamics. We also make our research and development decisions in the context of our overall business strategy, which includes the evaluation of potential collaborations for the development of our drug candidates.

We do not have reliable estimates regarding the timing of our clinical trials. Preclinical testing and clinical development are long, expensive and uncertain processes. In general, biopharmaceutical development involves a series of steps, beginning with identification of a potential target and including, among others, proof of concept in animals and Phase 1, 2 and 3 clinical trials in humans. Significant delays in clinical testing could materially impact our product development costs and timing of completion of the clinical trials. We do not know whether planned clinical trials will begin on time, will need to be halted or revamped or will be completed on schedule, or at all. Clinical trials can be delayed for a variety of reasons, including delays in obtaining regulatory approval to commence a trial, delays from scale up, delays in reaching agreement on acceptable clinical trial agreement terms with prospective clinical sites, delays in obtaining institutional review board approval to conduct a clinical trial at a prospective clinical site or delays in recruiting subjects to participate in a clinical trial.

We currently do not have reliable estimates of total costs for a particular drug candidate to reach the market. Our potential products are subject to a lengthy and uncertain regulatory process that may involve unanticipated additional clinical trials and may not result in receipt of the necessary regulatory approvals. Failure to receive the necessary regulatory approvals would prevent us from commercializing the product candidates affected. In addition, clinical trials of our potential products may fail to demonstrate safety and efficacy, which could prevent or significantly delay regulatory approval.

The following table presents our total research and development expense by category (in thousands).

| | Three Months Ended September 30, | | Nine Months Ended September 30, | | From January 1, 2007* to September 30, 2019 |
|--------------------|-------------------------------------|------------------|------------------------------------|------------------|--|
| | 2019 | 2018 | 2019 | 2018 | |
| Categories: | | | | | |
| Research | \$ 2,407 | \$ 2,562 | \$ 7,652 | \$ 7,500 | \$ 244,319 |
| Development | 10,073 | 6,279 | 24,236 | 19,869 | 395,098 |
| Other | 1,983 | 2,256 | 6,750 | 5,767 | 244,986 |
| | <u>\$ 14,463</u> | <u>\$ 11,097</u> | <u>\$ 38,638</u> | <u>\$ 33,136</u> | <u>\$ 884,403</u> |

* We started tracking research and development expense by category on January 1, 2007.

“Other” expenses mainly represent allocated facilities costs of approximately \$1.5 million for each of the three months ended September 30, 2019 and 2018, and allocated stock-based compensation expense of approximately \$487,000 and \$800,000 for the three months ended September 30, 2019 and 2018, respectively. For the nine months ended September 30, 2019 and 2018, allocated facilities costs were approximately \$4.6 million and \$4.0 million, respectively, and allocated stock-based compensation expense were approximately \$2.1 million and \$1.7 million, respectively.

For the three and nine months ended September 30, 2019 and 2018, a major portion of our total research and development expense was associated with our AIHA, ITP, RIP1, and IRAK programs, salaries of our research and development personnel and allocated facilities costs.

Selling, General and Administrative Expense

| | Three Months Ended | | Aggregate Change | Nine Months Ended | | Aggregate Change |
|--|--------------------|-----------|---------------------|-------------------|-----------|---------------------|
| | September 30, | | | September 30, | | |
| | 2019 | 2018 | | 2019 | 2018 | |
| | (in thousands) | | | (in thousands) | | |
| <i>Selling, general and administrative expense</i> | \$ 18,121 | \$ 18,069 | \$ 52 | \$ 56,276 | \$ 48,632 | \$ 7,644 |
| <i>Stock-based compensation expense included in selling, general and administrative expense</i> | \$ 1,611 | \$ 2,194 | \$ (583) | \$ 5,519 | \$ 3,913 | \$ 1,606 |

Selling, general and administrative expense for the three months ended September 30, 2019, compared to the same period in 2018, was relatively flat.

The increase in selling, general and administrative expense for the nine months ended September 30, 2019, compared to the same period in 2018, was primarily due to costs related to our customer-facing team of \$10.2 million, which includes third-party costs related to our ongoing commercialization of TAVALISSE in chronic ITP of \$2.7 million, as well as stock-based compensation expense of \$1.6 million, partially offset by a \$2.4 million reduction in legal costs and \$200,000 of various third-party costs.

We expect our selling, general and administrative expense to increase for the remainder of 2019 as we continue our commercial launch of TAVALISSE, and program expansion compared to the amount reported in the earlier part of 2019.

Interest Income

| | Three Months Ended | | Aggregate Change | Nine Months Ended | | Aggregate Change |
|-------------------------------|--------------------|--------|---------------------|-------------------|----------|---------------------|
| | September 30, | | | September 30, | | |
| | 2019 | 2018 | | 2019 | 2018 | |
| | (in thousands) | | | (in thousands) | | |
| <i>Interest income</i> | \$ 555 | \$ 604 | \$ (49) | \$ 2,068 | \$ 1,507 | \$ 561 |

Interest income results from our interest-bearing cash and investment balances. The decrease in interest income for the three months ended September 30, 2019 as compared to the same period in 2018 and increase in interest income for the nine months ended September 30, 2019, as compared to the same period in 2018 were primarily due to the fluctuations on yield on our investments, as well as our average cash and investment balances.

Critical Accounting Policies and the Use of Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP). The preparation of these financial statements requires us to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. On an ongoing basis, we evaluate our estimates, including those related to revenue recognition on product sales and collaboration agreements, recoverability of our assets, including accounts receivables and inventories, stock-based compensation, the probability of achievement of corporate performance-based milestone for our performance-based stock option awards, impairment issues, the estimated useful life of assets, estimated accruals, particularly research and development accruals, and estimates related our valuation of the operating lease right-of-use asset and lease liability, including the incremental borrowing rate used. We base our

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estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe that there have been no significant changes in our critical accounting policies and estimates disclosed in our Annual Report on Form 10-K for the year ended December 31, 2018, as filed with the SEC.

Recent Accounting Pronouncements

For a discussion of new accounting pronouncements, see “Note 3” to our “Notes to Condensed Financial Statements” contained in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Liquidity and Capital Resources

Cash Requirements

Since inception, we have financed our operations primarily through the sale of equity securities and contract payments under our collaboration agreements. Recently, we have entered into a \$60.0 million credit facility with MidCap. In September 2019, we received a \$4.0 million development milestone payment from Aclaris for the achievement of a certain event in accordance with our collaboration agreement dated August 27, 2015. In October 2019, we received a \$5.0 million upfront payment from Medison under our commercialization license agreement. Our commercialization of TAVALISSE, research and development activities, including preclinical studies and clinical trials, consume substantial amounts of capital.

As of September 30, 2019, we had approximately \$107.5 million in cash, cash equivalents and short-term investments, as compared to approximately \$128.5 million as of December 31, 2018, a decrease of approximately \$21.0 million. The decrease was primarily attributable to payments associated with funding our operating expenses during the nine months ended September 30, 2019, partially offset by collaboration revenue payment of \$4.0 million from Aclaris, \$10.0 million proceeds from our credit facility with MidCap and the proceeds from sale of TAVALISSE.

In December 2014, we entered into a sublease agreement with an unrelated third party to occupy a portion of our research and office space. This sublease agreement was amended in February 2017 to sublease additional research and office space. Effective July 2017, the sublease agreement was amended primarily to extend the term of the sublease through January 2023. During the nine months ended September 30, 2019, we received approximately \$3.9 million of sublease income and reimbursements. We expect to receive approximately \$15.1 million in future sublease income (excluding our subtenant’s share of facility’s operating expenses) through January 2023.

In January 2019, we entered into an exclusive license agreement with Grifols to commercialize fostamatinib in all indications, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. Under the agreement, we received an upfront payment of \$30.0 million, with the potential for \$297.5 million in total regulatory and commercial milestones, which includes a \$20 million payment upon approval from the EMA for fostamatinib in chronic ITP. We will also receive stepped double-digit royalty payments based on tiered net sales which may reach 30% of net sales. In return, Grifols will receive exclusive rights to fostamatinib in human diseases, including chronic ITP, AIHA, and IgAN, in Europe and Turkey. In the event that, in 2021, after the second anniversary of the agreement, fostamatinib has not been approved by the EMA for the treatment of ITP in Europe, Grifols will have the option, during a six-month time-frame, to terminate the entire agreement which would terminate all their rights to ITP, AIHA, and all other indications. In this limited circumstance, we will pay Grifols \$25.0 million and regain all rights to fostamatinib in Europe and other territories. The agreement also requires us to continue to conduct our long term open-label extension study on patients with ITP through EMA approval of ITP in Europe as well as conduct the Phase 3 trial in AIHA in the U.S.

We believe that our existing capital resources will be sufficient to support our current and projected funding requirements, including the ongoing commercialization of TAVALISSE in the U.S., through at least the next 12 months from the Form 10-Q filing date. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Because of the numerous risks and uncertainties

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associated with commercial launch, the development of our product candidates and other research and development activities, we are unable to estimate with certainty our future product revenues, our revenues from our current and future collaborative partners, the amounts of increased capital outlays and operating expenditures associated with our current and anticipated clinical trials and other research and development activities.

Our operations will require significant additional funding for the foreseeable future. Unless and until we are able to generate a sufficient amount of product, royalty or milestone revenue, we expect to finance future cash needs through public and/or private offerings of equity securities, debt financings and/or collaboration and licensing arrangements, and to a much lesser extent through the proceeds from exercise of stock options and interest income earned on the investment of our excess cash balances and short-term investments. To the extent we raise additional capital by issuing equity securities, our stockholders could at that time experience substantial dilution. Any debt financing that we are able to obtain may involve operating covenants that restrict our business. To the extent that we raise additional funds through collaboration and licensing arrangements, we may be required to relinquish some of our rights to our technologies or product candidates or grant licenses on terms that are not favorable to us.

Our future funding requirements will depend upon many factors, including, but not limited to:

- our ability to sell TAVALISSE in the U.S. and the ongoing costs to commercialize TAVALISSE for the treatment of ITP in the U.S., or any other future product candidates, if any such candidate receives regulatory approval for commercial sale;
- our ability to successfully obtain authorization from the European Commission on our MAA for fostamatinib in ITP in Europe;
- the progress and success of our clinical trials and preclinical activities (including studies and manufacture of materials) of our product candidates conducted by us;
- our ability to draw additional funds from our credit facility with MidCap;
- our ability to enter partnering opportunities across our pipeline;
- the costs and timing of regulatory filings and approvals by us and our collaborators;
- the progress of research and development programs carried out by us and our collaborative partners;
- any changes in the breadth of our research and development programs;
- the ability to achieve the events identified in our collaborative agreements that may trigger payments to us from our collaboration partners;
- our ability to acquire or license other technologies or compounds that we may seek to pursue;
- our ability to manage our growth;
- competing technological and market developments;
- the costs and timing of obtaining, enforcing and defending our patent and other intellectual property rights; and
- expenses associated with any unforeseen litigation, including any arbitration and securities class action lawsuits.

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Insufficient funds may require us to delay, scale back or eliminate some or all of our commercial efforts and/or research or development programs, to lose rights under existing licenses or to relinquish greater or all rights to product candidates at an earlier stage of development or on less favorable terms than we would otherwise choose or may adversely affect our ability to operate as a going concern.

For the nine months ended September 30, 2019 and 2018, we maintained an investment portfolio primarily in money market funds, U. S. treasury bills, government-sponsored enterprise securities, and corporate bonds and commercial paper. Cash in excess of immediate requirements is invested with regard to liquidity and capital preservation. Wherever possible, we seek to minimize the potential effects of concentration and degrees of risk. We will continue to monitor the impact of the changes in the conditions of the credit and financial markets to our investment portfolio and assess if future changes in our investment strategy are necessary.

Cash Flows from Operating, Investing and Financing Activities

| | Nine Months Ended September 30, | |
|--|---------------------------------|-------------|
| | 2019 | 2018 |
| | (in thousands) | |
| Net cash provided by (used in): | | |
| Operating activities | \$ (31,861) | \$ (70,470) |
| Investing activities | (16,039) | 22,871 |
| Financing activities | 10,671 | 70,795 |
| Net (decrease) increase in cash and cash equivalents | \$ (37,229) | \$ 23,196 |

Net cash used in operating activities was approximately \$31.9 million for the nine months ended September 30, 2019, compared to approximately \$70.5 million for the nine months ended September 30, 2018. Net cash used in operating activities for the nine months ended September 30, 2019 was related to our research and development programs and our ongoing commercialization of TAVALISSE, partially offset by the \$30.0 million upfront fee received from Grifols, proceeds from sale of TAVALISSE and \$4.0 million collaboration revenue from Aclaris. Net cash used in operating activities for the nine months ended September 30, 2018 was primarily due to the cash payments related to our research and development programs and commercial launch preparation costs partially offset by proceeds from sale of TAVALISSE. The timing of cash requirements may vary from period to period depending on our ongoing commercial activities related to TAVALISSE (fostamatinib), timing of collaboration revenues, our ability to access additional funds from our credit facility with MidCap, our research and development activities, including our planned preclinical and clinical trials, and future requirements to establish commercial capabilities for any products that we may develop.

Net cash used in investing activities was approximately \$16.0 million for the nine months ended September 30, 2019, compared to net cash provided by investing activities of approximately \$22.9 million for the nine months ended September 30, 2018. Net cash used in investing activities during the nine months ended September 30, 2019 related to net purchases of short-term investments and capital expenditures. Net cash provided by investing activities during the nine months ended September 30, 2018 related to net maturities of short-term investments, partially offset by capital expenditures. Capital expenditures were approximately \$844,000 for the nine months ended September 30, 2019, compared to approximately \$1.0 million for the same period in 2018.

Net cash provided by financing activities was approximately \$10.7 million for the nine months ended September 30, 2019, compared to approximately \$70.8 million for the nine months ended September 30, 2018. Net cash provided by financing activities for the nine months ended September 30, 2019 related to the funding of the first tranche of our term loan and cash proceeds received from the sale and issuance of common stock and exercise of stock options. Net cash provided by financing activities for the nine months ended September 30, 2018 consisted of net proceeds of \$67.2 million from issuance of common stock pursuant to the underwritten public offering and \$3.7 million proceeds from exercise of stock options and participation in our Employee Stock Purchase Plan.

Off-Balance Sheet Arrangements

As of September 30, 2019, we had no off-balance sheet arrangements (as defined in Item 303(a)(4)(ii) of Regulation S-K under the Exchange Act).

Contractual Obligations

We conduct our commercial activities and research and development programs internally and through third parties that include, among others, arrangements with collaboration partners, vendors, consultants, contract research organizations (CRO) and universities. We have contractual arrangements with these parties, however our contracts with them are cancelable generally on reasonable notice within one year and our obligations under these contracts are primarily based on services performed. We do not have any purchase commitments under any collaboration arrangements.

We have agreements with certain clinical research organizations to conduct our clinical trials and with third parties relative to our commercialization of TAVALISSE. The timing of payments for any amounts owed under the respective agreements will depend on various factors including, but not limited to, patient enrollment and other progress of the clinical trial and various activities related to commercial launch. We will continue to enter into contracts in the normal course of business with various third parties who support our clinical trials, support our preclinical research studies, and provide other services related to our operating purposes as well as our commercial launch of TAVALISSE. We can terminate these agreements at any time, and if terminated, we would not be liable for the full amount of the respective agreements. Instead, we will be liable for services provided through the termination date plus certain cancellation charges, if any, as defined in each of the respective agreements. In addition, these agreements may, from time to time, be subjected to amendments as a result of any change orders executed by the parties. As of September 30, 2019, we do not have material contractual commitments with respect to the arrangements discussed above, but we had the following contractual commitments related to our facilities lease and credit facility:

| | Total | Less than 1 Year | Payment Due By Period | | More than 5 Years |
|---------------------------------|------------------|---------------------|-----------------------|------------------|----------------------|
| | | | 1 - 3 Years | 3 - 5 Years | |
| | | | (in thousands) | | |
| Facilities lease (1) | \$ 33,477 | \$ 9,601 | \$ 20,370 | \$ 3,506 | \$ — |
| Credit facility with MidCap (2) | 13,136 | 727 | 4,602 | 7,807 | — |
| Total | \$ 46,613 | \$ 10,328 | \$ 24,972 | \$ 11,313 | \$ — |

- (1) In December 2014, we entered into a sublease agreement, which was amended in 2017, with an unrelated third party to lease up a portion of the research and office space. The facilities lease obligations above do not include the sublease income of approximately \$15.1 million which we expect to receive over the term of the sublease through January 2023.
- (2) In September 2019, we entered into a Credit Agreement with MidCap. We received funding for the first tranche of \$10.0 million. Under the agreement, we are obligated to make interest payments at an annual rate of one-month LIBOR plus 5.65% for the first 24 months and the interest plus principal amortization for the next 36 months. We will be obligated to pay administrative fees annually and a final fee upon final payment.

We are also subject to claims related to the patent protection of certain of our technologies, as well as purported securities class action lawsuit, other litigations, and other contractual agreements. We are required to assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of reserves required, if any, for these contingencies is made after careful analysis of each individual matter.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

During the nine months ended September 30, 2019, there were no material changes to our market risk disclosures as set forth in Part II, Item 7A, “Quantitative and Qualitative Disclosures About Market Risk,” of our Annual Report on Form 10-K for the year ended December 31, 2018.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures. Based on the evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), our chief executive officer (who serves as our principal executive officer) and our chief financial officer (who serves as our principal financial officer) have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

Changes in Internal Controls. There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the controls are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected. Accordingly, our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met and, as set forth above, our chief executive officer and chief financial officer have concluded, based on their evaluation as of the end of the period covered by this report, that our disclosure controls and procedures were sufficiently effective to provide reasonable assurance that the objectives of our disclosure control system were met.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

In evaluating our business, you should carefully consider the following risks, as well as the other information contained in this Quarterly Report on Form 10-Q. These risk factors could cause our actual results to differ materially from those contained in forward-looking statements we have made in this Quarterly Report on Form 10-Q and those we may make from time to time. If any of the following risks actually occurs, our business, financial condition and operating results could be harmed. The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties not presently known to us, or that we currently see as immaterial, may also harm our business.

We have marked with an asterisk () those risk factors below that reflect a substantive change from the risk factors included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 28, 2019.*

Our prospects are highly dependent on the successful commercialization of TAVALISSE® (fostamatinib disodium hexahydrate), which received approval in April 2018 from the FDA for patients with chronic ITP who have had an insufficient response to a previous treatment. To the extent that TAVALISSE is not commercially successful, our business, financial condition and results of operations may be materially adversely affected, and the price of our common stock may decline.*

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TAVALISSE is our only drug that has been approved for sale and it has only been approved in the United States for patients with chronic ITP who have had an insufficient response to a previous treatment. We are focusing a significant portion of our activities and resources on fostamatinib, and we believe our prospects are highly dependent on, and a significant portion of the value of our Company relates to, our ability to successfully commercialize TAVALISSE in the United States.

Successful commercialization of TAVALISSE is subject to many risks. We have never, as an organization, launched or commercialized a product, and there is no guarantee that we will be able to do so successfully with fostamatinib for its approved indication. There are numerous examples of unsuccessful product launches and failures to meet high expectations of market potential, including by pharmaceutical companies with more experience and resources than us.

Market acceptance of fostamatinib and any of our or collaborative partners' future product candidates that may receive approval, will depend on a number of factors, including:

- the efficacy and safety as demonstrated in clinical trials;
- the timing of market introduction of the product as well as competitive products;
- the clinical indications for which the product is approved;
- acceptance by physicians, the medical community and patients of the product as a safe and effective treatment;
- the ability to distinguish safety and efficacy from existing, less expensive generic alternative therapies, if any;
- the convenience of prescribing, administering and initiating patients on the product and the length of time the patient is on the product;
- the potential and perceived value and advantages of the product over alternative treatments;
- the cost of treatment in relation to alternative treatments, including any similar generic treatments;
- the availability of coverage and adequate reimbursement and pricing by third-party payors and government authorities;
- the prevalence and severity of adverse side effects; and
- the effectiveness of sales and marketing efforts.

Even if we are successful in building out our commercial team, there are many factors that could cause the launch and commercialization of TAVALISSE to be unsuccessful, including a number of factors that are outside our control. The commercial success of TAVALISSE depends on the extent to which patients and physicians accept and adopt TAVALISSE for patients with chronic ITP who have had an insufficient response to a previous treatment. We also do not know how physicians, patients and payors will respond to our future price increases of TAVALISSE.

Physicians may not prescribe TAVALISSE and patients may be unwilling to use TAVALISSE if coverage is not provided or reimbursement is inadequate to cover a significant portion of the cost. Additionally, any negative development for fostamatinib in clinical development in additional indications, may adversely impact the commercial results and potential of fostamatinib. Thus, significant uncertainty remains regarding the commercial potential of fostamatinib.

If the launch or commercialization of TAVALISSE is unsuccessful or perceived as disappointing, our stock price could decline significantly, and the long-term success of the product and our company could be harmed. If we are unable to achieve anticipated level of sales growth from TAVALISSE, or if we fail to achieve anticipated product royalties and collaboration milestones, we may need to reduce our operating expenses, access other sources of cash or otherwise modify our business plans, which could have a material adverse impact on our business, financial condition and results of operations.

We also may not be successful entering into arrangements with third parties to sell and market one or more of our product candidates or may be unable to do so on terms that are favorable to us. We likely will have little control over such third parties, including Kissei's development and commercialization of fostamatinib in all indications in Japan, China, Taiwan, and the Republic of Korea, and Grifols' future commercialization of fostamatinib in Europe and Turkey. As a consequence of our license agreements with Kissei and Grifols, we rely heavily upon their regulatory, commercial, medical affairs, market access and other expertise and resources for commercialization of TAVALISSE in their respective territories outside of the United States. We cannot control the amount of resources that our partners dedicate to the commercialization of TAVALISSE, and our ability to generate revenues from the commercialization of TAVALISSE by our partners depends on their ability to achieve market acceptance of TAVALISSE in its approved indications in their respective territories. Furthermore, foreign sales of TAVALISSE by our partners could be adversely affected by the imposition of governmental controls, political and economic instability, trade restrictions or barriers and changes in tariffs, including as a result of the pending withdrawal of the United Kingdom from the European Union (commonly referred to as "Brexit") and the uncertainty surrounding the date and the terms of the withdrawal, escalating global trade and political tensions. If our collaborators are unable to, or do not invest the resources necessary to successfully commercialize TAVALISSE in international territories where it has been approved, this could reduce the amount of revenue we are due to receive under these license agreements, resulting in harm to our business and operations. If we do not establish sales and marketing capabilities successfully, either on our own or in collaboration with third parties, we will not be successful in commercializing our product candidates.

Even if we, or any of our collaborative partners, are able to continue to commercialize TAVALISSE or any product candidate that we, or they, develop, the product may become subject to unfavorable pricing regulations, third-party payor reimbursement practices or labeling restrictions, any of which could harm our business.

The commercial success of any product for which we have obtained regulatory approval, or for which we obtain regulatory approval in the future will depend substantially on the extent to which the costs of our product candidates will be paid by third-party payors, including government health care programs and private health insurers. If coverage is not available, or reimbursement is limited, we, or any of our collaborative partners, may not be able to successfully commercialize TAVALISSE or any of our product candidates. Even if coverage is provided, the approved reimbursement amount may not be high enough to allow us, or any of our collaborative partners, to establish or maintain pricing sufficient to realize a sufficient return on our or their investments. In the United States, no uniform policy of coverage and reimbursement for products exists among third-party payors and coverage and reimbursement levels for products can differ significantly from payor to payor. As a result, the coverage determination process is often a time consuming and costly process that may require us to provide scientific and clinical support for the use of our products to each payor separately, with no assurance that coverage and adequate reimbursement will be applied consistently or obtained in the first instance.

There is significant uncertainty related to third-party payor coverage and reimbursement of newly approved drugs. Marketing approvals, pricing and reimbursement for new drug products vary widely from country to country. Some countries require approval of the sale price of a drug before it can be marketed. In many countries, the pricing review period begins after marketing or product licensing approval is granted. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. As a result, we, or any of our collaborative partners, might obtain marketing approval for a product in a particular country, but then be subject to price regulations that delay commercial launch of the product, possibly for lengthy time periods, which may negatively impact the revenues we are able to generate from the sale of the product in that country. Adverse pricing

limitations may hinder our ability or the ability of any future collaborators to recoup our or their investment in one or more product candidates, even if our product candidates obtain marketing approval.

Patients who are provided medical treatment for their conditions generally rely on third-party payors to reimburse all or part of the costs associated with their treatment. Therefore, our ability, and the ability of any of our collaborative partners, to successfully commercialize fostamatinib or any of our product candidates will depend in part on the extent to which coverage and adequate reimbursement for these products and related treatments will be available from third-party payors.

Additionally, the labeling ultimately approved for any of our product candidates for which we have or may obtain regulatory approval may include restrictions on their uses and may be subject to ongoing FDA or international regulatory authority requirements governing the labeling, packaging, storage, distribution, safety surveillance, advertising, promotion, record-keeping and reporting of safety and other post-market information. If we or any of our collaborative partners do not timely obtain or comply with the labeling approval by the FDA or international regulatory authorities on any of our product candidates, it may delay or inhibit our ability to successfully commercialize our products and generate revenues.

If we are unable to successfully launch TAVALISSE and retain experienced sales force, our business will be substantially harmed.

We currently have limited experience in marketing and selling pharmaceutical products. TAVALISSE is a newly-marketed drug and, therefore, none of the members of our sales force will have ever promoted TAVALISSE prior to its launch. As a result, we will be required to expend significant time and resources and continuously train our sales force to be credible, persuasive and compliant with applicable laws in marketing TAVALISSE for patients with chronic ITP who have had an insufficient response to a previous treatment. In addition, we must continually train our sales force to ensure that an appropriate and compliant message about TAVALISSE is being delivered. If we are unable to effectively train our sales force and equip them with compliant and effective materials, including medical and sales literature to help them appropriately inform and educate regarding its potential benefits and proper administration, our efforts to successfully commercialize TAVALISSE could be put in jeopardy, which would negatively impact our ability to generate product revenues.

We have only recently established our distribution and reimbursement capabilities, all of which will be necessary to successfully commercialize TAVALISSE. As a result, we will be required to expend significant time and resources to market, sell, and distribute TAVALISSE to hematologists and hematologists-oncologists. There is no guarantee that the marketing strategies, or the distribution and reimbursement capabilities, that we have developed will be successful. Particularly, we are dependent on third-party logistics, specialty pharmacies and distribution partners in the distribution of TAVALISSE. If they are unable to perform effectively or if they do not provide efficient distribution of the medicine to patients, our business may be harmed.

Maintaining our sales, marketing, market access and product distribution capabilities requires significant resources, and there are numerous risks involved with managing our commercial team, including our potential inability to successfully train, retain and incentivize adequate numbers of qualified and effective sales and marketing personnel. We are also competing for talent with numerous commercial and pre-commercial-stage oncology-focused biotechnology companies seeking to build out their commercial organizations, as well as other large pharmaceutical organizations that have extensive, well-funded and more experienced sales and marketing operations, and we may be unable to maintain or adequately scale our commercial organization as a result of such competition. If we cannot maintain effective sales, marketing, market access and product distribution capabilities, we may be unable to maximize the commercial potential of TAVALISSE. Also, to the extent that the commercial opportunities for TAVALISSE grow over time, we may not properly judge the requisite size and experience of our current commercialization teams or the level of distribution necessary to market and sell TAVALISSE which could have a material adverse impact on our business, financial condition and results of operations.

Enacted or future legislation, including potentially unfavorable pricing regulations or other healthcare reform initiatives, may increase the difficulty and cost for us to obtain regulatory approval of our product candidates and/or commercialize fostamatinib or our product candidates, once approved, and affect the prices we may set or obtain.

The regulations that govern, among other things, regulatory approvals, coverage, pricing and reimbursement for new drug products vary widely from country to country. In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay regulatory approval of our product candidates, restrict or regulate post-approval activities and affect our ability to successfully sell fostamatinib or any product candidates for which we obtain regulatory approval in the future. In particular, in March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, collectively, the Affordable Care Act, was enacted, which substantially changes the way health care is financed by both governmental and private insurers, and significantly impacts the U.S. pharmaceutical industry. The Affordable Care Act and its implementing regulations, among other things, addressed a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for certain drugs and biologics, including our approved product and product candidates, that are inhaled, infused, instilled, implanted or injected, increased the minimum Medicaid rebates owed by manufacturers under the Medicaid Drug Rebate Program, extended the Medicaid Drug Rebate Program to utilization of prescriptions of individuals enrolled in Medicaid managed care organizations, subjected manufacturers to new annual fees and taxes for certain branded prescription drugs, provided incentives to programs that increase the federal government's comparative effectiveness research and established a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 70% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D.

Other legislative changes have been proposed and adopted in the United States since the Affordable Care Act was enacted. In August 2011, the Budget Control Act of 2011, among other things, created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least \$1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions of Medicare payments to providers of 2% per fiscal year, which went into effect in April 2013, and, due to subsequent legislative amendments, will remain in effect through 2027, unless additional Congressional action is taken. In January 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, or the ATRA, which, among other things, further reduced Medicare payments to several providers, including hospitals and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years.

There have been, and likely will continue to be, legislative and regulatory proposals at the foreign, federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. 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 and/or impose price controls may adversely affect:

- the demand for fostamatinib or our product candidates, if we obtain regulatory approval;
- our ability to set a price that we believe is fair for our products;
- our ability to generate revenue and achieve or maintain profitability;
- the level of taxes that we are required to pay; and
- the availability of capital.

Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors, which may adversely affect our future profitability.

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Since its enactment, there have been judicial and Congressional challenges to numerous provisions of the Affordable Care Act, as well as recent efforts by the Trump administration to repeal or replace certain aspects of the Affordable Care Act. Since January 2017, President Trump has signed two Executive Orders designed to delay the implementation of certain provisions of the Affordable Care Act or otherwise circumvent some of the requirements for health insurance mandated by the Affordable Care Act. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the Affordable Care Act. While Congress has not passed comprehensive repeal legislation, two bills affecting the implementation of certain taxes under the Affordable Care Act have been enacted. More recently, in December 2018, the Centers for Medicare and Medicaid Services, or CMS, published a new final rule permitting further collections and payments to and from certain Affordable Care Act qualified health plans and health insurance issuers under the Affordable Care Act risk adjustment program. On December 14, 2018, a U.S. District Court Judge in the Northern District of Texas ruled that the individual mandate is a critical and inseparable feature of the Affordable Care Act, and because it was repealed as part of the Tax Cuts and Jobs Act of 2017, the remaining provisions of the Affordable Care Act are invalid as well. While neither the Texas District Court Judge, Trump administration nor CMS have stated that the ruling will have an immediate effect, it is unclear how this decision, subsequent appeals, if any, and other efforts will impact the Affordable Care Act. Additional policy changes, including potential modification or repeal of all or parts of the Affordable Care Act or the implementation of new health care legislation could result in significant changes to the health care system, which could have a material adverse effect on our business, results of operations and financial condition.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We cannot be sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the regulatory approvals of our product candidates, if any, may be.

In the United States, the European Union and other potentially significant markets for our current and future products, government authorities and third-party payors are increasingly attempting to limit or regulate the price of medical products and services, particularly for new and innovative products and therapies, which has resulted in lower average selling prices. For example, in the United States, there have been several recent Congressional inquiries and federal legislation designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. At the federal level, the Trump administration's budget proposal for fiscal years 2019 and 2020 contain further drug price control measures that could be enacted during the budget process or in other future legislation, including, for example, measures to permit Medicare Part D plans to negotiate the price of certain drugs under Medicare Part B, to allow some states to negotiate drug prices under Medicaid, and to eliminate cost sharing for generic drugs for low-income patients. Congress is currently considering legislation currently known as the Prescription Drug Price Reduction Act, which is designed to, among other things, reduce prescription drug prices and increase transparency. Further, the Trump administration released a "Blueprint", or plan, to lower drug prices and reduce out of pocket costs of drugs that contains additional proposals to increase drug manufacturer competition, increase the negotiating power of certain federal healthcare programs, incentivize manufacturers to lower the list price of their products, and reduce the out of pocket costs of drug products paid by consumers. The United States Department of Health and Human Services has started soliciting feedback on some of these measures while concurrently implementing others under its existing authority. For example, in May 2018, CMS issued a final rule to allow Medicare Advantage Plans the option of using step therapy for Part B drugs beginning January 1, 2020. This final rule codified CMS's policy change that was effective January 1, 2019. While some existing measures and proposed proposals may require additional authorization to become effective, Congress and the Trump administration have each indicated that it will continue to seek new legislative and/or administrative measures to control drug costs. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, to encourage importation from other countries and bulk purchasing. Furthermore, the increased emphasis on managed healthcare in the United States and on country and regional pricing and reimbursement controls in the E.U. will put additional pressure on product pricing, reimbursement and usage, which may adversely affect our sales and results of operations. These pressures can arise from rules and practices of managed care

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groups, judicial decisions and governmental laws and regulations related to Medicare, Medicaid and healthcare reform, pharmaceutical reimbursement policies and pricing in general.

If the market opportunities for TAVALISSE and product candidates are smaller than we believe they are, our revenues may be adversely affected, and our business may suffer.

Certain of the diseases that TAVALISSE and our other product candidates being developed to address are in underserved and underdiagnosed populations. Our projections of both the number of people who have these diseases, as well as the subset of people with these diseases who will seek treatment utilizing our products or product candidates, may not be accurate. If our estimates of the prevalence or number of patients potentially on therapy prove to be inaccurate, the market opportunities for fostamatinib and our other product candidates may be smaller than what we believe they are, our prospects for generating expected revenue may be adversely affected and our business may suffer.

We have recently increased, and will continue to increase, the size of our organization. We may encounter difficulties with managing our growth, which could adversely affect our results of operations.*

As of September 30, 2019, we had approximately 157 full-time employees. Although we have substantially increased the size of our organization, we may need to add additional qualified personnel and resources, especially now that we have a commercial sales force. Our current infrastructure may be inadequate to support our development and commercialization efforts and expected growth. Future growth will impose significant added responsibilities on members of management, including the need to identify, recruit, maintain and integrate additional employees, and may take time away from running other aspects of our business, including development and commercialization of TAVALISSE and our other product candidates.

Our future financial performance and our ability to commercialize TAVALISSE and our other product candidates that may receive regulatory approval will depend, in part, on our ability to manage any future growth effectively. In particular, as we continue to commercialize TAVALISSE, we will need to support the training and ongoing activities of our sales force and will likely need to continue to expand the size of our employee base for managerial, operational, financial and other resources. To that end, we must be able to successfully:

- manage our development efforts effectively;
- integrate additional management, administrative and manufacturing personnel;
- further develop our marketing and sales organization; and
- maintain sufficient administrative, accounting and management information systems and controls.

We may not be able to accomplish these tasks or successfully manage our operations and, accordingly, may not achieve our research, development, and commercialization goals. Our failure to accomplish any of these goals could materially and adversely affect our business and operations.

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, and we may incur significant liability if it is determined that we are promoting the “off-label” use of TAVALISSE or any of our future product candidates if approved.

Any regulatory approval is limited to those specific diseases, indications and patient populations for which a product is deemed to be safe and effective by the FDA. For example, the FDA-approved label for TAVALISSE is only approved for use in adults with ITP who have had an insufficient response to other treatments. 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 and product candidates, 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 and patient populations 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. We have implemented compliance and monitoring policies and procedures, including a process for internal review of promotional materials, to deter the promotion of TAVALISSE for off-label uses. We cannot guarantee that these compliance activities will prevent or timely detect off-label promotion by sales representatives or other personnel in their communications with health care professionals, patients and others, particularly if these activities are concealed from the Company. Regulatory authorities in the United States 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 the FDA's regulations or guidelines, we may be subject to warnings from, or enforcement action by, these regulatory authorities. In addition, our failure to follow FDA rules and guidelines relating to promotion and advertising may cause the FDA to issue warning letters or untitled letters, suspend or withdraw an approved product from the market, require a recall or institute fines, which could result in the disgorgement of money, operating restrictions, injunctions or civil or criminal enforcement, and other consequences, any of which could harm our business.

Notwithstanding the regulatory restrictions on off-label promotion, the FDA and other regulatory authorities allow companies to engage in truthful, non-misleading and non-promotional scientific exchange concerning their products. We engage in medical education activities and communicate with investigators and potential investigators regarding our clinical trials. If the FDA or other regulatory or enforcement authorities determine that our communications regarding our marketed product are not in compliance with the relevant regulatory requirements and that we have improperly promoted off-label uses, or that our communications regarding our investigational products are not in compliance with the relevant regulatory requirements and that we have improperly engaged in pre-approval promotion, we may be subject to significant liability, including civil and administrative remedies as well as criminal sanctions.

We may be subject, directly or indirectly, to federal and state healthcare fraud and abuse laws, false claims laws and other federal and state healthcare laws, and the failure to comply with such laws could result in substantial penalties. Our employees, independent contractors, consultants, principal investigators, CROs, commercial partners and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.

Our business operations and current and future arrangements with investigators, healthcare professionals, consultants, third-party payers and customers, may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations. These laws may constrain the business or financial arrangements and relationships through which we conduct our operations, including how we research, market, sell and distribute any product for which we have obtained regulatory approval, or for which we obtain regulatory approval in the future. In particular, the promotion, sales and marketing of healthcare items and services, as well as certain business arrangements in the healthcare industry, are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, including off-label uses of our products, structuring and commission(s), certain customer incentive programs and other business arrangements generally. Activities subject to these laws also involve the improper use or misrepresentation of information obtained in the course of patient recruitment for clinical trials, creating fraudulent data in our preclinical studies or clinical trials or illegal misappropriation of drug product, which could result in regulatory sanctions and cause serious harm to our reputation. The laws that may affect our ability to operate include, but are not limited to:

- the Federal Anti-Kickback Statute, which prohibits, among other things, individuals and entities from knowingly and willfully soliciting, receiving, offering or paying any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to induce, or in return for, either the referral of an individual for, or the purchase, lease, order or recommendation of, any good, facility, item or service for which payment may be made, in whole or in part, under a federal healthcare program, such as the

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Medicare and Medicaid programs. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;

- federal civil and criminal false claims laws and civil monetary penalty laws, including the federal civil False Claims Act, which impose criminal and civil penalties, through government or civil whistleblower, or qui tam, actions, on individuals and entities for, among other things, knowingly presenting, or causing to be presented, claims for payment or approval from the federal government, including federal healthcare programs, such as Medicare, Medicaid that are false, fictitious or fraudulent, or knowingly making, using or causing to be made or used, a false statement to avoid, decrease or conceal an obligation to pay money to the federal government. Entities can be held liable under the federal civil False Claims Act if they are deemed to “cause” the submission of false or fraudulent claims by, for example, providing inaccurate billing or coding information to customers, promoting a product off label, or for providing medically unnecessary services or items. In addition, the government may assert that a claim including items and services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the False Claims Act;
- the Federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which imposes criminal and civil liability for, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud or to obtain any healthcare benefit program or obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any healthcare benefit program, regardless of the payor (e.g., public or private), willfully obstructing a criminal investigation of a healthcare offense, and knowingly and willfully falsifying, concealing or covering up by any trick or device a material fact or making any materially false, fictitious or fraudulent statements in connection with the delivery of, or payment for, healthcare benefits, items or services relating to healthcare matters. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the healthcare fraud statute implemented under HIPAA or specific intent to violate it in order to have committed a violation;
- 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 requirements on certain covered healthcare providers, health plans, and healthcare clearinghouses, as well as their respective business associates that perform services for them that involve the creation, use, maintenance or disclosure of, individually identifiable health information, relating to the privacy, security and transmission of individually identifiable health information without appropriate authorization;
- the federal physician payment transparency requirements, sometimes referred to as the Physician Payments Sunshine Act, created under the Affordable Care Act, and its implementing regulations, which require certain manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children’s Health Insurance Program (with certain exceptions) to report annually to CMS, information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members;
- the U.S. Federal Food, Drug and Cosmetic Act, or FDCA, which prohibits, among other things, the adulteration or misbranding of drugs and medical devices; and
- federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers.

Additionally, we are subject to state and foreign equivalents of each of the healthcare fraud and abuse laws described above, among others, some of which may be broader in scope and may apply regardless of the payor. We may also be subject to: state 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; state and local laws that restrict payments that may be made to healthcare providers; state and local laws that require

pharmaceutical manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers and entities, or marketing expenditures; state and local laws that require the registration of pharmaceutical sales representatives; state laws that require information to be reported related to drug pricing; and equivalent foreign laws and regulations. Further, we may be subject to 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.

We are also exposed to the risk of fraud, misconduct or other illegal activity by our employees, independent contractors, consultants, principal investigators, CROs, commercial partners and vendors. Misconduct by these parties could include intentional, reckless and/or negligent conduct that fails to: comply with the laws of the FDA and other similar foreign regulatory bodies; provide true, complete and accurate information to the FDA and other similar foreign regulatory bodies; comply with manufacturing standards we have established; comply with federal and state data privacy, security, fraud and abuse and other healthcare laws and regulations in the United States and similar foreign fraudulent misconduct laws; or report financial information or data accurately or to disclose unauthorized activities to us. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent inappropriate conduct 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.

We are also subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. Efforts to ensure that our business arrangements will comply with applicable healthcare laws and regulations will involve substantial costs. It is possible that governmental and enforcement authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law interpreting applicable fraud and abuse or other healthcare laws and 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, including the imposition of civil, criminal and administrative penalties, damages, disgorgement, monetary fines, individual imprisonment, additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, and curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations. In addition, the approval and commercialization of any of our product candidates outside the United States will also likely subject us to foreign equivalents of the healthcare laws mentioned above, among other foreign laws.

Enhanced governmental and public scrutiny over, or investigations or litigation involving, pharmaceutical manufacturer donations to patient assistance programs may require us to modify our programs and could negatively impact our business practices, harm our reputation, divert the attention of management and increase our expenses.

To help patients afford our products, we have a patient assistance program that help financially needy patients. This type of program has become the subject of scrutiny. Some pharmaceutical manufacturers were named in class action lawsuits challenging the legality of their patient assistance programs under a variety of federal and state laws. Our patient assistance program could become the target of similar litigation. In addition, certain state and federal enforcement authorities and members of Congress have initiated inquiries about co-pay assistance programs. Some state legislatures have also been considering proposals that would restrict or ban co-pay coupons.

If we are deemed not to have complied with laws or regulations in the operation of these programs, we could be subject to damages, fines, penalties or other criminal, civil or administrative sanctions or enforcement actions. Further, numerous organizations, including pharmaceutical manufacturers, have received subpoenas from the U.S. Department of Justice and other enforcement authorities seeking information related to their patient assistance programs and support, and certain of these organizations have entered into, or have otherwise agreed to, significant civil settlements with applicable enforcement authorities. It is possible that future legislation may propose establishing requirements that affect pharmaceutical manufacturers. We cannot ensure that our compliance controls, policies and procedures will be sufficient

to protect against acts of our employees, business partners or vendors that may violate the laws or regulations of the jurisdictions in which we operate. A government investigation could negatively impact our business practices, harm our reputation, divert the attention of management and increase our expenses.

If manufacturers obtain approval for generic versions of TAVALISSE, or of products with which we compete, our business may be harmed.

Under the U.S. Food, Drug and Cosmetic Act, or FDCA, the FDA can approve an Abbreviated New Drug Application, or ANDA, for a generic version of a branded drug without the ANDA applicant undertaking the clinical testing necessary to obtain approval to market a new drug. Generally, in place of such clinical studies, an ANDA applicant usually needs only to submit data demonstrating that its product has the same active ingredient(s), strength, dosage form, route of administration and that it is bioequivalent to the branded product.

The FDCA requires that an applicant for approval of a generic form of a branded drug certify either that its generic product does not infringe any of the patents listed by the owner of the branded drug in the Orange Book or that those patents are not enforceable. This process is known as a paragraph IV challenge. Upon notice of a paragraph IV challenge, a patent owner has 45 days to bring a patent infringement suit in federal district court against the company seeking ANDA approval of a product covered by one of the owner's patents. If this type of suit is commenced, the FDCA provides a 30-month stay on the FDA's approval of the competitor's application. If the litigation is resolved in favor of the ANDA applicant or the challenged patent expires during the 30-month stay period, the stay is lifted, and the FDA may thereafter approve the application based on the standards for approval of ANDAs. Once an ANDA is approved by the FDA, the generic manufacturer may market and sell the generic form of the branded drug in competition with the branded medicine.

The ANDA process can result in generic competition if the patents at issue are not upheld or if the generic competitor is found not to infringe the owner's patents. If this were to occur with respect to TAVALISSE or products with which it competes, our business would be materially harmed. We have a number of patents listed in the Orange Book, the last of which is expected to expire in July 2032.

Unforeseen safety issues could emerge with TAVALISSE that could require us to change the prescribing information to add warnings, limit use of the product, and/or result in litigation. Any of these events could have a negative impact on our business.

Discovery of unforeseen safety problems or increased focus on a known problem could impact our ability to commercialize TAVALISSE and could result in restrictions on its permissible uses, including withdrawal of the medicine from the market.

If we or others identify additional undesirable side effects caused by TAVALISSE after approval:

- regulatory authorities may require the addition of labeling statements, specific warnings, contraindications, or field alerts to physicians and pharmacies;
- regulatory authorities may withdraw their approval of the product and require us to take our approved drugs off the market;
- we may be required to change the way the product is administered, conduct additional clinical trials, change the labeling of the product, or implement a Risk Evaluation and Mitigation Strategy, or REMS;
- we may have limitations on how we promote our drugs;
- third-party payers may limit coverage or reimbursement for TAVALISSE;

- sales of TAVALISSE may decrease significantly;
- we may be subject to litigation or product liability claims; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of TAVALISSE and could substantially increase our operating costs and expenses, which in turn could delay or prevent us from generating significant revenue from sale of TAVALISSE.

If a safety issue emerges post-approval, we may become subject to costly product liability litigation by our customers, their patients or payers. Product liability claims could divert management's attention from our core business, be expensive to defend, and result in sizable damage awards against us that may not be covered by insurance. If we cannot successfully defend ourselves against claims that TAVALISSE caused injuries, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for any product candidates or products that we may develop;
- the inability to commercialize any products that we may develop;
- injury to our reputation and significant negative media attention;
- withdrawal of patients from clinical studies or cancellation of studies;
- significant costs to defend the related litigation;
- substantial monetary awards to patients; and
- loss of revenue.

We currently hold \$10.0 million in product liability insurance coverage, which may not be adequate to cover all liabilities that we may incur. Insurance coverage is increasingly expensive. We may not be able to obtain insurance coverage at a reasonable cost or in amounts adequate to satisfy any liability or associated costs that may arise in the future. These events could harm our business and results of operations and cause our stock price to decline.

If we fail to comply with our reporting and payment obligations under the Medicaid Drug Rebate Program or other governmental pricing programs in the United States, we could be subject to additional reimbursement requirements, fines, sanctions and exposure under other laws which could have a material adverse effect on our business, results of operations and financial condition.

We participate in the Medicaid Drug Rebate Program, as administered by the CMS, and other federal and state government pricing programs in the United States, and we may participate in additional government pricing programs in the future. These programs generally require us to pay rebates or otherwise provide discounts to government payers in connection with drugs that are dispensed to beneficiaries/recipients of these programs. In some cases, such as with the Medicaid Drug Rebate Program, the rebates are based on pricing that we report on a monthly and quarterly basis to the government agencies that administer the programs. Pricing requirements and rebate/discount calculations are complex, vary among products and programs, and are often subject to interpretation by governmental or regulatory agencies and the courts. The requirements of these programs, including, by way of example, their respective terms and scope, change frequently. Responding to current and future changes may increase our costs, and the complexity of compliance will be time consuming. Invoicing for rebates is provided in arrears, and there is frequently a time lag of up to several months

between the sales to which rebate notices relate and our receipt of those notices, which further complicates our ability to accurately estimate and accrue for rebates related to the Medicaid program as implemented by individual states. Thus, there can be no assurance that we will be able to identify all factors that may cause our discount and rebate payment obligations to vary from period to period, and our actual results may differ significantly from our estimated allowances for discounts and rebates. Changes in estimates and assumptions may have a material adverse effect on our business, results of operations and financial condition.

In addition, the Office of Inspector General of the Department of Health and Human Services and other Congressional enforcement and administrative bodies have recently increased their focus on pricing requirements for products, including, but not limited to the methodologies used by manufacturers to calculate average manufacturer price, or AMP, and best price, or BP, for compliance with reporting requirements under the Medicaid Drug Rebate Program. We are liable for errors associated with our submission of pricing data and for any overcharging of government payers. Failure to make necessary disclosures and/or to identify overpayments could result in allegations against us under the Federal False Claims Act and other laws and regulations. Any required refunds to the U.S. government or responding to a government investigation or enforcement action would be expensive and time consuming and could have a material adverse effect on our business, results of operations and financial condition. In addition, in the event that CMS were to terminate our rebate agreement, no federal payments would be available under Medicaid or Medicare for our covered outpatient drugs.

Even for those product candidates that have or may receive regulatory approval, they may fail to achieve the degree of market acceptance by physicians, patients, healthcare payors and others in the medical community necessary for commercial success, in which case we may not generate significant revenues or become profitable.

For our product candidates that have or may receive regulatory approval, they may nonetheless fail to gain sufficient market acceptance by physicians, hospital administrators, patients, healthcare payors and others in the medical community. The degree of market acceptance of our product candidates, if approved for commercial sale, will depend on a number of factors, including the following:

- relative convenience and ease of administration;
- the willingness of the target patient population to try new therapies and of physicians to prescribe these therapies;
- the willingness of physicians to change their current treatment practices;
- the willingness of hospitals and hospital systems to include our product candidates as treatment options;
- demonstration of efficacy and safety in clinical trials;
- the prevalence and severity of any side effects;
- the ability to offer product candidates for sale at competitive prices;
- the price we charge for our product candidates;
- the strength of marketing and distribution support; and
- the availability of third-party coverage and adequate reimbursement.

Efforts to educate the physicians, patients, healthcare payors and others in the medical community on the benefits of our product candidates may require significant resources and may not be successful. If any of our product

candidates are approved, if at all, but do not achieve an adequate level of acceptance, we may not generate significant product revenue and we may not become profitable on a sustained basis.

We will need additional capital in the future to sufficiently fund our operations and research.

We have consumed substantial amounts of capital to date as we continue our research and development activities, including preclinical studies and clinical trials and for the commercial launch of TAVALISSE. We may seek another collaborator or licensee in the future for further clinical development and commercialization of fostamatinib, as well as our other clinical programs, which we may not be able to obtain on commercially reasonable terms or at all. In September 2019, we entered into a \$60.0 million term loan credit facility with MidCap pursuant to a Credit and Security Agreement (Credit Agreement). At closing, \$10.0 million was funded to us in an initial tranche. The facility also gives us the ability to access an additional \$50.0 million, of which \$40.0 million is subject to the achievement of certain customary conditions. In January 2019, we entered into an exclusive commercialization license agreement with Grifols to commercialize fostamatinib for the treatment, palliation, or prevention of human diseases, including chronic or persistent ITP, AIHA, and IgAN in Europe and Turkey, in which we received an upfront payment of \$30.0 million. However, if by the second anniversary of the effective date of the agreement, the EMA has not approved the MAA for fostamatinib for ITP, Grifols will have the right to terminate such agreement in its entirety within six 6 months after such second anniversary by providing us with at 60 days' written notice, and in such event only, we are required to refund to Grifols \$25.0 million of the upfront payment. In October 2018, we entered into an exclusive license and supply agreement with Kissei for the development and commercialization of fostamatinib in all indications in Japan, China, Taiwan, and the Republic of Korea in which we will receive an upfront cash payment of \$33.0 million. We believe that our existing capital resources will be sufficient to support our current and projected funding requirements, including the commercial launch of TAVALISSE in the U.S., through at least the next 12 months from the Form 10-Q filing date. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Because of the numerous risks and uncertainties associated with commercial launch, the development of our product candidates and other research and development activities, we are unable to estimate with certainty our future product revenues, our revenues from our current and future collaborative partners, the amounts of increased capital outlays and operating expenditures associated with our current and anticipated clinical trials and other research and development activities.

We will continue to need additional capital and the amount of future capital needed will depend largely on the success of our commercial launch of TAVALISSE and the success of our internally developed programs as they proceed in later and more expensive clinical trials, including any additional clinical trials that we may decide to conduct with respect to fostamatinib. Unless and until we are able to generate a sufficient amount of product, royalty or milestone revenue, which may never occur, we expect to finance future cash needs through public and/or private offerings of equity securities, debt financings or collaboration and licensing arrangements, as well as through proceeds from exercise of stock options and interest income earned on the investment of our cash balances and short-term investments. We do not know whether additional financing will be available when needed, or that, if available, we will obtain financing on reasonable terms. To the extent we raise additional capital by issuing equity securities in the future, our stockholders could at that time experience substantial dilution. In addition, we have a significant number of stock options outstanding. To the extent that outstanding stock options have been or may be exercised or other shares issued, our stockholders may experience further dilution. Further, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans, including through an "at-the-market" equity offering program. Our credit facility with MidCap involve certain covenants and any other debt financing that we are able to obtain in the future may involve operating covenants that restrict our business. To the extent that we raise additional funds through any new collaboration and licensing arrangements, we may be required to refund certain payments made to us, relinquish some rights to our technologies or product candidates or grant licenses on terms that are not favorable to us.

We have new indebtedness in the form of term loan pursuant to the Credit Agreement with MidCap, which could adversely affect our financial condition and our ability to respond to changes in our business. Further, if we are unable to satisfy certain conditions of the Credit Agreement, we will be unable to draw down the remainder of the

facility. If we are unable to satisfy certain conditions of the Credit Agreement, we will be unable to draw down the remainder of the facility.*

In September 2019, we entered into the Credit Agreement with MidCap. The Credit Agreement provides for a \$60 million term loan credit facility with four tranches. At closing, \$10.0 million was funded to us in an initial tranche. The Credit Agreement also gives us the ability to access an additional \$50.0 million, of which \$40.0 million is subject to the achievement of certain customary conditions.

Under the Credit Agreement we are required to repay amounts due when there is an event of default for the term loans that results in the principal, premium, if any, and interest, if any, becoming due prior to the maturity date for the term loans. The Credit Agreement also contains a number of other affirmative and restrictive covenants. These and other terms in the Credit Agreement have to be monitored closely for compliance and could restrict our ability to grow our business or enter into transactions that we believe would be beneficial to our business. Our business may not generate cash flow from operations in the future sufficient to service our debt and support our growth strategies. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as restructuring our debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our current debt obligations. In addition, we cannot be sure that additional financing will be available when required or, if available, will be on terms satisfactory to us. Further, even if we are able to obtain additional financing, we may be required to use such proceeds to repay a portion of our debt.

Our indebtedness may have other adverse effects, such as:

- our vulnerability to adverse general economic conditions and heightened competitive pressures;
- dedication of a portion of our cash flow from operations to interest payments, limiting the availability of cash for other operational purposes;
- limited flexibility in planning for, or reacting to, changes in our business and industry; and
- our inability to obtain additional financing in the future.

Our Credit Agreement with MidCap contains a mandatory prepayment provision that gives the Agent the right to demand payment of the outstanding principal and additional interest and fees in the event of default. We may not have enough available cash or be able to obtain financing at the time we are required to repay the term loan with additional interest and fees prior to maturity.

At closing, \$10.0 million was funded to us in an initial tranche. The Credit Agreement also gives us the ability to access an additional \$50.0 million at our option, of which \$40.0 million may be drawn in 2 tranches subject to the achievement of certain customary conditions. If we are unable to satisfy these or other required conditions, we would not be able to draw down the remaining tranches of financing and may not be able to obtain alternative financing on commercially reasonable terms or at all, which could adversely impact our business.

We rely and may continue to rely on a single distribution facility for the sale of TAVALISSE and potential sale of any of our product candidates.*

Our distribution operations for the sale of TAVALISSE is currently concentrated in one distribution center owned by a third-party logistics provider. Our distribution operations, if and when we launch any of our product candidates in the future, may also be concentrated in a single distribution center owned by a third-party logistics provider. Any errors in inventory level management and unforeseen inventory shortage could adversely affect our business. In addition, any significant disruption in the operation of the facility due to natural disaster or severe weather, or events such as fire, accidents, power outages, system failures, or other unforeseen causes, could devalue or damage a significant portion of our inventories and could adversely affect our product distribution and sales until such time as we could secure an alternative facility. If we encounter difficulties with our distribution facility or other problems or disasters arise, we cannot ensure that critical systems and operations will be restored in a timely manner or at all, and this

would have a material adverse effect on our business. In addition, growth could require us to further expand our current facility, which could affect us adversely in ways that we cannot predict.

We lack the capability to manufacture compounds for clinical development and we intend to rely on third parties for commercial supply, manufacturing and distribution if any of our product candidates which receive regulatory approval and we may be unable to obtain required material or product in a timely manner, at an acceptable cost or at a quality level required to receive regulatory approval.

We currently do not have the manufacturing capabilities or experience necessary to produce TAVALISSE or any product candidates for clinical trials, including fostamatinib in AIHA, our IRAK inhibitor program and our RIP1 inhibitor program. We currently use one manufacturer of fostamatinib. We do not currently have, nor do we plan to acquire the infrastructure or capability to supply, manufacture or distribute preclinical, clinical or commercial quantities of drug substances or products. For each clinical trial of our unpartnered product candidates, we rely on third-party manufacturers for the active pharmaceutical ingredients, as well as various manufacturers to manufacture starting components, excipients and formulated drug products. Our ability to develop our product candidates, and our ability to commercially supply our products will depend, in part, on our ability to successfully obtain the APIs and other substances and materials used in our product candidates from third parties and to have finished products manufactured by third parties in accordance with regulatory requirements and in sufficient quantities for preclinical and clinical testing and commercialization. If we fail to develop and maintain supply relationships with these third parties, we may be unable to continue to develop or commercialize our product candidates.

We rely and will continue to rely on certain third parties, including those located outside the U.S., as our limited source of the materials they supply or the finished products they manufacture. The drug substances and other materials used in our product candidates are currently available only from one or a limited number of suppliers or manufacturers and certain of our finished product candidates are manufactured by one or a limited number of contract manufacturers. Any of these existing suppliers or manufacturers may:

- fail to supply us with product on a timely basis or in the requested amount due to unexpected damage to or destruction of facilities or equipment or otherwise;
- fail to increase manufacturing capacity and produce drug product and components in larger quantities and at higher yields in a timely or cost-effective manner, or at all, to sufficiently meet our commercial needs;
- be unable to meet our production demands due to issues related to their reliance on sole-source suppliers and manufacturers;
- supply us with product that fails to meet regulatory requirements;
- become unavailable through business interruption or financial insolvency;
- lose regulatory status as an approved source;
- be unable or unwilling to renew current supply agreements when such agreements expire on a timely basis, on acceptable terms or at all; or
- discontinue production or manufacturing of necessary drug substances or products.

Our current and anticipated future dependence upon these third-party manufacturers may adversely affect our ability to develop and commercialize product candidates on a timely and competitive basis, which could have a material adverse effect on sales, results of operations and financial condition. If we were required to transfer manufacturing processes to other third-party manufacturers and we were able to identify an alternative manufacturer, we would still need to satisfy various regulatory requirements. Satisfaction of these requirements could cause us to experience significant delays in receiving an adequate supply of our products and products in development and could be costly.

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Moreover, we may not be able to transfer processes that are proprietary to the manufacturer, if any. These manufacturers may not be able to produce material on a timely basis or manufacture material at the quality level or in the quantity required to meet our development timelines and applicable regulatory requirements and may also experience a shortage in qualified personnel. We may not be able to maintain or renew our existing third-party manufacturing arrangements, or enter into new arrangements, on acceptable terms, or at all. Our third-party manufacturers could terminate or decline to renew our manufacturing arrangements based on their own business priorities, at a time that is costly or inconvenient for us. If we are unable to contract for the production of materials in sufficient quantity and of sufficient quality on acceptable terms, our planned clinical trials may be significantly delayed. Manufacturing delays could postpone the filing of our IND applications and/or the initiation or completion of clinical trials that we have currently planned or may plan in the future.

Drug manufacturers are subject to ongoing periodic unannounced inspection by the FDA, the Drug Enforcement Administration, and other federal and state agencies to ensure strict compliance with cGMP and other government regulations and corresponding foreign standards. We do not have control over third-party manufacturers' compliance with these regulations and standards and they may not be able to comply. Switching manufacturers may be difficult because the number of potential manufacturers is limited. It may be difficult or impossible for us to find a replacement manufacturer quickly on acceptable terms, or at all. Additionally, if we are required to enter into new supply arrangements, we may not be able to obtain approval from the FDA of any alternate supplier in a timely manner, or at all, which could delay or prevent the clinical development and commercialization of any related product candidates. Failure of our third-party manufacturers or us to comply with applicable regulations could result in sanctions being imposed on us, including fines, civil penalties, delays in or failure to grant marketing approval of our product candidates, injunctions, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products and compounds, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect our business.

Forecasting potential sales for any of our product candidates will be difficult, and if our projections are inaccurate, our business may be harmed, and our stock price may be adversely affected.

Our business planning requires us to forecast or make assumptions regarding product demand and revenues for any of our product candidates if they are approved despite numerous uncertainties. These uncertainties may be increased if we rely on our collaborators or other third parties to conduct commercial activities in certain geographies and provide us with accurate and timely information. Actual results may differ materially from projected results for various reasons, including the following, as well as risks identified in other risk factors:

- the efficacy and safety of any of our product candidates, including as relative to marketed products and product candidates in development by third parties;
- pricing (including discounting or other promotions), reimbursement, product returns or recalls, competition, labeling, adverse events and other items that impact commercialization;
- the rate of adoption in the particular market, including fluctuations in demand for various reasons;
- lack of patient and physician familiarity with the drug;
- lack of patient use and physician prescribing history;
- lack of commercialization experience with the drug;
- actual sales to patients may significantly differ from expectations based on sales to wholesalers; and
- uncertainty relating to when the drug may become commercially available to patients and rate of adoption in other territories.

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We expect that our revenues from sales of any of our product candidates will continue to be based in part on estimates, judgment and accounting policies. Any incorrect estimates or disagreements with regulators or others regarding such estimates or accounting policies may result in changes to our guidance, projections or previously reported results. Expected and actual product sales and quarterly and other results may greatly fluctuate, including in the near-term, and such fluctuations can adversely affect the price of our common stock, perceptions of our ability to forecast demand and revenues, and our ability to maintain and fund our operations.

We might not be able to commercialize our product candidates successfully if problems arise in the clinical testing and approval process.

The activities associated with the research, development and commercialization of fostamatinib and other product candidates in our pipeline must undergo extensive clinical trials, which can take many years and require substantial expenditures, subject to extensive regulation by the FDA and other regulatory agencies in the U.S. and by comparable authorities in other countries. The process of obtaining regulatory approvals in the U.S. and other foreign jurisdictions is expensive, and lengthy, if approval is obtained at all.

Our clinical trials may fail to produce results satisfactory to the FDA or regulatory authorities in other jurisdictions. The regulatory process also requires preclinical testing, and data obtained from preclinical and clinical activities are susceptible to varying interpretations. The FDA has substantial discretion in the approval process and may refuse to approve any NDA or sNDA and decide that our data is insufficient for approval and require additional preclinical, clinical or other studies. For example, the primary endpoint for our pivotal Phase 3 trial in warm AIHA, which is a durable hemoglobin response by week 24, defined as Hgb > 10 g/dL and > 2 g/dL greater than baseline could ultimately be viewed as insufficient for approval by the FDA. Varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent regulatory approval of fostamatinib for any individual, additional indications.

In addition, delays or rejections may be encountered based upon changes in regulatory policy for product approval during the period of product development and regulatory agency review, which may cause delays in the approval or rejection of an application for fostamatinib or for our other product candidates.

Commercialization of our product candidates depends upon successful completion of extensive preclinical studies and clinical trials to demonstrate their safety and efficacy for humans. Preclinical testing and clinical development are long, expensive and uncertain processes.

In connection with clinical trials of our product candidates, we face the risks that:

- the product candidate may not prove to be effective;
- the product candidate may cause harmful side effects;
- the clinical results may not replicate the results of earlier, smaller trials;
- we, or the FDA or similar foreign regulatory authorities, may terminate or suspend the trials;
- our results may not be statistically significant;
- patient recruitment and enrollment may be slower than expected;
- patients may drop out of the trials; and
- regulatory and clinical trial requirements, interpretations or guidance may change.

We do not know whether we will be permitted to undertake clinical trials of potential products beyond the trials already concluded and the trials currently in process. It will take us, or our collaborative partners several years to complete any such testing, and failure can occur at any stage of testing. Interim results of trials do not necessarily predict final results, and acceptable results in early trials may not be repeated in later trials. A number of companies in the pharmaceutical industry, including biotechnology companies, have suffered significant setbacks in advanced clinical trials, even after achieving promising results in earlier trials. For example, in April 2018, we announced that our Phase 2 clinical trial in patients with IgAN did not achieve statistical significance for its primary endpoint, which was mean change in proteinuria comparing fostamatinib dose groups to placebo controls in all patients studied.

We cannot assure you that we will be able to successfully complete the clinical development of our product candidates or receive regulatory approval to ultimately commercialize any of our other product candidates. For example, if we are unable to successfully commercialize fostamatinib, our business will be harmed.

Any product for which we have obtained regulatory approval, or for which we obtain approval in the future, is subject to, or will be subject to, extensive ongoing regulatory requirements by the FDA, EMA and other comparable regulatory authorities, and if we fail to comply with regulatory requirements or if we experience unanticipated problems with our products, we may be subject to penalties, we will be unable to generate revenue from the sale of such products, our potential for generating positive cash flow will be diminished, and the capital necessary to fund our operations will be increased.

In April 2018, we announced that the FDA had approved TAVALISSE for the treatment of adult patients with chronic ITP who have had insufficient response to previous treatment. We launched fostamatinib in the United States on our own in late May 2018. In January 2019, we entered into an exclusive commercialization license agreement with Grifols to commercialize fostamatinib for the treatment, palliation, or prevention of human diseases, including chronic or persistent immune ITP, AIHA, and IgAN in Europe and Turkey, and in October 2018, we entered into an exclusive license and supply agreement with Kissei for the development and commercialization of fostamatinib in all indications in Japan, China, Taiwan, and the Republic of Korea. Any product for which we have obtained regulatory approval, or for which we obtain regulatory approval in the future, along with the manufacturing processes and practices, post-approval clinical research, product labeling, advertising and promotional activities for such product, are subject to continual requirements of, and review by, the FDA, the EMA and other comparable international regulatory authorities. These requirements include submissions of safety and other post-marketing information and reports, registration and listing requirements, current good manufacturing practices (cGMP) requirements relating to manufacturing, quality control, quality assurance and corresponding maintenance of records and documents, requirements regarding the distribution of samples to physicians, import and export requirements and recordkeeping.

Promotional communications with respect to prescription drugs are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the product's approved labeling. Thus, we will not be able to promote any products we develop for indications or uses for which they are not approved.

In addition, the FDA often requires post-marketing testing and surveillance to monitor the effects of products. The FDA, the EMA and other comparable international regulatory agencies may condition approval of our product candidates on the completion of such post-marketing clinical studies. These post-marketing studies may suggest that a product causes undesirable side effects or may present a risk to the patient. Additionally, the FDA may require Risk Evaluation and Mitigation Strategies, or REMS, to help ensure that the benefits of the drug outweigh its risks. A REMS may be required to include various elements, such as a medication guide or patient package insert, a communication plan to educate healthcare providers of the drug's risks, limitations on who may prescribe or dispense the drug, requirements that patients enroll in a registry or undergo certain health evaluations or other measures that the FDA deems necessary to ensure the safe use of the drug.

Discovery after approval of previously unknown problems with any of our products, manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in actions such as:

- restrictions on our ability to conduct clinical trials, including full or partial clinical holds on ongoing or

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- planned trials;
- restrictions on product manufacturing processes;
- restrictions on the marketing of a product;
- restrictions on product distribution;
- requirements to conduct post-marketing clinical trials;
- untitled or warning letters or other adverse publicity;
- withdrawal of products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recall of products;
- refusal to permit the import or export of our products;
- product seizure;
- fines, restitution or disgorgement of profits or revenue;
- refusal to allow us to enter into supply contracts, including government contracts;
- injunctions; or
- imposition of civil or criminal penalties.

If such regulatory actions are taken, the value of our company and our operating results will be adversely affected. Additionally, if the FDA, the EMA or any other comparable international regulatory agency withdraws its approval of a product that is or may be approved, we will be unable to generate revenue from the sale of that product in the relevant jurisdiction, our potential for generating positive cash flow will be diminished and the capital necessary to fund our operations will be increased. Accordingly, we continue to expend significant time, money and effort in all areas of regulatory compliance, including manufacturing, production, product surveillance, post-marketing studies and quality control.

We do not and will not have access to all information regarding fostamatinib and product candidates we licensed to Kissei and Grifols.

We do not and will not have access to all information regarding fostamatinib and other product candidates, including potentially material information about commercialization plans, medical information strategies, clinical trial design and execution, safety reports from clinical trials, safety reports, regulatory affairs, process development, manufacturing and other areas known by Kissei and Grifols. In addition, we have confidentiality obligations under our agreement with Kissei and Grifols. Thus, our ability to keep our shareholders informed about the status of fostamatinib will be limited by the degree to which Kissei and/or Grifols keep us informed and allows us to disclose such information to the public. If Kissei and/or Grifols fail to keep us informed about commercialization efforts related to fostamatinib, or the status of the clinical development or regulatory approval pathway of other product candidates licensed to them, we may make operational and/or investment decisions that we would not have made had we been fully informed, which may materially and adversely affect our business and operations.

If we are unable to obtain regulatory approval to market products in the United States and foreign jurisdictions, we will not be permitted to commercialize products we or our collaborative partners may develop.

We cannot predict whether regulatory clearance will be obtained for any product that we, or our collaborative partners, hope to develop. Satisfaction of regulatory requirements typically takes many years, is dependent upon the type, complexity and novelty of the product and requires the expenditure of substantial resources. Of particular significance to us are the requirements relating to research and development and testing.

Before commencing clinical trials in humans in the United States, we, or our collaborative partners, will need to submit and receive approval from the FDA of an IND application. Clinical trials are subject to oversight by institutional review boards and the FDA and:

- must be conducted in conformance with the FDA’s good clinical practices and other applicable regulations;
- must meet requirements for institutional review board oversight;
- must meet requirements for informed consent;
- are subject to continuing FDA and regulatory oversight;
- may require large numbers of test subjects; and
- may be suspended by us, our collaborators or the FDA at any time if it is believed that the subjects participating in these trials are being exposed to unacceptable health risks or if the FDA finds deficiencies in the IND or the conduct of these trials.

While we have stated that we intend to file additional INDs for future product candidates, this is only a statement of intent, and we may not be able to do so because we may not be able to identify potential product candidates. In addition, the FDA may not approve any IND we or our collaborative partners may submit in a timely manner, or at all.

Before receiving FDA approval to market a product, we must demonstrate with substantial clinical evidence that the product is safe and effective in the patient population and the indication that will be treated. Data obtained from preclinical and clinical activities are susceptible to varying interpretations that could delay, limit or prevent regulatory approvals. In addition, delays or rejections may be encountered based upon additional government regulation from future legislation or administrative action or changes in FDA policy during the period of product development, clinical trials and FDA regulatory review. Failure to comply with applicable FDA or other applicable regulatory requirements may result in criminal prosecution, civil penalties, recall or seizure of products, total or partial suspension of production or injunction, adverse publicity, as well as other regulatory action against our potential products or us. Additionally, we have limited experience in conducting and managing the clinical trials necessary to obtain regulatory approval.

If regulatory approval of a product is granted, this approval will be limited to those indications or disease states and conditions for which the product is demonstrated through clinical trials to be safe and efficacious. We cannot assure you that any compound developed by us, alone or with others, will prove to be safe and efficacious in clinical trials and will meet all of the applicable regulatory requirements needed to receive marketing approval.

Outside the United States, our ability, or that of our collaborative partners, to market a product is contingent upon receiving a marketing authorization from the appropriate regulatory authorities. This foreign regulatory approval process typically includes all of the risks and costs associated with FDA approval described above and may also include additional risks and costs, such as the risk that such foreign regulatory authorities, which often have different regulatory and clinical trial requirements, interpretations and guidance from the FDA, may require additional clinical trials or results for approval of a product candidate, any of which could result in delays, significant additional costs or failure to obtain such regulatory approval. For example, on October 18, 2019, we announced that the CHMP of the EMA, has adopted a positive trend vote on the MAA. The indication for the positive trend vote is for the treatment of chronic

immune thrombocytopenia in adult patients who are refractory to other treatments. The CHMP intends to hold a final vote on their recommendation at their November meeting. Pending a formal positive CHMP opinion, the European Commission, which has the authority to approve medicines for use in Europe, would be expected to render their decision approximately 60 days after the opinion is received. There can be no assurance that we will obtain approval on our MAA for fostamatinib in ITP in Europe. Also, there can be no assurance that we or our collaborative partners will not have to provide additional information or analysis, or conduct additional clinical trials, before receiving approval to market product candidates.

We may be unable to expand our product pipeline, which could limit our growth and revenue potential.

Our business is focused on the discovery, development and commercialization of novel small molecule drugs that significantly improve the lives of patients with immune and hematologic disorders, cancer and rare diseases. In this regard, we are pursuing internal drug discovery efforts with the goal of identifying new product candidates to advance into clinical trials. Internal discovery efforts to identify new product candidates require substantial technical, financial and human resources. These internal discovery efforts may initially show promise in identifying potential product candidates, yet ultimately fail to yield product candidates for clinical development for a number of reasons. For example, potential product candidates may, on later stage clinical study, be shown to have inadequate efficacy, harmful side effects, suboptimal pharmaceutical profiles or other characteristics suggesting that they are unlikely to be commercially viable products.

Apart from our internal discovery efforts, our strategy to expand our development pipeline is also dependent on our ability to successfully identify and acquire or in-license relevant product candidates. However, the in-licensing and acquisition of product candidates is a highly competitive area, and many other companies are pursuing the same or similar product candidates to those that we may consider attractive. In particular, larger companies with more well-established and diverse revenue streams may have a competitive advantage over us due to their size, financial resources and more extensive clinical development and commercialization capabilities. Furthermore, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We may also be unable to in-license or acquire additional relevant product candidates on acceptable terms that would allow us to realize an appropriate return on our investment. If we are unable to develop suitable product candidates through internal discovery efforts or if we are unable to successfully obtain rights to suitable product candidates, our business and prospects for growth could suffer. Even if we succeed in our efforts to obtain rights to suitable product candidates, the competitive business environment may result in higher acquisition or licensing costs, and our investment in these potential products will remain subject to the inherent risks associated with the development and commercialization of new medicines. In certain circumstances, we may also be reliant on the licensor for the continued development of the in-licensed technology and their efforts to safeguard their underlying intellectual property.

With respect to acquisitions, we may not be able to integrate the target company successfully into our existing business, maintain the key business relationships of the target, or retain key personnel of an acquired business. Furthermore, we could assume unknown or contingent liabilities or incur unanticipated expenses. Any acquisitions or investments made by us also could result in our spending significant amounts, issuing dilutive securities, assuming or incurring significant debt obligations and contingent liabilities, incurring large one-time expenses and acquiring intangible assets that could result in significant future amortization expense and significant write-offs, any of which could harm our operating results.

Increasing use of social media could give rise to liability and may harm our business.

We and our employees are increasingly utilizing social media tools and our website as a means of communication. Despite our efforts to monitor evolving social media communication guidelines and comply with applicable laws and regulations, there is risk that the unauthorized use of social media by us or our employees to communicate about our products or business, or any inadvertent disclosure of material, nonpublic information through these means, may cause us to be found in violation of applicable laws and regulations, which may give rise to liability

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and result in harm to our business. In addition, there is also risk of inappropriate disclosure of sensitive information, which could result in significant legal and financial exposure and reputational damages that could potentially have a materially adverse impact on our business, financial condition and results of operations. Furthermore, negative posts or comments about us or our products on social media could seriously damage our reputation, brand image and goodwill.

Our future funding requirements will depend on many uncertain factors.

Our future funding requirements will depend upon many factors, many of which are beyond our control, including, but not limited to:

- the costs to commercialize fostamatinib for the treatment of ITP in the United States, or any other future product candidates, if any such candidate receives regulatory approval for commercial sale;
- our ability to successfully obtain authorization from the European Commission on our MAA for fostamatinib in ITP in Europe;
- the progress and success of our Phase 3 trial in warm AIHA, other clinical trials and preclinical activities (including studies and manufacture of materials) of our product candidates conducted by us;
- the costs and timing of regulatory filings and approvals by us and our collaborators;
- the progress of research and development programs carried out by us and our collaborative partners;
- any changes in the breadth of our research and development programs;
- the ability to achieve the events identified in our collaborative agreements that may trigger payments to us from our collaboration partners;
- our ability to acquire or license other technologies or compounds that we may seek to pursue;
- our ability to manage our growth;
- competing technological and market developments;
- the costs and timing of obtaining, enforcing and defending our patent and other intellectual property rights; and
- expenses associated with any unforeseen litigation, including any arbitration and securities class action lawsuits.

Insufficient funds may require us to delay, scale back or eliminate some or all of our commercial efforts and/or research and development programs, to reduce personnel and operating expenses, to lose rights under existing licenses or to relinquish greater or all rights to product candidates at an earlier stage of development or on less favorable terms than we would otherwise choose or may adversely affect our ability to operate as a going concern.

There is a high risk that drug discovery and development efforts might not generate successful product candidates.

At the present time, a significant portion of our operations are focused on various stages of drug identification and development. We currently have various product candidates in the clinical testing stage. In our industry, it is statistically unlikely that the limited number of compounds that we have identified as potential product candidates will actually lead to successful product development efforts. We have invested a significant portion of our efforts and financial resources into the development of fostamatinib. Our ability to generate product revenue, which will not occur until after regulatory approval, if ever, will depend on the successful development, regulatory approval and eventual commercialization of one of our product candidates.

Our compounds in clinical trials and our future leads for potential drug compounds are subject to the risks and failures inherent in the development of pharmaceutical products. These risks include, but are not limited to, the inherent difficulty in selecting the right drug and drug target and avoiding unwanted side effects, as well as unanticipated problems relating to product development, testing, enrollment, obtaining regulatory approvals, maintaining regulatory compliance, manufacturing, competition and costs and expenses that may exceed current estimates. In future clinical trials, we or our partners may discover additional side effects and/or higher frequency of side effects than those observed in previously completed clinical trials. The results of preliminary and mid-stage clinical trials do not necessarily predict clinical or commercial success, and larger later-stage clinical trials may fail to confirm the results observed in the previous clinical trials. Similarly, a clinical trial may show that a product candidate is safe and effective for certain patient populations in a particular indication, but other clinical trials may fail to confirm those results in a subset of that population or in a different patient population, which may limit the potential market for that product candidate. With respect to our own compounds in development, we have established anticipated timelines with respect to the initiation of clinical trials based on existing knowledge of the compounds. However, we cannot provide assurance that we will meet any of these timelines for clinical development. Additionally, the initial results of a completed earlier clinical trial of a product candidate do not necessarily predict final results and the results may not be repeated in later clinical trials.

Because of the uncertainty of whether the accumulated preclinical evidence (pharmacokinetic, pharmacodynamic, safety and/or other factors) or early clinical results will be observed in later clinical trials, we can make no assurances regarding the likely results from our future clinical trials or the impact of those results on our business. If our clinical trials fail to meet the primary efficacy endpoints, the commercial prospects of our business may be harmed, our ability to generate product revenues may be delayed or eliminated or we may be forced to undertake other strategic alternatives that are in our shareholders' best interests, including cost reduction measures. If we are unable to obtain adequate financing or engage in a strategic transaction on commercially reasonable terms or at all, we may be required to implement further cost reduction strategies which could significantly impact activities related to our commercial efforts and/or research and development of our future product candidates, and could significantly harm our business, financial condition and results of operations. In addition, these cost reduction strategies could cause us to further curtail our operations or take other actions that would adversely impact our shareholders.

Delays in clinical testing could result in increased costs to us.

We may not be able to initiate or continue clinical studies or trials for our product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in these clinical trials as required by the FDA or other regulatory authorities. Even if we are able to enroll a sufficient number of patients in our clinical trials, if the pace of enrollment is slower than we expect, the development costs for our product candidates may increase and the completion of our clinical trials may be delayed, or our clinical trials could become too expensive to complete. Significant delays in clinical testing could materially impact our product development costs and timing. Our estimates regarding timing are based on a number of assumptions, including assumptions based on past experience with our other clinical programs. If we are unable to enroll the patients in these trials at the projected rate, the completion of the clinical program could be delayed and the costs of conducting the program could increase, either of which could harm our business.

Clinical trials can be delayed for a variety of reasons, including delays in obtaining regulatory approval to commence a study, delays from scaling up of a study, delays in reaching agreement on acceptable clinical trial agreement

terms with prospective clinical sites, delays in obtaining institutional review board approval to conduct a study at a prospective clinical site or delays in recruiting subjects to participate in a study. In addition, we typically rely on third-party clinical investigators to conduct our clinical trials and other third-party organizations to oversee the operations of such trials and to perform data collection and analysis. The clinical investigators are not our employees, and we cannot control the amount or timing of resources that they devote to our programs. Failure of the third-party organizations to meet their obligations could adversely affect clinical development of our products. As a result, we may face additional delaying factors outside our control if these parties do not perform their obligations in a timely fashion. For example, any number of those issues could arise with our clinical trials causing a delay. Delays of this sort could occur for the reasons identified above or other reasons. If we have delays in conducting the clinical trials or obtaining regulatory approvals, our product development costs will increase. For example, we may need to make additional payments to third-party investigators and organizations to retain their services or we may need to pay recruitment incentives. If the delays are significant, our financial results and the commercial prospects for our product candidates will be harmed, and our ability to become profitable will be delayed. Moreover, these third-party investigators and organizations may also have relationships with other commercial entities, some of which may compete with us. If these third-party investigators and organizations assist our competitors at our expense, it could harm our competitive position.

We have obtained orphan drug designation from the FDA for fostamatinib for the treatment of ITP and warm AIHA, but we may not be able to obtain or maintain orphan drug designation or exclusivity for fostamatinib for the treatment of ITP, warm AIHA or our other product candidates, or we may be unable to maintain the benefits associated with orphan drug designation, including the potential for market exclusivity.

We have obtained orphan drug designation in the United States for fostamatinib for the treatment of ITP and AIHA. We may seek orphan drug designation for other product candidates in the future. Under the Orphan Drug Act, the FDA may grant orphan drug designation to a drug or biologic intended to treat a rare disease or condition, which is defined as one occurring in a patient population of fewer than 200,000 in the United States, or a patient population greater than 200,000 in the United States where there is no reasonable expectation that the cost of developing the drug will be recovered from sales in the United States. In the United States, orphan drug designation entitles a party to financial incentives such as opportunities for grant funding towards clinical trial costs, tax advantages and user-fee waivers. In addition, if a product that has orphan drug designation subsequently receives the first FDA approval for the disease for which it has such designation, the product is entitled to orphan drug exclusivity, which means that the FDA may not approve any other applications, including a full NDA, to market the same drug for the same indication for seven years, except in limited circumstances, such as a showing of clinical superiority to the product with orphan drug exclusivity or where the manufacturer is unable to assure sufficient product quantity.

We cannot assure you that any future application for orphan drug designation with respect to any other product candidate will be granted. If we are unable to obtain orphan drug designation with respect to other product candidates in the United States, we will not be eligible to obtain the period of market exclusivity that could result from orphan drug designation or be afforded the financial incentives associated with orphan drug designation. Even though we have received orphan drug designation for fostamatinib for the treatment of ITP and warm AIHA, we may not be the first to obtain marketing approval for the orphan-designated indication due to the uncertainties associated with developing pharmaceutical products. In addition, exclusive marketing rights in the United States for fostamatinib for the treatment of ITP, AIHA or any future product candidate may be limited if we seek approval for an indication broader than the orphan-designated indication or may be lost if the FDA later determines that the request for designation was materially defective or if the manufacturer is unable to assure sufficient quantities of the product to meet the needs of patients with the rare disease or condition. Further, even if we obtain orphan drug exclusivity for a product, that exclusivity may not effectively protect the product from competition because different drugs with different active moieties can be approved for the same condition. Even after an orphan product is approved, the FDA can subsequently approve the same drug with the same active moiety for the same condition if the FDA concludes that the later drug is safer, more effective, or makes a major contribution to patient care. Orphan drug designation neither shortens the development time or regulatory review time of a drug nor gives the drug any advantage in the regulatory review or approval process.

Our research and development efforts will be seriously jeopardized if we are unable to attract and retain key employees and relationships.

As a small company, our success depends on the continued contributions of our principal management and scientific personnel and on our ability to develop and maintain important relationships with leading academic institutions, scientists and companies in the face of intense competition for such personnel. In particular, our research programs depend on our ability to attract and retain highly skilled chemists, other scientists, and development, regulatory and clinical personnel. If we lose the services of any of our key personnel, our research and development efforts could be seriously and adversely affected. Our employees can terminate their employment with us at any time.

Our success as a company is uncertain due to our history of operating losses and the uncertainty of any future profitability.*

We incurred a loss from operations of approximately \$51.7 million during the nine months ended September 30, 2019. Other than for 2010, we have historically incurred losses from operations each year since we were incorporated in June 1996, due in large part to the significant research and development expenditures required to identify and validate new product candidates and pursue our development efforts, and recently our significant expenses related to the costs of our ongoing commercial launch of TAVALISSE. We expect to continue to incur losses from operations, at least in the next twelve months, and there can be no assurance that we will generate annual operating income in the foreseeable future. Currently, our potential sources of revenues are our sales of TAVALISSE, upfront payments, research and development contingent payments and royalty payments pursuant to our collaboration arrangements, which may never materialize if our collaborators do not achieve certain events or generate net sales to which these contingent payments are dependent on. If our future drug candidates fail or do not gain regulatory approval, or if our drugs do not achieve sustainable market acceptance, we may not be profitable. As of September 30, 2019, we had an accumulated deficit of approximately \$1.3 billion. The extent of our future losses or profitability, if any, is highly uncertain.

If our corporate collaborations or license agreements are unsuccessful, or if we fail to form new corporate collaborations or license agreements, our research and development efforts could be delayed.

Our strategy depends upon the formation and sustainability of multiple collaborative arrangements and license agreements with third parties now and in the future. We rely on these arrangements for not only financial resources, but also for expertise we need now and in the future relating to clinical trials, manufacturing, sales and marketing, and for licenses to technology rights. To date, we have entered into several such arrangements with corporate collaborators; however, we do not know if these collaborations or additional collaborations with third parties, if any, will dedicate sufficient resources or if any development or commercialization efforts by third parties will be successful. In addition, our corporate collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a drug candidate or development program. Should a collaborative partner fail to develop or commercialize a compound or product to which it has rights from us for any reason, including corporate restructuring, such failure might delay our ongoing research and development efforts, because we might not receive any future payments, and we would not receive any royalties associated with such compound or product. We are conducting a Phase 3 clinical program to study fostamatinib in AIHA on our own. We may seek another collaborator or licensee in the future for clinical development and commercialization of fostamatinib, as well as our other clinical programs, which we may not be able to obtain on commercially reasonable terms or at all. If we are unable to form new collaborations or enter into new license agreements, our research and development efforts could be delayed. In addition, the continuation of some of our partnered drug discovery and development programs may be dependent on the periodic renewal of our corporate collaborations.

Each of our collaborations could be terminated by the other party at any time, and we may not be able to renew these collaborations on acceptable terms, if at all, or negotiate additional corporate collaborations on acceptable terms, if at all. If these collaborations terminate or are not renewed, any resultant loss of revenues from these collaborations or loss of the resources and expertise of our collaborative partners could adversely affect our business.

Conflicts also might arise with collaborative partners concerning proprietary rights to particular compounds. While our existing collaborative agreements typically provide that we retain milestone payments, royalty rights and/or revenue sharing with respect to drugs developed from certain compounds or derivative compounds, any such payments or royalty rights may be at reduced rates, and disputes may arise over the application of payment provisions or derivative payment provisions to such drugs, and we may not be successful in such disputes. For example, in September 2018, BerGenBio served us with a notice of arbitration seeking declaratory relief related to the interpretation of provisions under our June 2011 license agreement, particularly as they relate to the rights and obligations of the parties in the event of the license or sale of a product in the program by BerGenBio and/or the sale of BerGenBio to a third party. The arbitration panel dismissed four of the six declarations sought by BerGenBio, and we thereafter consented to one of the remaining declarations requested by BerGenBio. On February 27, 2019, the arbitration panel issued a determination granting the declaration sought by BerGenBio on the remaining issue, and held that in the event of a sale of shares by BerGenBio's shareholders where there is no monetary benefit to BerGenBio, we would not be entitled to a portion of the proceeds from such a sale. In this circumstance where the revenue share provision is not triggered, the milestone and royalty payment provisions remain in effect. While we do not believe that the determination will have a material adverse effect on our operations, cash flows or financial condition, we can make no assurance regarding any such impact. Additionally, the management teams of our collaborators may change for various reasons including due to being acquired. Different management teams or an acquiring company of our collaborators may have different priorities which may have adverse results on the collaboration with us.

We are also a party to various license agreements that give us rights to use specified technologies in our research and development processes. The agreements pursuant to which we have in-licensed technology permit our licensors to terminate the agreements under certain circumstances. If we are not able to continue to license these and future technologies on commercially reasonable terms, our product development and research may be delayed or otherwise adversely affected.

If conflicts arise between our collaborators or advisors and us, any of them may act in their self-interest, which may be averse to our stockholders' interests.

If conflicts arise between us and our corporate collaborators or scientific advisors, the other party may act in its self-interest and not in the interest of our stockholders. Some of our corporate collaborators are conducting multiple product development efforts within each disease area that is the subject of the collaboration with us or may be acquired or merged with a company having a competing program. In some of our collaborations, we have agreed not to conduct, independently or with any third party, any research that is competitive with the research conducted under our collaborations. Our collaborators, however, may develop, either alone or with others, products in related fields that are competitive with the products or potential products that are the subject of these collaborations. Competing products, either developed by our collaborators or to which our collaborators have rights, may result in their withdrawal of support for our product candidates.

If any of our corporate collaborators were to breach or terminate its agreement with us or otherwise fail to conduct the collaborative activities successfully and in a timely manner, the preclinical or clinical development or commercialization of the affected product candidates or research programs could be delayed or terminated. We generally do not control the amount and timing of resources that our corporate collaborators devote to our programs or potential products. We do not know whether current or future collaborative partners, if any, might pursue alternative technologies or develop alternative products either on their own or in collaboration with others, including our competitors, as a means for developing treatments for the diseases targeted by collaborative arrangements with us.

Our success is dependent on intellectual property rights held by us and third parties, and our interest in such rights is complex and uncertain.*

Our success will depend to a large part on our own, our licensees' and our licensors' ability to obtain and defend patents for each party's respective technologies and the compounds and other products, if any, resulting from the application of such technologies. For example, fostamatinib is covered as a composition of matter in a U.S. issued patent

that has an expected expiration date of September 2031, after taking into account patent term adjustment and extension rules.

As of September 30, 2019, we had 46 pending patent applications and 360 issued and active patents in the United States, as well as corresponding pending foreign patent applications and issued foreign patents. In the future, our patent position might be highly uncertain and involve complex legal and factual questions. For example, we may be involved in post-grant proceedings before the United States Patent and Trademark Office. Post-grant proceedings are complex and expensive legal proceedings and there is no assurance we will be successful in any such proceedings. A post-grant proceeding could result in our losing our patent rights and/or our freedom to operate and/or require us to pay significant royalties. Additional uncertainty may result because no consistent policy regarding the breadth of legal claims allowed in biotechnology patents has emerged to date. Accordingly, we cannot predict the breadth of claims allowed in our or other companies' patents.

Because the degree of future protection for our proprietary rights is uncertain, we cannot assure you that:

- we were the first to make the inventions covered by each of our pending patent applications;
- we were the first to file patent applications for these inventions;
- others will not independently develop similar or alternative technologies or duplicate any of our technologies;
- any of our pending patent applications will result in issued patents;
- any patents issued to us or our collaborators will provide a basis for commercially-viable products or will provide us with any competitive advantages or will not be challenged by third parties;
- we will develop additional proprietary technologies that are patentable; or
- the patents of others will not have a negative effect on our ability to do business.

We rely on trade secrets to protect technology where we believe patent protection is not appropriate or obtainable; however, trade secrets are difficult to protect. While we require employees, collaborators and consultants to enter into confidentiality agreements, we may not be able to adequately protect our trade secrets or other proprietary information in the event of any unauthorized use or disclosure or the lawful development by others of such information.

We are a party to certain in-license agreements that are important to our business, and we generally do not control the prosecution of in-licensed technology. Accordingly, we are unable to exercise the same degree of control over this intellectual property as we exercise over our internally-developed technology. Moreover, some of our academic institution licensors, research collaborators and scientific advisors have rights to publish data and information in which we have rights. If we cannot maintain the confidentiality of our technology and other confidential information in connection with our collaborations, our ability to receive patent protection or protect our proprietary information may otherwise be impaired. In addition, some of the technology we have licensed relies on patented inventions developed using U.S. government resources.

The U.S. government retains certain rights, as defined by law, in such patents, and may choose to exercise such rights. Certain of our in-licenses may be terminated if we fail to meet specified obligations. If we fail to meet such obligations and any of our licensors exercise their termination rights, we could lose our rights under those agreements. If we lose any of our rights, it may adversely affect the way we conduct our business. In addition, because certain of our licenses are sublicenses, the actions of our licensors may affect our rights under those licenses.

If a dispute arises regarding the infringement or misappropriation of the proprietary rights of others, such dispute could be costly and result in delays in our research and development activities and partnering.

Our success will depend, in part, on our ability to operate without infringing or misappropriating the proprietary rights of others. There are many issued patents and patent applications filed by third parties relating to products or processes that are similar or identical to our licensors or ours, and others may be filed in the future. There may also be copyrights or trademarks that third parties hold. There can be no assurance that our activities, or those of our licensors, will not violate intellectual property rights of others. We believe that there may be significant litigation in the industry regarding patent and other intellectual property rights, and we do not know if our collaborators or we would be successful in any such litigation. Any legal action against our collaborators or us claiming damages or seeking to enjoin commercial activities relating to the affected products, our methods or processes could:

- require our collaborators or us to obtain a license to continue to use, manufacture or market the affected products, methods or processes, which may not be available on commercially reasonable terms, if at all;
- prevent us from using the subject matter claimed in the patents held by others;
- subject us to potential liability for damages;
- consume a substantial portion of our managerial and financial resources; and
- result in litigation or administrative proceedings that may be costly, whether we win or lose.

The comprehensive tax reform bill could adversely affect our business and financial condition.

On December 22, 2017, President Trump signed into law new tax legislation, or the Tax Act, which significantly reforms the Internal Revenue Code of 1986, as amended. The Tax Act, among other things, contains significant changes to corporate taxation, including reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%; limitation of the tax deduction for interest expense to 30% of adjusted earnings (except for certain small businesses); limitation of the deduction for net operating losses generated after 2017 to 80% of current year taxable income, indefinite carryforward of net operating losses and elimination of net operating loss carrybacks; changes in the treatment of offshore earnings regardless of whether they are repatriated; mandatory capitalization of research and development expenses beginning in 2022; immediate deductions for certain new investments instead of deductions for depreciation expense over time; further deduction limits on executive compensation; and modifying, repealing and creating many other business deductions and credits, including the reduction in the orphan drug credit from 50% to 25% of qualifying expenditures. Our federal net operating loss carryovers will be carried forward indefinitely pursuant to the Tax Act. We continue to examine the impact this tax reform legislation may have on our business. Notwithstanding the reduction in the corporate income tax rate, the overall impact of the Tax Act is uncertain and our business and financial condition could be adversely affected. The impact of this tax reform on holders of our common stock is also uncertain and could be adverse. This periodic report does not discuss any such tax legislation or the manner in which it might affect us or our stockholders in the future. We urge our stockholders to consult with their legal and tax advisors with respect to such legislation.

The Tax Act could be amended or subject to technical correction, which could change the financial impacts that were recorded at December 31, 2018 and September 30, 2019, or are expected to be recorded in future periods. Additionally, further guidance may be forthcoming from the FASB and SEC, as well as regulations, interpretations and rulings from federal and state tax agencies, which could result in additional impacts, possibly with retroactive effect.

Our ability to use net operating losses and certain other tax attributes is uncertain and may be limited.

Our ability to use our federal and state net operating losses to offset potential future taxable income and related income taxes that would otherwise be due is dependent upon our generation of future taxable income before the expiration dates of the net operating losses, and we cannot predict with certainty when, or whether, we will generate

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sufficient taxable income to use all of our net operating losses. Federal net operating losses generated prior to 2018 will continue to be governed by the net operating loss tax rules as they existed prior to the adoption of the new Tax Act, which means that generally they will expire 20 years after they were generated if not used prior thereto. Many states have similar laws. Accordingly, our federal and state net operating losses could expire unused and be unavailable to offset future income tax liabilities. Under the newly enacted Tax Act, federal net operating losses incurred in 2018 and in future years may be carried forward indefinitely, but the deductibility of such federal net operating losses is limited to 80% of current year taxable income. It is uncertain if and to what extent various states will conform to the newly enacted federal tax law. In addition, utilization of net operating losses to offset potential future taxable income and related income taxes that would otherwise be due is subject to annual limitations under the “ownership change” provisions of Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (Internal Revenue Code) and similar state provisions, which may result in the expiration of net operating losses before future utilization. In general, under the Code, if a corporation undergoes an “ownership change,” generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation’s ability to use its pre-change net operating losses and other pre-change tax attributes (such as research and development credit carryforwards) to offset its post-change taxable income or taxes may be limited. Our equity offerings and other changes in our stock ownership, some of which are outside of our control, may have resulted or could in the future result in an ownership change. Although we have completed studies to provide reasonable assurance that an ownership change limitation would not apply, we cannot be certain that a taxing authority would reach the same conclusion. If, after a review or audit, an ownership change limitation were to apply, utilization of our domestic net operating losses and tax credit carryforwards could be limited in future periods and a portion of the carryforwards could expire before being available to reduce future income tax liabilities.

Because we expect to be dependent upon collaborative and license agreements, we might not meet our strategic objectives.

Our ability to generate revenue in the near term depends on the timing of recognition of certain upfront payments, achievement of certain payment triggering events with our existing collaboration agreements and our ability to enter into additional collaborative agreements with third parties. Our ability to enter into new collaborations and the revenue, if any, that may be recognized under these collaborations is highly uncertain. If we are unable to enter into one or more new collaborations, our business prospects could be harmed, which could have an immediate adverse effect on our ability to continue to develop our compounds and on the trading price of our stock. Our ability to enter into a collaboration may be dependent on many factors, such as the results of our clinical trials, competitive factors and the fit of one of our programs with another company’s risk tolerance, including toward regulatory issues, patent portfolio, clinical pipeline, the stage of the available data, particularly if it is early, overall corporate goals and financial position.

To date, a portion of our revenues have been related to the research or transition phase of each of our collaborative agreements. Such revenues are for specified periods, and the impact of such revenues on our results of operations is at least partially offset by corresponding research costs. Following the completion of the research or transition phase of each collaborative agreement, additional revenues may come only from payments triggered by milestones and/or the achievement of other contingent events, and royalties, which may not be paid, if at all, until certain conditions are met. This risk is heightened due to the fact that unsuccessful research efforts may preclude us from receiving any contingent payments under these agreements. Our receipt of revenues from collaborative arrangements is also significantly affected by the timing of efforts expended by us and our collaborators and the timing of lead compound identification. We have received payments from our collaborations with Grifols, Kissei, Medison, Aclaris, Celgene, BMS, AZ, BerGenBio, Janssen Pharmaceutica N.V., a division of Johnson & Johnson, Novartis Pharma A.G., Daiichi, Merck & Co., Inc., Merck Serono and Pfizer. Under many agreements, future payments may not be earned until the collaborator has advanced product candidates into clinical testing, which may never occur or may not occur until sometime well into the future. If we are not able to generate revenue under our collaborations when and in accordance with our expectations or the expectations of industry analysts, this failure could harm our business and have an immediate adverse effect on the trading price of our common stock.

Our business requires us to generate meaningful revenue from royalties and licensing agreements. To date, we have not received any revenue from royalties for the commercial sale of drugs, and we do not know when we will receive any such revenue, if at all.

Securities class action lawsuits or other litigation could result in substantial damages and may divert management's time and attention from our business.

We have been subject to class action lawsuits in the past and we may be subject to lawsuits in the future, such as those that might occur if there was to be a change in our corporate strategy. These and other lawsuits are subject to inherent uncertainties, and the actual costs to be incurred relating to the lawsuit will depend upon many unknown factors. The outcome of litigation is necessarily uncertain, and we could be forced to expend significant resources in the defense of such suits, and we may not prevail. Monitoring and defending against legal actions is time-consuming for our management and detracts from our ability to fully focus our internal resources on our business activities. In addition, we may incur substantial legal fees and costs in connection with any such litigation. We have not established any reserves for any potential liability relating to any such potential lawsuits. It is possible that we could, in the future, incur judgments or enter into settlements of claims for monetary damages. A decision adverse to our interests on any such actions could result in the payment of substantial damages, or possibly fines, and could have a material adverse effect on our cash flow, results of operations and financial position.

Global economic conditions could adversely impact our business.

The U.S. government has indicated its intent to alter its approach to international trade policy and in some cases to renegotiate, or potentially terminate, certain existing bilateral or multi-lateral trade agreements and treaties with foreign countries, including the North American Free Trade Agreement ("NAFTA"). In addition, the U.S. government has initiated or is considering imposing tariffs on certain foreign goods. Related to this action, certain foreign governments, including China, have instituted or are considering imposing tariffs on certain U.S. goods. It remains unclear what the U.S. Administration or foreign governments will or will not do with respect to tariffs, NAFTA or other international trade agreements and policies. A trade war or other governmental action related to tariffs or international trade agreements or policies has the potential to disrupt our research activities, affect our suppliers and/or the U.S. economy or certain sectors thereof and, thus, could adversely impact our businesses.

If our competitors develop technologies that are more effective than ours, our commercial opportunity will be reduced or eliminated.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. Many of the drugs that we are attempting to discover will be competing with existing therapies. In addition, a number of companies are pursuing the development of pharmaceuticals that target the same diseases and conditions that we are targeting. For example, the commercialization of new pharmaceutical products is highly competitive, and we face substantial competition with respect to TAVALISSE in which there are existing therapies and drug candidates in development for the treatment of ITP that may be alternative therapies to TAVALISSE. Many of our competitors, including a number of large pharmaceutical companies that compete directly with us, have significantly greater financial resources and expertise commercializing approved products than we do. Also, many of our competitors are large pharmaceutical companies that will have a greater ability to reduce prices for their competing drugs in an effort to gain market share and undermine the value proposition that we might otherwise be able to offer to payers. We face, and will continue to face, intense competition from pharmaceutical and biotechnology companies, as well as from academic and research institutions and government agencies, both in the United States and abroad. Some of these competitors are pursuing the development of pharmaceuticals that target the same diseases and conditions as our research programs. Our competitors including fully integrated pharmaceutical companies have extensive drug discovery efforts and are developing novel small-molecule pharmaceuticals. We also face significant competition from organizations that

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are pursuing the same or similar technologies, including the discovery of targets that are useful in compound screening, as the technologies used by us in our drug discovery efforts.

Competition may also arise from:

- new or better methods of target identification or validation;
- other drug development technologies and methods of preventing or reducing the incidence of disease;
- new small molecules; or
- other classes of therapeutic agents.

Our competitors or their collaborative partners may utilize discovery technologies and techniques or partner with collaborators in order to develop products more rapidly or successfully than we or our collaborators are able to do. Many of our competitors, particularly large pharmaceutical companies, have substantially greater financial, technical and human resources and larger research and development staffs than we do. In addition, academic institutions, government agencies and other public and private organizations conducting research may seek patent protection with respect to potentially competitive products or technologies and may establish exclusive collaborative or licensing relationships with our competitors.

We believe that our ability to compete is dependent, in part, upon our ability to create, maintain and license scientifically-advanced technology and upon our and our collaborators' ability to develop and commercialize pharmaceutical products based on this technology, as well as our ability to attract and retain qualified personnel, obtain patent protection or otherwise develop proprietary technology or processes and secure sufficient capital resources for the expected substantial time period between technological conception and commercial sales of products based upon our technology. The failure by any of our collaborators or us in any of those areas may prevent the successful commercialization of our potential drug targets.

Many of our competitors, either alone or together with their collaborative partners, have significantly greater experience than we do in:

- identifying and validating targets;
- screening compounds against targets; and
- undertaking preclinical testing and clinical trials.

Accordingly, our competitors may succeed in obtaining patent protection, identifying or validating new targets or discovering new drug compounds before we do.

Our competitors might develop technologies and drugs that are more effective or less costly than any that are being developed by us or that would render our technology and product candidates obsolete and noncompetitive. In addition, our competitors may succeed in obtaining the approval of the FDA or other regulatory agencies for product candidates more rapidly. Companies that complete clinical trials, obtain required regulatory agency approvals and commence commercial sale of their drugs before us may achieve a significant competitive advantage, including certain patent and FDA marketing exclusivity rights that would delay or prevent our ability to market certain products. Any drugs resulting from our research and development efforts, or from our joint efforts with our existing or future collaborative partners, might not be able to compete successfully with competitors' existing or future products or obtain regulatory approval in the United States or elsewhere.

We face and will continue to face intense competition from other companies for collaborative arrangements with pharmaceutical and biotechnology companies, for establishing relationships with academic and research institutions

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and for licenses to additional technologies. These competitors, either alone or with their collaborative partners, may succeed in developing technologies or products that are more effective than ours.

Our ability to compete successfully will depend, in part, on our ability to:

- identify and validate targets;
- discover candidate drug compounds that interact with the targets we identify;
- attract and retain scientific and product development personnel;
- obtain patent or other proprietary protection for our new drug compounds and technologies; and
- enter commercialization agreements for our new drug compounds.

Our stock price may be volatile, and our stockholders' investment in our common stock could decline in value.

The market prices for our common stock and the securities of other biotechnology companies have been highly volatile and may continue to be highly volatile in the future. The following factors, in addition to other risk factors described in this section, may have a significant impact on the market price of our common stock:

- the progress and success of our clinical trials and preclinical activities (including studies and manufacture of materials) of our product candidates conducted by us;
- our ability to continue to sell TAVALISSE in the United States;
- our ability to enter into partnering opportunities across our pipeline;
- the receipt or failure to receive the additional funding necessary to conduct our business;
- selling by large stockholders;
- presentations of detailed clinical trial data at medical and scientific conferences and investor perception thereof;
- announcements of technological innovations or new commercial products by our competitors or us;
- developments concerning proprietary rights, including patents;
- developments concerning our collaborations;
- publicity regarding actual or potential medical results relating to products under development by our competitors or us;
- regulatory developments in the United States and foreign countries;
- changes in the structure of healthcare payment systems;
- litigation or arbitration;
- economic and other external factors or other disaster or crisis; and

· period-to-period fluctuations in financial results.

If we fail to continue to meet the listing standards of Nasdaq, our common stock may be delisted, which could have a material adverse effect on the liquidity of our common stock.

Our common stock is currently listed on the Nasdaq Global Market. The Nasdaq Stock Market LLC has requirements that a company must meet in order to remain listed on Nasdaq. In particular, Nasdaq rules require us to maintain a minimum bid price of \$1.00 per share of our common stock. If the closing bid price of our common stock were to fall below \$1.00 per share for 30 consecutive trading days or we do not meet other listing requirements, we would fail to be in compliance with Nasdaq listing standards. There can be no assurance that we will continue to meet the minimum bid price requirement, or any other requirement in the future. If we fail to meet the minimum bid price requirement, The Nasdaq Stock Market LLC may initiate the delisting process with a notification letter. If we were to receive such a notification, we would be afforded a grace period of 180 calendar days to regain compliance with the minimum bid price requirement. In order to regain compliance, shares of our common stock would need to maintain a minimum closing bid price of at least \$1.00 per share for a minimum of 10 consecutive trading days. In addition, we may be unable to meet other applicable Nasdaq listing requirements, including maintaining minimum levels of stockholders' equity or market values of our common stock in which case, our common stock could be delisted. If our common stock were to be delisted, the liquidity of our common stock would be adversely affected, and the market price of our common stock could decrease.

The UK's planned withdrawal from the EU, commonly referred to as Brexit, may have a negative effect on global economic conditions, financial markets and our business.

Brexit has created significant uncertainty concerning the future relationship between the UK and the EU, particularly if the UK withdraws from the EU without a ratified withdrawal agreement in place. From a regulatory perspective, there is uncertainty about which laws and regulations will apply. A significant portion of the regulatory framework in the UK is derived from EU laws. However, it is unclear which EU laws the UK will decide to replace or replicate in connection with its withdrawal from the EU and the regulatory regime applicable to our operations may change.

A basic requirement related to the grant of a marketing authorization for a medicinal product in the EU is the requirement that the applicant be established in the EU. Following withdrawal of the UK from the EU, marketing authorizations previously granted to applicants established in the UK through the centralized, mutual recognition or decentralized procedures may no longer be valid. Moreover, depending upon the exact terms of the UK's withdrawal, there is a risk that the scope of a marketing authorization for a medicinal product granted by the European Commission pursuant to the centralized procedure, or by the competent authorities of other EU member states through the decentralized or mutual recognition procedures, would not encompass the UK. In that circumstance, a separate authorization granted by the UK competent authorities would be required to place medicinal products on the UK market.

Brexit has also given rise to calls for the governments of other EU member states to consider withdrawal from the EU. The Brexit could also cause disruptions to and create uncertainty surrounding the business environment in which we operate. For example, we conduct clinical trials in the U.K. and other E.U. member states. These developments, or the perception that they could occur, have had and may continue to have a material adverse effect on global economic conditions and the stability of global financial markets, including by significantly reducing global market liquidity or restricting the ability of key market participants to operate in certain financial markets.

Any of these risks, if encountered, could significantly harm our future international operations and, consequently, negatively impact our financial condition, results of operations and cash flows.

If product liability lawsuits are successfully brought against us, we may incur substantial liabilities and may be required to limit commercialization of our products.

The testing and marketing of medical products and the sale of any products for which we obtain marketing approval exposes us to the risk of product liability claims. Product liability claims might be brought against us by consumers, health care providers, pharmaceutical companies or others selling or otherwise coming into contact with our products. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our products. We carry product liability insurance that is limited in scope and amount and may not be adequate to fully protect us against product liability claims. If and when we obtain marketing approval for our product candidates, we intend to expand our insurance coverage to include the sale of commercial products; however, we may be unable to obtain product liability insurance on commercially reasonable terms or in adequate amounts. Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of pharmaceutical products we develop, alone or with corporate collaborators. We, or our corporate collaborators, might not be able to obtain insurance at a reasonable cost, if at all. While under various circumstances we are entitled to be indemnified against losses by our corporate collaborators, indemnification may not be available or adequate should any claim arise.

We depend on various scientific consultants and advisors for the success and continuation of our research and development efforts.

We work extensively with various scientific consultants and advisors. The potential success of our drug discovery and development programs depends, in part, on continued collaborations with certain of these consultants and advisors. We, and various members of our management and research staff, rely on certain of these consultants and advisors for expertise in our research, regulatory and clinical efforts. Our scientific advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us. We do not know if we will be able to maintain such consulting agreements or that such scientific advisors will not enter into consulting arrangements, exclusive or otherwise, with competing pharmaceutical or biotechnology companies, any of which would have a detrimental impact on our research objectives and could have a material adverse effect on our business, financial condition and results of operations.

If we use biological and hazardous materials in a manner that causes injury or violates laws, we may be liable for damages, penalties or fines.

Our research and development activities involve the controlled use of potentially harmful biological materials as well as hazardous materials, chemicals, animals, and various radioactive compounds. We cannot completely eliminate the risk of accidental contamination or injury from the use, storage, handling or disposal of these animals and materials. In the event of contamination or injury, we could be held liable for damages that result or for penalties or fines that may be imposed, and such liability could exceed our resources. We are also subject to federal, state and local laws and regulations governing the use, storage, handling and disposal of these materials and specified waste products. The cost of compliance with, or any potential violation of, these laws and regulations could be significant.

Our internal computer systems, or those used by our contract research organizations or other contractors or consultants, may fail or suffer security breaches.

Despite the implementation of security measures, our internal computer systems and those of our contract research organizations and other contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. While we have not experienced any such system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a disruption of our drug development programs. For example, the loss of clinical trial data from completed or ongoing clinical trials for a product candidate could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach were to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability, incur significant remediation or litigation costs, result

in product development delays, disrupt key business operations and divert attention of management and key information technology resources.

Companies have been increasingly subject to a wide variety of security incidents, cyber-attacks and other attempts to gain unauthorized access or otherwise compromise information technology systems. These threats can come from a variety of sources, ranging in sophistication from an individual hacker to a state-sponsored attack and motive including corporate espionage. Cyber threats may be generic, or they may be custom-crafted against our information systems. Cyber-attacks continue to become more prevalent and much harder to detect and defend against. Our network and storage applications and those of our contract manufacturing organizations, contract research organizations or vendors may be subject to unauthorized access by hackers or breached due to operator error, malfeasance or other system disruptions. It is often difficult to anticipate or immediately detect such incidents and the damage caused by such incidents. These data breaches and any unauthorized access or disclosure of our information or intellectual property could compromise our intellectual property and expose our sensitive business information. Any such event that leads to unauthorized access, use or disclosure of personal information, including personal information regarding our patients or employees, could harm our reputation and business, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to investigations and mandatory corrective action, and otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information, which could disrupt our business, result in increased costs or loss of revenue, or result in significant financial exposure. Furthermore, the costs of maintaining or upgrading our cyber-security systems at the level necessary to keep up with our expanding operations and prevent against potential attacks are increasing, and despite our best efforts, our network security and data recovery measures and those of our vendors may still not be adequate to protect against such security breaches and disruptions, which could cause material harm to our business, financial condition and results of operations.

Our facilities are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could cause damage to our facilities and equipment, which could require us to cease or curtail operations.

Our facilities are located in the San Francisco Bay Area near known earthquake fault zones and are vulnerable to significant damage from earthquakes. We are also vulnerable to damage from other types of disasters, including fires, floods, power loss, communications failures and similar events. If any disaster were to occur, our ability to operate our business at our facilities would be seriously, or potentially completely, impaired, and our research could be lost or destroyed. In addition, the unique nature of our research activities and of much of our equipment could make it difficult for us to recover from a disaster. The insurance we maintain may not be adequate to cover our losses resulting from disasters or other business interruptions.

Future equity issuances or a sale of a substantial number of shares of our common stock may cause the price of our common stock to decline.

Because we will continue to need additional capital in the future to continue to expand our business and our research and development activities, among other things, we may conduct additional equity offerings. For example, under the universal shelf registration statement filed by us in March 2018 and declared effective by the SEC in April 2018, we may offer and sell any combination of common stock, preferred stock, debt securities and warrants in one or more offerings, up to a cumulative value of \$200 million. To date, we have \$128.2 million remaining under such universal shelf registration statement. If we or our stockholders sell, or if it is perceived that we or they will sell, substantial amounts of our common stock (including shares issued upon the exercise of options and warrants) in the public market, the market price of our common stock could fall. A decline in the market price of our common stock could make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem appropriate. Furthermore, if we obtain funds through a credit facility or through the issuance of debt or preferred securities, these securities would likely have rights senior to the rights of our common stockholders, which could impair the value of our common stock.

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Anti-takeover provisions in our charter documents and under Delaware law may make an acquisition of us, which may be beneficial to our stockholders, more difficult.

Provisions of our amended and restated certificate of incorporation and bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us, even if doing so would benefit our stockholders. These provisions:

- establish that members of the board of directors may be removed only for cause upon the affirmative vote of stockholders owning a majority of our capital stock;
- authorize the issuance of “blank check” preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt;
- limit who may call a special meeting of stockholders;
- prohibit stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- establish advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings;
- provide for a board of directors with staggered terms; and
- provide that the authorized number of directors may be changed only by a resolution of our board of directors.

In addition, Section 203 of the Delaware General Corporation Law, which imposes certain restrictions relating to transactions with major stockholders, may discourage, delay or prevent a third party from acquiring us.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

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Item 6. Exhibits

The exhibits listed on the accompanying index to exhibits are filed or incorporated by reference (as stated therein) as part of this Quarterly Report on Form 10-Q.

| Exhibit Number | Description of Document |
|-----------------------|---|
| 3.1 | Amended and Restated Certificate of Incorporation. (1) |
| 3.2 | Certificate of Amendment to the Amended and Restated Certificate of Incorporation. (2) |
| 3.3 | Amended and Restated Bylaws. (3) |
| 4.1 | Form of warrant to purchase shares of common stock. (4) |
| 4.2 | Specimen Common Stock Certificate. (5) |
| 4.3 | Warrant issued to HCP BTC, LLC for the purchase of shares of common stock. (6) |
| 10.1¥# | Credit and Security Agreement, dated as of September 27, 2019, by and between the Registrant and MidCap Financial Trust. |
| 31.1# | Certification required by Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act. |
| 31.2# | Certification required by Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act. |
| 32.1# | Certification required by Rule 13a-14(b) or Rule 15d-14(b) of the Exchange Act and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350). |
| 101.INS | XBRL Instance Document |
| 101.SCH | XBRL Taxonomy Extension Schema Document |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.LAB | XBRL Taxonomy Extension Labels Linkbase Document |
| 101.PRE | XBRL Taxonomy Extension Presentation Linkbase Document |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase Document |

Filed herewith

¥ Portions of this exhibit (indicated by asterisks) have been omitted in accordance with Item 601(b)(10) of Regulation S-K.

- (1) Filed as an exhibit to Rigel's Current Report on Form 8-K (No. 000-29889) filed on May 29, 2012, and incorporated herein by reference.
- (2) Filed as an exhibit to Rigel's Current Report on Form 8-K (No. 000-29889) filed on May 18, 2018, and incorporated herein by reference.
- (3) Filed as an exhibit to Rigel's Current Report on Form 8-K (No. 000-29889) filed on February 2, 2007, and incorporated herein by reference.
- (4) Filed as an exhibit to Rigel's Registration Statement on Form S-1 (No. 333-45864), as amended, and incorporated herein by reference.
- (5) Filed as an exhibit to Rigel's Current Report on Form 8-K (No. 000-29889) filed on June 24, 2003, and incorporated herein by reference.
- (6) Filed as an exhibit to Rigel's Quarterly Report on Form 10-Q (No. 000-29889) for the quarter ended March 31, 2009, and incorporated herein by reference.

SIGNATURES

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

RIGEL PHARMACEUTICALS, INC.

By: /s/ RAUL R. RODRIGUEZ
Raul R. Rodriguez
Chief Executive Officer
(Principal Executive Officer)

Date: November 5, 2019

By: /s/ DEAN L. SCHORNO
Dean L. Schorno
Chief Financial Officer
(Principal Financial Officer)

Date: November 5, 2019

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE RIGEL PHARMACEUTICALS, INC. HAS DETERMINED THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO RIGEL PHARMACEUTICALS, INC. IF PUBLICLY DISCLOSED.

CREDIT AND SECURITY AGREEMENT

dated as of September 27, 2019

by and among

**RIGEL PHARMACEUTICALS, INC., as a Borrower
and any additional borrower that hereafter becomes party hereto,**

and

MIDCAP FINANCIAL TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO



CREDIT AND SECURITY AGREEMENT

THIS CREDIT AND SECURITY AGREEMENT (this “**Agreement**”), dated as of September 27, 2019 (the “**Closing Date**”) by and among **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust (“**MidCap**”), as administrative agent, the Lenders listed on the Credit Facility Schedule attached hereto and otherwise party hereto from time to time (each a “**Lender**”, and collectively the “**Lenders**”), **RIGEL PHARMACEUTICALS, INC.**, a Delaware corporation (“**Rigel**”), and the other entities from time to time party to this Agreement as borrowers (collectively in the singular, “**Borrower**”), provides the terms on which Lenders agree to lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Article 15. All other capitalized terms contained in Article 4 and Exhibit A, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All headings numbered without a decimal point are herein referred to as “Articles,” and all paragraphs numbered with a decimal point (and all subparagraphs or subsections thereof) are herein referred to as “Sections.” All references herein to a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or analogous term, will be construed to mean also a division of or by a limited liability company, as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or similar term, as applicable. Any series of limited liability company shall be considered a separate Person.

2. CREDIT FACILITIES AND TERMS

2.1 ***Promise to Pay.*** Borrower hereby unconditionally promises to pay to each Lender in accordance with each Lender’s respective Pro Rata Share of each Credit Facility, the outstanding principal amount of all Credit Extensions made by the Lenders under such Credit Facility and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 ***Credit Facilities.*** Subject to the terms and conditions hereof, each Lender, severally, but not jointly, agrees to make available to Borrower Credit Extensions in respect of each Credit Facility set forth opposite such Lender’s name on the Credit Facility Schedule, in each case not to exceed such Lender’s commitment as identified on the Credit Facility Schedule (such commitment of each Lender, as it may be amended to reflect assignments made in accordance with this Agreement or terminated or reduced in accordance with this Agreement, its “**Applicable Commitment**”, and the aggregate of all such commitments of all Lenders, the “**Applicable Commitments**”).

2.3 ***Credit Facilities.***

(a) ***Nature of Credit Facility; Credit Extension Requests.*** Credit Extensions in respect of a Credit Facility may be requested by Borrower to be made by the applicable Lenders on any Business Day during the Draw Period for such Credit Facility, but no Credit Extensions in respect of a Credit Facility shall be made before the applicable Commitment Commencement Date or after the applicable Commitment Termination Date. For any Credit Extension requested under a Credit Facility (other than a Credit

Extension on the Closing Date), Agent must receive the completed Credit Extension Form by 12:00 noon (New York time) ten (10) Business Days prior to the date the Credit Extension is to be funded (other than the Credit Extension made on the Closing Date). To the extent any Credit Facility proceeds are repaid for any reason, whether voluntarily or involuntarily (including repayments from insurance or condemnation proceeds), Agent and the Lenders shall have no obligation to re-advance such sums to Borrower.

(b) **Principal Payments.** Principal payable on account of a Credit Facility shall be payable by Borrower to Agent, for the account of the applicable Lenders in accordance with their respective Pro Rata Shares, immediately upon the earliest of (i) the date(s) set forth in the Amortization Schedule for such Credit Facility, or (ii) the Maturity Date. Except as this Agreement may specifically provide otherwise, all prepayments of Credit Extensions under the Credit Facilities shall be applied by Agent to the applicable Credit Facility in inverse order of maturity. The monthly payments required under the Amortization Schedule shall continue in the same amount (for so long as the applicable Credit Facility shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the applicable Credit Facility.

(c) **Mandatory Prepayment.** If a Credit Facility is accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Agent, for payment to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Credit Facility and all other Obligations, plus accrued and unpaid interest thereon, (ii) any fees payable under the Fee Letters by reason of such prepayment, (iii) the Applicable Prepayment Fee as specified in the Credit Facility Schedule for the Credit Facility being prepaid, and (iv) all other sums that shall have become due and payable, including Protective Advances. Additionally, at the election of Agent, Borrower shall prepay the Credit Facilities (to be allocated pro rata among the outstanding Credit Extensions under all Credit Facilities) in the following amounts: (A) within five (5) Business Days after the date on which any Credit Party (or Agent as loss payee or assignee) receives any casualty proceeds in excess of [***] (\$[***]) for property, in respect of assets upon which Agent has been granted a Lien, an amount equal to [***] ([***]%) of of such proceeds (net of out-of-pocket expenses and, in the case of personal property, repayment of any permitted purchase money debt encumbering the personal property that suffered such casualty), or such lesser portion of such proceeds as Agent shall elect to apply to the Obligations; and (B) within five (5) Business Days after receipt by any Credit Party of the proceeds of any asset disposition of personal property not made in the Ordinary Course of Business (other than transfers permitted by Section 7.1) an amount equal to [***] ([***]%) of the net cash proceeds of such asset disposition (net of out-of-pocket expenses and repayment of any permitted purchase money debt encumbering such asset), or such lesser portion as Agent shall elect to apply to the Obligations. Notwithstanding the foregoing, (a) so long as no Default or Event of Default

has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to [***] (\$[***]) in the aggregate with respect to any property loss in any one (1) year, toward the replacement or repair of destroyed or damaged property; *provided* that any such replaced or repaired property (x) shall be of greater, equal, or like value as the replaced or repaired Collateral and (y) shall be deemed Collateral in which Agent and the Lenders have been granted a first priority security interest, and (b) after the occurrence and during the continuance of a Default or Event of Default, all proceeds payable under such casualty policy shall, at the option of Agent, be payable to Agent, for the ratable benefit of the Lenders, on account of the Obligations.

(d) **Permitted Prepayment.** Except as provided below, Borrower shall have no right to prepay the Credit Extensions made in respect of a Credit Facility. For the applicable Credit Facility as specified in the Credit Facility Schedule therefor, Borrower shall have the option to prepay the Prepayable Amount (as defined below) of such Credit Facility advanced by the Lenders under this Agreement, *provided* Borrower (i) provides irrevocable written notice to Agent and each Lender of its election to prepay the Prepayable Amount at least five (5) Business Days prior to such prepayment, and (ii) pays to Agent, for payment to each applicable Lender in accordance with its respective Pro Rata Share, on the date of such prepayment, an amount equal to the sum of (A) the Prepayable Amount, plus accrued interest thereon, (B) any fees payable under the Fee Letters by reason of such prepayment, (C) the Applicable Prepayment Fee as specified in the Credit Facility Schedule for the Credit Facility being prepaid, and (D) all Protective Advances. The term "Prepayable Amount" means the lesser of (x) all of the Credit Extensions and all other Obligations under all Credit Facilities and (y) a portion of the Credit Extensions and related Obligations in amounts of no less than (\$[***]) of principal being prepaid.

2.4 **Reserved.**

2.5 **Reserved.**

2.6 **Interest and Payments; Administration.**

(a) **Interest; Computation of Interest.** Each Credit Extension shall bear interest on the outstanding principal amount thereof from the date when made until paid in full at a rate per annum equal to the Applicable Interest Rate. Each Lender may, upon the failure of Borrower to pay any fees or interest as required herein, capitalize such interest and fees and begin to accrue interest thereon until paid in full, which such interest shall be at a rate per annum equal to the Applicable Interest Rate unless and until the Default Rate shall otherwise apply. All other Obligations shall bear interest on the outstanding amount thereof from the date they first become payable by Borrower under the Financing Documents until paid in full at a rate per annum equal to the Applicable

Interest Rate unless and until the Default Rate shall otherwise apply. Interest on the Credit Extensions and all fees payable under the Financing Documents shall be computed on the basis of a three hundred sixty (360) day year and the actual number of days elapsed in the period during which such interest accrues. In computing interest on any Credit Extension or other advance, the date of the making of such Credit Extension or advance shall be included and the date of payment shall be excluded; *provided, however*, that if any Credit Extension or advance is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension or advance. As of each Applicable Interest Rate Determination Date, Agent shall determine (which determination shall, absent manifest error in calculation, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Credit Extensions.

(b) Default Rate. Upon the election of Agent following the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is [***] ([***]%) above the rate that is otherwise applicable thereto (the "Default Rate"). Payment or acceptance of the increased interest rate provided in this subsection is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or the Lenders.

(c) Payments Generally. Except as otherwise provided in this Agreement, including pursuant to Section 2.6(c), or as otherwise directed by Agent, all payments in respect of the Obligations shall be made to Agent for the account of the applicable Lenders in accordance with their Pro Rata Share. Payments of principal and interest in respect of each Credit Facility shall be made to each applicable Lender identified on the applicable Credit Facility Schedule. All Obligations are payable upon demand of Agent in the absence of any other due date specified herein. All fees payable under the Financing Documents shall be deemed non-refundable as of the date paid. Any payment required to be made to Agent or a Lender (and any servicer or trustee on behalf of a securitization vehicle designated by either) under this Agreement may be made by debit or automated clearing house payment initiated by Agent or such Lender (or any servicer designated or trustee on behalf of a securitization vehicle on behalf of either) from any of Borrower's deposit accounts, including the Designated Funding Account, and Borrower hereby authorizes Agent and each Lender (or any servicer or trustee on behalf of a securitization vehicle designated on behalf of either) to debit any such accounts for any amounts Borrower owes hereunder when due; *provided* that Agent shall endeavor in good faith to give five (5) days prior written notice to Borrower that such debit shall be made. Without limiting the foregoing, Borrower shall tender to Agent and the Lenders any authorization forms as Agent or any Lender may require to implement such debit or automated clearing house payment. These debits or automated clearing house payments shall not constitute a set-off. Payments of principal and/or interest received after 12:00

noon New York time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower under any Financing Document shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. The balance of the Obligations, as recorded in Agent's books and records at any time, shall be conclusive and binding evidence of the amounts due and owing to Agent and the Lenders by each Borrower absent manifest error; *provided, however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any Financing Document. Agent shall endeavor to provide Borrower with a monthly statement regarding the Credit Extensions (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrower in all respects as to all matters reflected therein.

(d) **Interest Payments; Maturity Date.** Commencing on the first (1st) Payment Date following the funding of a Credit Extension, and continuing on the Payment Date of each successive month thereafter through and including the Maturity Date, Borrower shall make monthly payments of interest, in arrears, calculated as set forth in this Section 2.6. All unpaid principal and accrued interest is due and payable in full on the Maturity Date or any earlier date specified herein. If the Obligations are not paid in full on or before the Maturity Date, all interest thereafter accruing shall be payable immediately upon accrual.

(e) **Fees.** Borrower shall pay, as and when due and payable under the terms of the Fee Letters, to Agent and each Lender, as applicable, for their own accounts and not for the benefit of any other Lenders, the fees set forth in the Fee Letters.

(f) **Protective Advances.** Borrower shall pay to Agent for the account of the Lenders all Protective Advances (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement and the other Financing Documents) when due under any Financing Document (and in the absence of any other due date specified herein, such Protective Advances shall be due upon demand).

(g) **Maximum Lawful Rate.** In no event shall the interest charged hereunder with respect to the Obligations exceed the maximum amount permitted under the Laws of the State of New York. Notwithstanding anything to the contrary in any Financing Document, if at any time the rate of interest payable hereunder (the "Stated Rate") would exceed the highest rate of interest permitted under any applicable Law to be

charged (the "Maximum Lawful Rate"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, Borrower shall, to the extent permitted by Law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received, had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of such Lender's Credit Extensions or to other amounts (other than interest) payable hereunder, and if no such Credit Extensions or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrower. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

(h) Taxes; Additional Costs.

(i) Any and all payments by or on account of any obligation of Borrower hereunder shall be made without deduction or withholding for any Taxes, except as required by applicable law. For purposes of this Section 2.6(h), the term "applicable law" shall include FATCA. 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 make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by 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 2.6(h)) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(ii) Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(iii) Borrower shall indemnify each Recipient, within ten (10) Business 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 2.6(h)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable and documented out-of-pocket 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 Borrower by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(iv) Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.1(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent in connection with this Agreement or any Obligation, 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 Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender pursuant to this Agreement or otherwise payable by Agent to the Lender from any other source against any amount due to Agent under this paragraph (iv).

(v) As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.6(h), upon Agent's reasonable request, Borrower shall deliver to 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 Agent.

(vi) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made in connection with this Agreement or any Obligation shall deliver to Borrower and Agent, at the time or times prescribed by applicable Law or reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Agent as will enable Borrower or 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 2.6(h)(vii)(A), (vii)(B) and (vii)(D) below) shall not be required if in the 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.

(vii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to Borrower and 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 Borrower or Agent), executed copies of IRS Form W-9 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 Borrower and 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 Borrower or 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 this Agreement or any Financing Document, executed copies of IRS Form W-8BEN-E or W-8BEN, as applicable, 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 this Agreement or any other Financing Document, IRS Form W-8BEN-E or W-8BEN, as applicable, 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;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) executed copies of IRS Form W-8BEN-E or W-8BEN, as applicable and (y) a certification reasonably satisfactory to Borrower and Agent to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the IRC, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or a “controlled foreign corporation” related to Borrower as described in Section 881(c)(3)(C) of the IRC, together with such Other Tax Certification as Borrower or Agent may reasonably request from time to time; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E or W-8BEN, as applicable, IRS Form W-9, and/or such Other Tax Certification from each beneficial owner as Borrower or Agent may reasonably request, as applicable; *provided* that if the Foreign Lender is a partnership and one (1) or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide such Other Tax Certification as may be reasonably required by Borrower or Agent 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 Borrower and 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 Borrower or Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such Other Tax Certification as may be prescribed by applicable law to permit Borrower or Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to Agent or a Lender under any this Agreement would be subject to U.S. federal withholding Tax imposed by FATCA if Agent or 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 IRC, as applicable), Agent or such Lender shall deliver to Borrower and Agent on or prior to the date on which Agent or such Lender becomes a Lender under this Agreement at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such Other Tax Certification reasonably requested by Borrower or Agent as may be necessary for Borrower and Agent to comply with their obligations under FATCA and to determine that Agent or such Lender has complied with Agent or such Lender’s obligations under FATCA or to determine the

amount to deduct and withhold, if any, from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Agent and each Lender agrees that if any form or certification it previously delivered pursuant to this Section 2.6(h) (vi), (vii) or (viii) expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify Borrower and Agent, if applicable, in writing of its legal inability to do so.

(viii) **On or prior to the date Agent becomes a party to this Agreement, Agent shall, in the event that Agent is a U.S. Person, deliver an IRS Form W-9 to Borrower, and in the event Agent is not a U.S. Person, deliver to Borrower the appropriate IRS Form W-8 certifying Agent's exemption, if any, from U.S. withholding Taxes with respect to amounts payable under this Agreement.**

(ix) **If any party 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 2.6(h) (including by the payment of additional amounts pursuant to this Section 2.6(h)), 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 with respect to the Taxes giving rise to such refund), net of all reasonable and documented 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 paragraph (h) (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 paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) 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 paragraph 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.

(x) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction; *provided, however*, that notwithstanding anything in this Agreement to the contrary, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (B) 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 be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(x i) If any Lender requires compensation under this subsection (h), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to this subsection (h), then, upon the written request of Borrower, such Lender shall

use reasonable efforts to designate a different lending office for funding or booking its Credit Extensions hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (A) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (B) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(x i i) Each party's obligations under this Section 2.6(h) shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(i) Administrative Fees and Charges.

(i) Borrower shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable and documented out-of-pocket fees and expenses in connection with audits and inspections of the books and records of the Credit Parties, audits, valuations or appraisals of the Collateral, audits of Borrower's compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first (1st) Business Day of the month following the date of issuance by Agent of a written request for payment thereof to any Borrower.

(i i) If payments of principal or interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents, are not timely made and remain overdue for a period of five (5) Business Days, Borrower, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to [***] ([***]%) of each delinquent payment.

2 . 7 Secured Promissory Notes. At the election of any Lender made as to each Credit Facility for which it has made Credit Extensions, each Credit Facility shall be evidenced by one (1) or more secured promissory notes in form and substance reasonably satisfactory to Agent and the Lenders (each a "Secured Promissory Note"). Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

3. CONDITIONS OF CREDIT EXTENSIONS

3.1 ***Conditions Precedent to Initial Credit Extension.*** Each Lender's obligation to make the initial advance in respect of a Credit Facility is subject to the condition precedent that Agent shall consent to or shall have received, in form and substance satisfactory to Agent, such documents, and completion of such other matters, as Agent may reasonably deem necessary or appropriate, including, without limitation, all items listed on the Closing Deliveries Schedule attached hereto.

3.2 ***Conditions Precedent to all Credit Extensions.*** The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) **satisfaction of all Applicable Funding Conditions for the applicable Credit Extension as set forth in the Credit Facility Schedule, if any, in each case each in form and substance satisfactory to Agent and each Lender;**

(b) **timely receipt by Agent and each Lender of an executed Credit Extension Form in the form attached hereto;**

(c)

(i) **for Credit Extensions made on the Closing Date, the representations and warranties in Article 5 and elsewhere in the Financing Documents shall be true, correct and complete in all material respects on the Closing Date; *provided, however,* that those representations and warranties expressly referring to a specific date shall be true, correct and complete in all material respects as of such date; *provided, further,* that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and**

(ii) **for Credit Extensions made after the Closing Date, if any, the representations and warranties in Article 5 and elsewhere in the Financing Documents shall be true, correct and complete in all material respects on the date of the Credit Extension Form and on the Funding Date of each Credit Extension; *provided, however,* that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further* that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Article 5 and elsewhere in the Financing Documents remain true, accurate and complete in all material respects; *provided, however,* that such**

materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further* that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(d) no Default or Event of Default shall have occurred and be continuing or result from the Credit Extension;

(e) payment in full of the fees owed to Agent and the Lenders in connection with the making of the applicable Credit Extensions, including pursuant to the Fee Letters;

(f) Agent shall be satisfied with the results of any searches conducted under Section 3.5;

(g) receipt by Agent of such evidence as Agent shall reasonably request to confirm that the deliveries made in Section 3.1 remain current, accurate and in full force and effect, or if not, updates thereto, each in form and substance satisfactory to Agent; and

(h) as determined in such Lender's sole but reasonable discretion, there has not been any Material Adverse Change.

3.3 ***Method of Borrowing.*** Each Credit Extension in respect of each Credit Facility shall be in an amount at least equal to the applicable Minimum Credit Extension Amount for such Credit Facility as set forth in the Credit Facility Schedule or such lesser amount as shall remain undisbursed under the Applicable Commitments for such Credit Facility. The date of funding for any requested Credit Extension shall be a Business Day. To obtain a Credit Extension, Borrower shall deliver to Agent a completed Credit Extension Form executed by a Responsible Officer. Agent may rely on any notice given by a person whom Agent reasonably believes is a Responsible Officer or designee thereof. Agent and the Lenders shall have no duty to verify the authenticity of any such notice.

3.4 ***Funding of Credit Facilities.*** In Agent's discretion, Credit Extensions may be funded by Agent on behalf of the Lenders or by the Lenders directly. If Agent elects to fund any Credit Extension on behalf of the Lenders, upon the terms and subject to the conditions set forth in this Agreement, each Lender, severally and not jointly, shall make available to Agent its Pro Rata Share of the requested Credit Extension, in lawful money of the United States of America in immediately available funds, prior to 11:00 a.m. (New York time) on the specified date for the Credit Extension. Agent (or if Agent elects to have each Lender fund its Credit Extensions to Borrower directly, each Lender) shall, unless it shall have determined that one of the conditions set forth in Section 3.1 or 3.2, as applicable, has not been satisfied, by 2:00 p.m. (New York time) on the specified date for the Credit Extension, credit the amounts received by it in like funds to Borrower by wire transfer to the Designated Funding Account (or to the account of Borrower in respect of the Obligations, if the Credit Extension is being made to pay an Obligation of Borrower). A Credit Extension made prior to the satisfaction of any conditions set forth in Section 3.1 or 3.2 shall not constitute a waiver by Agent or the Lenders of Borrower's obligation to satisfy such conditions, and any such Credit Extension made in the absence of such satisfaction shall be made in each Lender's discretion.

3 . 5 **Searches.** Before the Closing Date, and thereafter (as and when determined by Agent in its reasonable discretion), Agent shall have the right to perform, all at Borrower's expense, the searches described in clauses (a), (b), and (c) below against Borrower and any other Credit Party, the results of which are to be consistent with Borrower's representations and warranties under this Agreement and the reasonably satisfactory results of which shall be a condition precedent to all Credit Extensions requested by Borrower: (a) title investigations, UCC searches and fixture filings searches; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

4. CREATION OF SECURITY INTEREST

4.1 **Grant of Security Interest.** Borrower hereby grants to Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that may have priority by operation of applicable Law or by the terms of a written intercreditor or subordination agreement entered into by Agent.

4.2 **Representations and Covenants.**

(a) **As of the Closing Date , Borrower has no ownership interest in any Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than as disclosed on the Disclosure Schedule attached hereto).**

(b) **Borrower shall promptly (and in any event within ten (10) Business Days of acquiring any of the following) deliver to Agent all tangible Chattel Paper and all Instruments and documents with an aggregate value in excess of [***] (\$[***]) owned at any time by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrower shall provide Agent with "control" (as defined in the Code) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the Code. Borrower also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrower will mark conspicuously all such Chattel Paper and all such Instruments and Documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such Instruments and Documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Financing Documents.**

(c) **Borrower shall promptly (and in any event within ten (10) Business Days of acquiring any of the following) deliver to Agent all letters of credit with an aggregate value in excess of [***] (\$[***]) on which any Borrower is the beneficiary and**

which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrower shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in the Code) of any such letter of credit rights in a manner acceptable to Agent.

(d) Borrower shall promptly (and in any event within 10 Business Days) advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which may reasonably exceed [***] (\$[***]) which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrower shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(e) No Inventory or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrower's agents or processors without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of (or solely with respect to locations of contract manufacturers, Borrower's use of commercially reasonable efforts to obtain) warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control, except for (x) locations where Borrower maintains less than [***] (\$[***]) in the aggregate of Inventory or other Collateral, or (y) clinical trial sites. Borrower shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Financing Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall, in Agent's discretion, obtain an Access Agreement or other acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(f) Upon the reasonable request of Agent, Borrower shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible personal property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrower shall not permit any such tangible personal property with an aggregate value in excess of [***] (\$[***]) to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(g) As of the Closing Date and each subsequent date that the representations and warranties under this Agreement are remade, all Deposit Accounts, Securities Accounts, Commodity Accounts or other bank accounts or investment accounts owned by Borrower, together with the purpose of such accounts and the financial institutions at which such accounts reside, are listed on the Disclosure Schedule.

(h) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to its Liens on all or any part of the Collateral, which financing statements may list Agent as the “secured party” and such Borrower as the “debtor” and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents, in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Any financing statement may include a notice that any disposition of the Collateral in contravention of this Agreement, by either Borrower or any other Person, shall be deemed to violate the rights of Agent and the Lenders under the Code.

(i) As of the Closing Date, no Borrower holds, and, after the Closing Date, Borrower shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrower shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(j) Borrower shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows on the Closing Date, on the date of each Credit Extension, and on such other dates when such representations and warranties under this Agreement are made or deemed to be made:

5.1 **Due Organization, Authorization: Power and Authority.**

(a) Each Credit Party and each Subsidiary is duly organized, validly existing and in good standing (if applicable in such entity's jurisdiction of formation) as a Registered Organization in its respective jurisdiction of formation. Each Credit Party and each Subsidiary has the power to own its assets and is qualified and licensed to do business and is in good standing (if applicable in such jurisdiction) in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. The Financing Documents have been duly authorized, executed and delivered by each Credit Party and constitute legal, valid and binding agreements enforceable in accordance with their terms. The execution, delivery and performance by each Credit Party of each Financing Document executed or to be executed by it is in each case within such Credit Party's powers.

(b) The execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party do not (i) conflict with any of such Credit Party's organizational documents; (ii) contravene, conflict with, constitute a default under or violate any Law in any material respect; (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Credit Party or any of its property or assets may be bound or affected; (iv) require any action by, filing, registration, or qualification with, or Required Permit from, any Governmental Authority (except such Required Permits which have already been obtained and are in full force and effect); or (v) constitute a default under or conflict with any Material Agreement. No Credit Party is in default under any agreement to which it is a party or by which it is bound in which the default would reasonably be expected to have a Material Adverse Change.

5 . 2 **Litigation.** Except as disclosed on the **Disclosure Schedule** or, after the Closing Date, pursuant to Section 6.7, there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Responsible Officers, threatened in writing by or against any Credit Party which involves the possibility of any judgment or liability of more than [***] (\$[***]). There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Responsible Officers, threatened in writing by or against any Credit Party that could result in a Material Adverse Change, or which questions the validity of the Financing Documents or action to be taken pursuant to the Financing Documents.

5 . 3 **No Material Deterioration in Financial Condition; Financial Statements.** All financial statements for the Credit Parties delivered to Agent or any Lender fairly present, in conformity with GAAP (and as to unaudited financial statements, subject to normal periodic adjustments and the absence of footnote disclosures), in all material respects the consolidated financial condition and consolidated results of operations of such Credit Party. There has been no material deterioration in the consolidated financial condition of any Credit Party from the most recent financial statements and projections submitted to Agent or any Lender. There has been no material adverse deviation from the most recent annual operating plan of Borrower delivered to Agent and the Lenders.

5.4 **Solvency.** The fair salable value of (a) Rigel's and (b) Rigel's and its Subsidiaries' (taken as a whole) assets exceeds, in each case, the fair value of their liabilities. After giving effect to the transactions described in this Agreement, (i) neither Rigel nor Rigel and its Subsidiaries (taken as a whole) is left with unreasonably small capital in relation to their business as presently conducted, and (ii) each of (x) Rigel and (y) Rigel and its Subsidiaries (taken as a whole) are able to pay, in each case, their debts (including trade debts) as they mature.

5.5 **Subsidiaries; Investments; Margin Stock.** Borrower and its Subsidiaries do not own any stock, partnership interest or other equity securities, except for Permitted Investments. Without limiting the foregoing, Borrower and its Subsidiaries do not own or hold any Margin Stock.

5.6 **Tax Returns and Payments; Pension Contributions.** Each Credit Party and its Subsidiaries has timely filed all required federal tax returns and all other material tax returns and reports, and, except for those Taxes that are subject to a Permitted Contest, each Credit Party and its Subsidiaries has timely paid all federal Taxes and all other material Taxes, assessments, deposits and contributions owed by such Credit Party or Subsidiary, as applicable. For purposes of this Section 5.6, any foreign, state or local Taxes, assessment, deposit or contribution, and any return with respect thereto, shall not be considered "material" if it is equal to or less than \$[***] in the aggregate for all Taxes; *provided* that all foreign, state or local Tax, assessment, deposit or contribution, and any return with respect thereto shall be considered "material" if the nonpayment thereof or failure to file could be reasonably be expected to result in a Material Adverse Change. Other than as disclosed to Agent in accordance with Section 6.2, Borrower is unaware of any claims or adjustments proposed for any prior tax years of any Credit Party or any of its Subsidiaries which could result in additional Taxes becoming due and payable by such Credit Party. No Credit Party nor any trade or business (whether or not incorporated) that is under common control with any Credit Party within the meaning of Section 414(b) or (c) of the IRC (and Sections 414(m) and (o) of the IRC for purposes of the provisions relating to Section 412 of the IRC) or Section 4001 of ERISA (an "ERISA Affiliate") (i) has failed to satisfy the "minimum funding standards" (as defined in Section 412 of or Section 302 of ERISA), whether or not waived, with respect to any Pension Plan, (ii) has incurred liability with respect to the withdrawal or partial withdrawal of any Credit Party or ERISA Affiliate from any Pension Plan or incurred a cessation of operations that is treated as a withdrawal, (iii) has incurred any liability under Title IV of ERISA (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA), (iv) has had any "reportable event" as defined in Section 4043(c) of ERISA (or the regulations issued thereunder) (other than an event for which the thirty (30) day notice requirement is waived) occur with respect to any Pension Plan or (v) failed to maintain (1) each "plan" (as defined by Section 3(3) of ERISA) in all material respects with the applicable provisions of ERISA, the IRC and other federal or state laws, and (2) the tax qualified status of each plan (as defined above) intended to be so qualified.

5.7 **Intellectual Property and License Agreements.** A list of all Registered Intellectual Property of each Credit Party and all material in-bound license or sublicense agreements, exclusive out-bound license or sublicense agreements, or other material rights of any Credit Party to use Intellectual Property (but excluding in-bound licenses of software that is commercially available to the public), as of the Closing Date and, as updated pursuant to Section 6.14, is set forth on the **Intangible Assets Schedule**. Such **Intangible Assets Schedule** shall be prepared by Borrower in the form provided by Agent and contain all information required in such form. Except for Permitted Licenses, each Credit Party is the sole owner of its Intellectual Property free and clear of any Liens other than Permitted Liens. Each of the Credit Parties patents is valid and enforceable and no part of the Material Intangible Assets has been judged invalid or unenforceable, in whole or in part, and to the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property materially violates the rights of any third party.

5.8 **Regulatory Status.**

(a) **All of Borrower's Products and material Regulatory Required Permits are listed on the Products Schedule and Required Permits Schedule, respectively (as updated from time to time pursuant to Section 6.14), and Borrower has delivered to**

Agent a copy of all Regulatory Required Permits reasonably requested by Agent as of the date hereof or to the extent requested by Agent pursuant to Section 6.16.

(b) None of the Borrower or any of its Subsidiaries are in violation of any Healthcare Law, except where any such violation could not reasonably be expected to result in a Material Adverse Change.

(c) None of the Borrower's or its Subsidiaries' officers, directors, employees or their agents or, to Borrower's knowledge, any of its shareholders or affiliates has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(d) With respect to each Product, (i) Borrower and its Subsidiaries have received, and such Product is the subject of, all Regulatory Required Permits needed in connection with the testing, manufacture, marketing or sale of such Product as currently being conducted by or on behalf of Borrower, and have provided Agent and each Lender with all material notices and other material information required by Section 6.16, (ii) such Product is being tested, manufactured, marketed or sold, as the case may be, in material compliance with all applicable Laws and Regulatory Required Permits.

(e) As of the Closing Date, there have been no Regulatory Reporting Events.

5 . 9 No Default. *No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Change.*

5 . 1 0 Accuracy of Schedules and Perfection Certificate. All information set forth in the Disclosure Schedule, Intangible Assets Schedule, the Required Permits Schedule and the Products Schedule is true, accurate and complete in all material respects as of the Closing Date, the date of delivery of the last Compliance Certificate and any other subsequent date on which Borrower is requested to update such certificate. All information set forth in the Perfection Certificate is true, accurate and complete in all material respects as of the Closing Date, the date of each Credit Extension and each other subsequent date on which Borrower delivers an updated Perfection Certificate pursuant to Agent's request. Notwithstanding the foregoing, Borrower shall not be required to update information on any of the Disclosure Schedule, Intangible Assets Schedule, the Required Permits Schedule and the Products Schedule, except as expressly required by the Financing Documents.

6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees as follows:

6.1 ***Organization and Existence; Government Compliance.***

(a) Each Credit Party and its Subsidiaries shall maintain its legal existence and good standing in its respective jurisdiction of formation and shall maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. If a Credit Party is not now a Registered Organization but later becomes one, Borrower shall promptly notify Agent of such occurrence and provide Agent with such Credit Party's organizational identification number.

(b) Each Credit Party and its Subsidiaries shall comply with all Laws, ordinances and regulations to which it or its business locations are subject, the noncompliance with which could reasonably be expected to result in a Material Adverse Change. Each Credit Party shall obtain and keep in full force and effect and comply with all of the Required Permits, except where failure to have or maintain compliance with or effectiveness of such Required Permit could not reasonably be expected to result in a Material Adverse Change. Upon request of Agent or any Lender, each Credit Party shall promptly (and in any event within five (5) Business Days of such request) provide copies of any such obtained Required Permits to Agent. Borrower shall notify Agent within five (5) Business Days (but in any event prior to Borrower submitting any requests for Credit Extensions or release of any reserves) of the occurrence of any facts, events or circumstances known to a Borrower, whether threatened in writing, existing or pending, that could cause any Required Permit to become materially limited, suspended or revoked. Notwithstanding the foregoing, each Credit Party shall comply with Section 6.16 as it relates to Regulatory Required Permits and to the extent that there is a conflict between this Section and Section 6.16 as it relates to Regulatory Required Permits, Section 6.16 shall govern.

6.2 ***Financial Statements, Reports, Certificates.***

(a) Each Credit Party shall deliver to Agent and each Lender: (i) as soon as available, but no later than (x) forty-five (45) days after the last day of each of March, June, September and December, and (y) thirty (30) days after the last day of each other month, a company prepared consolidated (and upon Agent's reasonable request, consolidating) balance sheet, income statement and cash flow statement covering such Credit Party's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Agent and each Lender; (ii) as soon as available, but no later than ninety (90) days after the last day of a Credit Party's fiscal year, audited consolidated (and upon Agent's reasonable request, consolidating) financial statements prepared under GAAP, consistently applied, together with an unqualified opinion (other than a going

concern qualification based solely on Borrower having negative profits or a determination that Borrower has less than twelve months liquidity) on the financial statements from an independent certified public accounting firm acceptable to Agent and each Lender in its reasonable discretion which is [***] as of the Closing Date; (iii) as soon as available after approval thereof by such Credit Party's governing board, but no later than sixty (60) days after the last day of such Credit Party's fiscal year, and as amended and/or updated, such Credit Party's financial projections for the current fiscal year; (iv) within five (5) days of delivery, copies of all statements, reports and notices made available to all of such Credit Party's security holders or to any holders of Subordinated Debt; (v) in the event that such Credit Party is or becomes subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission ("SEC") or a link thereto on such Credit Party's or another website on the Internet; (vi) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by a Credit Party and each deposit account and securities account maintained by a Restricted Foreign Subsidiary, which statements may be provided to Agent and each Lender by Borrower or directly from the applicable institution(s); (vii) promptly (and in any event within ten (10) days of any request therefor) such readily available board reviewed budgets, sales projections, operating plans, financial information and other information, reports or statements regarding the Credit Parties or their respective businesses, contractors and subcontractors reasonably requested by Agent or any Lender; and (viii) within ten (10) days after any Credit Party becomes aware of any claim or adjustment proposed for any prior tax years of any Credit Party or any of their Subsidiaries which could result in additional Taxes becoming due and payable by such Credit Party or Subsidiary, notice of such claim or adjustment. Notwithstanding anything to the contrary herein, documents required to be delivered pursuant to Section 6.2(a)(i) or (ii) (to the extent any such documents are included in materials filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at Borrower's website address.

(b) Within (x) forty-five (45) days after the last day of each of March, June, September and December, and (y) thirty (30) days after the last day of each other month, Borrower shall deliver to Agent and each Lender with the monthly financial statements described above, a duly completed Compliance Certificate signed by a Responsible Officer. The Compliance Certificate shall include, without limitation, (i) a statement and report, on a form approved by Agent, detailing Borrower's calculations of compliance with Article 9 (to the extent applicable), (ii) the monthly cash and Cash Equivalents of Borrower and Borrower and its consolidated Subsidiaries and, if requested by Agent, bank statements and (iii) if reasonably requested by Agent, back-up

documentation (including, without limitation, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

(c) Borrower shall cause each Credit Party to keep proper books of record and account in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Upon at least three (3) Business Days prior written notice and during normal business hours (which such limitations shall not apply if a Default or Event of Default has occurred and is continuing), Borrower shall allow, and cause each Credit Party to allow, Agent and the Lenders to visit and inspect any properties of a Credit Party, to examine and make abstracts or copies from any Credit Party's books, to conduct a collateral audit and analysis of its operations and the Collateral to verify the amount and age of the accounts, the identity and credit of the respective account debtors, to review the billing practices of the Credit Party and to discuss its respective affairs, finances and accounts with their respective officers, employees and independent public accountants once per fiscal year unless an Event of Default has occurred and is continuing. Borrower shall reimburse Agent and each Lender for all reasonable costs and expenses associated with such visits and inspections; *provided, however,* that Borrower shall be required to reimburse Agent and each Lender for such costs and expenses for no more than one (1) such visits and inspections per twelve (12) month period unless an Event of Default has occurred and is continuing at the time such an inspection or visit occurs.

(d) Borrower shall, and shall cause each Credit Party to, deliver to Agent and each Lender, within ten (10) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Required Permits material to Borrower's business or otherwise on the operations of Borrower or any of its Subsidiaries.

(e) Borrower shall, and shall cause each Credit Party to, promptly, but in any event within five (5) Business Days, after any Responsible Officer of any Borrower obtains knowledge of the occurrence of any event or change (including, without limitation, any notice of any violation of Healthcare Laws) that has resulted or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Change, a certificate of a Responsible Officer specifying the nature and period of existence of any such event or change, or specifying the notice given or action taken by such holder or Person and the nature of such event or change, and what action the applicable Credit Party or Subsidiary has taken, is taking or proposes to take with respect thereto.

(f) **Borrower shall, and shall cause each Credit Party to, promptly after the request by any Lender, provide all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act.**

6 . 3 ***Maintenance of Property.*** Borrower shall, and shall cause each Credit Party to, cause all equipment and other tangible personal property other than Inventory to be maintained and preserved in the same condition, repair and in working order as of the date hereof, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Borrower shall cause each Credit Party to keep all material Inventory in good and marketable condition, free from material defects. Returns and allowances between a Credit Party and its Account Debtors shall follow the Credit Party’s customary practices as they exist at the Closing Date. Borrower shall promptly notify Agent of all returns, recoveries, disputes and claims that involve more than [***] (\$[***]) in the aggregate per fiscal year of Inventory collectively among all Credit Parties.

6.4 ***Taxes; Pensions.***

(a) **Borrower shall timely file and cause each Credit Party to timely file, all required federal tax returns and other material tax returns and reports and timely pay, and cause each Credit Party to timely pay, all federal Taxes and all other material foreign, state, and local Taxes, assessments, deposits and contributions owed, and shall deliver to Agent, promptly on demand, appropriate certificates attesting to such payments; *provided, however,* that a Credit Party may defer payment of any contested Taxes, so long as such Credit Party (i) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted, (ii) notifies Agent in writing of the commencement of, and any material development in, the proceedings, and (iii) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested Taxes from obtaining a Lien upon any of the Collateral other than a Permitted Lien (such contest, a “Permitted Contest”). For purposes of this Section 6.4(a), any foreign, state or local Taxes, assessment, deposit or contribution, and any return with respect thereto, shall not be considered “material” if it is equal to or less than [***] (\$[***]) in the aggregate for all Taxes; *provided* that all foreign, state or local Tax, assessment, deposit or contribution, and any return with respect thereto shall be considered “material” if the nonpayment thereof or failure to file could be reasonably be expected to result in a Material Adverse Change.**

(b) **Borrower shall pay, and cause each Credit Party to pay, all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms. Each Credit Party and their ERISA Affiliates shall timely make all required contributions to each Pension Plan and shall maintain each “plan” (as defined by Section 3(3) of ERISA) in material compliance with the applicable provisions of ERISA, the Internal Revenue Code and other federal and state laws. Borrower shall**

give written notice to Agent and each Lender promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of any (i) Credit Party's or any ERISA Affiliate's failure to make any contribution required to be made with respect to any Pension Plan not having been timely made, (ii) notice of the PBGC's, any Credit Party's or any ERISA Affiliate's intention to terminate or to have a trustee appointed to administer any such Pension Plan, or (iii) complete or partial withdrawal by any Credit Party or any ERISA Affiliate from any Pension Plan.

6.5 ***Insurance.*** Borrower shall, and shall cause each Credit Party to, keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Agent. All property policies shall have a lender's loss payable endorsement showing Agent as sole lender's loss payee and waive subrogation against Agent, and all liability policies shall show, or have endorsements showing, Agent as an additional insured. No other loss payees, unless expressly subordinate to Agent, may be shown on the policies unless Agent shall otherwise consent in writing. If required by Agent, all policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall endeavor to give Agent at least twenty (20) days' (ten (10) days' for non-payment of premium) notice before canceling, amending, or declining to renew its policy. At Agent's request, Borrower shall deliver certified copies of all such Credit Party insurance policies and evidence of all premium payments. If any Credit Party fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Agent, Agent may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Agent deems prudent.

6.6 ***Collateral Accounts.*** Borrower shall, and shall cause each Credit Party to, provide Agent five (5) Business Days prior written notice before establishing any Collateral Account at or with any bank or financial institution. In addition, for each Collateral Account that any Credit Party at any time maintains (and in connection with any such Collateral Account established after the Closing Date, prior to opening such Collateral Account), Borrower shall, and shall cause each Credit Party to, cause the applicable bank or financial institution at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Agent's Lien in such Collateral Account in accordance with the terms hereunder, which Control Agreement, *inter alia*, (a) provides that, upon written notice from Agent, such bank or financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Collateral Account without further consent by Borrower and (b) may not be terminated without prior written consent of Agent. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and, in Agent's discretion, other employee wage and benefit payments to or for the benefit of a Credit Party's employees and identified to Agent by Borrower as such; *provided, however*, that, at all times Borrower shall maintain one (1) or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

6.7 ***Notices of Material Agreements, Litigation and Defaults; Cooperation in Litigation.***

(a) **Borrower shall promptly (and in any event within the time periods specified below) provide written notice to Agent and each Lender that the following has occurred:**

(i) **Within five (5) Business Days of Borrower becoming aware of the existence of any Default or Event of Default;**

(i i) **Within five (5) Business Days of Borrower becoming aware of (or having reason to believe any of the following are pending or threatened in writing) any action, suit, proceeding or investigation by or against Borrower or any Credit Party which involves the possibility of any judgment or liability of more than [***] (\$[***]) or that could result in a Material Adverse Change, or which questions the validity of any of the Financing Documents, or the other documents required thereby or any action to be taken pursuant to any of the foregoing; and**

(i i i) **(A) Within ten (10) Business Days of Borrower receiving or delivering any notice of termination (due to a breach or default and not from termination in accordance with its terms) or similar notice in connection with any Material Agreement, and (B) together with delivery of the next Compliance Certificate, the execution of any new Material Agreement and/or any new material amendment, consent, waiver or other modification to any Material Agreement not previously disclosed. Documents required to be delivered pursuant to this Section 6.7(a)(iii) (to the extent any such documents are included in materials filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents or provides a link thereto, on Borrower's website on the Internet at Borrower's website address.**

(iv) **At any time after the Lenders have made Credit Extensions in respect of Credit Facility #3 or Credit Facility #4, Borrower shall immediately (but in any event within three (3) Business Days) notify Agent if Borrower Unrestricted Cash has fallen below the Minimum Cash Threshold.**

(b) **Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clause (a). From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.**

6.8 **Creation/Acquisition of Subsidiaries.** Borrower shall provide Agent with at least ten (10) Business Days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create or, to the extent permitted pursuant to this Agreement, acquire a new Subsidiary. Upon such

creation or, to the extent permitted hereunder, acquisition of any Subsidiary, Borrower and such Subsidiary shall promptly (and in any event within thirty (30) days of such creation or acquisition) take all such action as may be reasonably required by Agent or the Required Lenders to cause each such Subsidiary (other than a Restricted Foreign Subsidiary) to either, in the discretion of Agent, become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Financing Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on **Exhibit A** hereto); and Borrower shall grant and pledge to Agent, for the ratable benefit of the Lenders, a perfected security interest in the stock, units or other evidence of ownership of each Subsidiary (the foregoing collectively, the “**Joinder Requirements**”); *provided* that Borrower shall not be permitted to make any Investment in such Subsidiary until such time as Borrower has satisfied the Joinder Requirements.

6.9 ***Use of Proceeds.*** Borrower shall use the proceeds of the Credit Extensions solely for (a) transaction fees incurred in connection with the Financing Documents, and (b) for working capital needs of Borrower and its Subsidiaries and (c) any other Permitted Purpose specified in the Credit Facility Schedule for such Credit Facility. No portion of the proceeds of the Credit Extensions will be used for family, personal, agricultural or household use or to purchase Margin Stock.

6.10 ***Hazardous Materials; Remediation.***

(a) **If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply in all material respects with all applicable Laws and to preserve the material value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply in all material respects with each applicable Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.**

(b) **Borrower will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent’s determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Change.**

(c) **If there is any conflict between this Section 6.10 and any environmental indemnity agreement which is a Financing Document, the environmental indemnity agreement shall govern and control.**

6.11 ***Power of Attorney.*** Each of the officers of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for each Borrower (without requiring any of them to act as such) with full

power of substitution to do the following: (a) after the occurrence and during the continuance of an Event of Default, pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, (i) execute in the name of any Person comprising Borrower any schedules, assignments, instruments, documents, and statements that Borrower is obligated to give Agent under this Agreement or that Agent or any Lender deems necessary to perfect or better perfect Agent's security interest or Lien in any Collateral, (ii) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrower that Agent may deem necessary or desirable to enforce, protect or preserve any Collateral or its rights therein, including, but not limited to, to sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; and (iii) after the occurrence and during the continuance of an Event of Default, (A) endorse the name of any Borrower upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrower; (B) make, settle, and adjust all claims under Borrower's insurance policies; (C) take any action any Credit Party is required to take under this Agreement or any other Financing Document; (D) transfer the Collateral into the name of Agent or a third party as the Code permits; (E) exercise any rights and remedies described in this Agreement or the other Financing Documents; and (F) do such other and further acts and deeds in the name of Borrower that Agent may deem necessary or desirable to enforce its rights with regard to any Collateral.

6.12 ***Further Assurances.*** Borrower shall, and shall cause each Credit Party and their Subsidiaries to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of Lenders on the Collateral (including Collateral acquired after the date hereof), including on any and all assets of each Credit Party, whether now owned or hereafter acquired (subject to the limitations set forth in the Financing Documents).

6.13 ***Post-Closing Obligations.*** Borrower shall, and shall cause each Credit Party to, complete each of the post-closing obligations and/or deliver to Agent each of the documents, instruments, agreements and information listed on the **Post-Closing Obligations Schedule** attached hereto, on or before the date set forth for each such item thereon (as the same may be extended by Agent in writing in its sole discretion), each of which shall be completed or provided in form and substance reasonably satisfactory to Agent and the Lenders.

6.14 ***Disclosure Schedule Updates.*** Borrower shall deliver to Agent, together with the each Compliance Certificate delivered with respect to the last month of a calendar quarter under this Agreement, an update to the **Disclosure Schedule** correcting all outdated, inaccurate, incomplete or misleading information therein. With respect to any proposed updates to the **Disclosure Schedule** involving Permitted Liens, Permitted Indebtedness or Permitted Investments, Agent will replace the **Disclosure Schedule** attached hereto with such proposed updates only if such updated information reflects transactions that are otherwise expressly permitted by the definitions of, and limitations herein pertaining to, Permitted Liens, Permitted Indebtedness or Permitted Investments (it being understood that such updates will not be deemed to amend the **Disclosure Schedule** as in effect on the Closing Date). With respect to any updates to the **Disclosure Schedule** involving matters other than those set forth in the preceding sentence, Agent will replace the applicable portion of the **Disclosure Schedule** attached hereto with such update upon Agent's receipt and approval thereof.

6.15 ***Intellectual Property and Licensing.***

(a) **Together with each Compliance Certificate required to be delivered pursuant to Section 6.2(b) delivered with respect to the last month of a calendar quarter, to the extent (A) Borrower acquires and/or develops any new Registered Intellectual Property, or (B) Borrower enters into or becomes bound by any additional in-bound license**

or sublicense agreement, any additional exclusive out-bound license or sublicense agreement or other material agreement with respect to rights in Intellectual Property (other than over-the-counter software that is commercially available to the public), or (C) there occurs any other material change in Borrower's Registered Intellectual Property, in-bound licenses or sublicenses or exclusive out-bound licenses or sublicenses from that listed on the Intangible Assets Schedule, together with such Compliance Certificate, deliver to Agent an updated Intangible Assets Schedule reflecting such updated information. With respect to any updates to the Intangible Assets Schedule involving exclusive out-bound licenses or sublicenses, such licenses shall be consistent with the definitions of and limitations herein pertaining to Permitted Licenses.

(b) If Borrower obtains any Registered Intellectual Property, Borrower shall promptly execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in the IP Proceeds pertaining thereto.

(c) Without limiting Section 6.15 (d), Borrower shall use commercially reasonable efforts to take such steps as Agent requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (x) all licenses or agreements to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise be restricted or prohibited by Law or by the terms of any such license or agreement, whether now existing or entered into in the future, and (y) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's rights and remedies under this Agreement and the other Financing Documents.

(d) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets subject to Permitted Licenses. Borrower shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Change. Borrower shall at all times conduct its business without material infringement or claim of infringement of any Intellectual Property rights of others. Borrower shall (i) protect, defend and maintain the validity and enforceability of its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, or of a material claim of infringement by Borrower on the Intellectual Property rights of others, in each case to the extent Borrower has received written notice from a third party thereof; and (iii) not allow any of Borrower's Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any material

license or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property.

6.16 ***Regulatory Reporting and Covenants.***

(a) Borrower shall notify Agent and each Lender promptly, and in any event within five (5) Business Days of receiving, becoming aware of or determining that, (each, a "**Regulatory Reporting Event**") and collectively, the "**Regulatory Reporting Events**"):

(i) any Governmental Authority, specifically including the FDA is conducting or has conducted (A) if applicable, any investigation of Borrower's or its Subsidiaries' manufacturing facilities and processes for any Product (or any investigation of the facility of a contract manufacturer engaged by Borrower or its Subsidiaries in respect of a Product of which Borrower and/or its Subsidiaries are aware), which has disclosed any material deficiencies or violations of Laws and/or the Regulatory Required Permits related thereto or (B) an investigation or review of any Regulatory Required Permit (other than routine reviews in the Ordinary Course of Business associated with the renewal of a Regulatory Required Permit),

(i i) any development, testing, and/or manufacturing of any [***] or any other material Product should cease,

(i i i) if a Product has been approved for marketing and sale, any marketing or sales of such Product should cease or such Product should be withdrawn from the marketplace,

(i v) any Regulatory Required Permit has been revoked or withdrawn,

(v) adverse clinical test results have occurred with respect to any Product to the extent that such results have or could reasonably be expected to result in a Material Adverse Change,

(v i) receipt by Borrower or any Subsidiary thereof from the FDA a warning letter, Form FDA-483, "Untitled Letter," other correspondence or notice setting forth allegedly material objectionable observations or alleged material violations of laws and regulations enforced by the FDA, or any comparable correspondence from any state or local authority responsible for

regulating drug products and establishments, or any comparable correspondence from any foreign counterpart of the FDA, or any comparable correspondence from any foreign counterpart of any state or local authority with regard to any Product or the manufacture, processing, packing, or holding thereof;

(vii) any Product recalls or voluntary Product withdrawals from any market (other than with respect to discrete batches or lots that are not material in quantity or amount and are not made in conjunction with a larger recall) have occurred, or

(viii) any material failures in the manufacturing of any Product have occurred such that the amount of such Product successfully manufactured in accordance with all specifications thereof and the required payments to be made to Borrower therefor in any month shall decrease materially with respect to the quantities of such Product and payments produced in the prior month.

Borrower shall provide to Agent or any Lender such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any such Regulatory Reporting Event promptly upon, but in any event within five (5) Business Days of, such request.

(b) Borrower shall have, and shall ensure that it and each of its Subsidiaries has, each material Required Permit and other rights from, and have made all declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in all material respects in the ownership, management and operation of the business or the assets of Borrower and Borrower shall take reasonable actions to ensure that no Governmental Authority has taken action to limit, suspend or revoke any such Required Permit. Borrower shall ensure that all such Required Permits are valid and in full force and effect and Borrower is in material compliance with the terms and conditions of all such Required Permits in all material respects.

(c) Borrower will maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of Borrower's business and assets, all material Required Permits necessary under Healthcare Laws to carry on the business of Borrower as it is conducted on the Closing Date in all material respects.

(d) Borrower shall, and shall cause each Credit Party to, obtain and comply with and, to the extent applicable, use commercially reasonable efforts to cause

all third parties to obtain and comply with, all Regulatory Required Permits at all times issued or required to be issued by any Governmental Authority, specifically including the FDA, with respect to the development, testing, manufacture, marketing or sales of any Product by the Borrower as such activities are at any such time being conducted by such Borrower.

(e) **Borrower will timely file or caused to be timely filed (after giving effect to any extension duly obtained), all material notifications, reports, submissions, material Required Permit renewals and reports required by applicable Healthcare Laws (which reports will be materially accurate and complete in all respects and not materially misleading in any respect and shall not remain open or unsettled).**

(f) **In the event Borrower or any Credit Party obtains any new Regulatory Required Permit or any information on the Required Permits Schedule becomes outdated, inaccurate, incomplete or misleading, Borrower shall, together with the next quarterly Compliance Certificate required to be delivered under this Agreement after such event, provide Agent with an updated Required Permits Schedule including such updated information**

(g) **If, after the Closing Date, (i) Borrower determines to manufacture, sell, develop, test or market any new Product (by itself or through a third party), Borrower shall deliver prior written notice to Agent of such determination (which shall include a brief description of such Product) and, together with delivery of the next quarterly Compliance Certificate shall provide an updated Intangible Assets Schedule, Products Schedule and Required Permits Schedule (and copies of such Required Permits as Agent may request) reflecting updates related to such determination.**

7. NEGATIVE COVENANTS

Borrower shall not do, nor shall it permit any Credit Party or any of its Subsidiaries to do, any of the following:

7 . 1 ***Dispositions.*** Convey, sell, abandon, lease, license, transfer, assign or otherwise dispose of (including by merger, allocation of assets (including allocation of assets to any series of a limited liability company), division, consolidation or amalgamation) (collectively, “**Transfer**”) all or any part of its business or property, except for (a) sales, transfers or dispositions of Inventory in the Ordinary Course of Business; (b) sales or abandonment of (i) worn-out, surplus or obsolete Equipment or other tangible personal property or (ii) other Equipment that is no longer used or useful in the business of Borrower with a fair salable value not to exceed [***] (\$[***]) in the aggregate per fiscal year for all such Equipment and other tangible personal property Transferred pursuant clauses (i) and (ii); (c) to the extent constituting a Transfer, Permitted Liens; (d) to the extent they may constitute a Transfer, the use of cash and Cash Equivalents to make Permitted Investments; (e) the granting of Permitted Licenses; (f) Transfers from any Subsidiary to a Borrower, (g) Transfers between Guarantors, (h) Transfers from Credit Parties to Borrowers; (i) sales or discounting of delinquent accounts in the Ordinary Course of Business, (j) the expiration, forfeiture, invalidation, cancellation, abandonment of Intellectual Property (other than Material Intangible Assets) to the extent such Intellectual Property is no longer used or useful in the business of Borrower, or (k) long as no Event of Default has

occurred and is continuing or would result therefrom, other Transfers of tangible personal property in the Ordinary Course of Business with a fair market value not to exceed [***] (\$[***) in the aggregate for all such property per fiscal year.

7 . 2 **Changes in Business, Management, Ownership or Business Locations.** (a) Engage in, or permit any of its Subsidiaries to engage in, any business other than the businesses currently engaged in by Borrower, such Credit Party or such Subsidiary, as applicable, or reasonably related thereto or a reasonable extension thereof; (b) liquidate or dissolve; *provided* that a Subsidiary that is not a Credit Party may liquidate or dissolve so long as such Subsidiary distributes its assets to a Credit Party upon such liquidation or dissolution; (c) enter into any transaction or series of related transactions which would result in a Change in Control unless the agreements with respect to such transactions provide for, as a condition precedent to the consummation thereof, either (x) the indefeasible payment in full of the Obligations or (y) the consent of Agent and the Lenders; (d) fail to deliver within sixty (60) days (or such longer time as approved by Agent) notice of the addition of any new offices or business locations, or of any new leases with respect to existing offices or business locations, and a fully-executed Access Agreement to Agent (except as otherwise provided below); (e) without at least ten (10) Business Days' prior written notice to Agent (i) change its jurisdiction of organization (provided that no Credit Party shall change its jurisdiction of organization to a new country without Agent's consent); (ii) change its organizational structure or type; (iii) change its legal name; or (iv) change any organizational number (if any) assigned by its jurisdiction of organization. Notwithstanding the foregoing in the case of subpart (d) above, provided that the applicable lease or license agreement, or applicable law, does not grant to the landlord or licensor any Lien upon intangible assets of the tenant or licensee, subpart (d) shall not restrict leases or licenses for (i) such new or existing offices or business locations containing less than [***] (\$[***) in Borrower's assets or property and not containing Borrower's Books and (ii) any new or existing business location constituting a warehouse, consignee or bailee location that does not contain any of Borrower's Books and would not otherwise require an Access Agreement pursuant to the criteria set forth in Section 4.2(e).

7.3 **Mergers and Consolidations.** Merge or consolidate with any other Person, *provided, however*, that (a) a Borrower may merge or consolidate into another Borrower, (b) a Guarantor may merge or consolidate into another Credit Party, (c) a Restricted Foreign Subsidiary may merge or consolidate into another Restricted Foreign Subsidiary and (d) a Subsidiary that is not a Credit Party may merge or consolidate into a Credit Party, so long as, in each case of the foregoing (a)-(d), (i) Borrower has provided Agent with prior written notice of such transaction, (ii) if a Credit Party is a party thereto, a Person already comprising a Credit Party shall be the surviving legal entity, (iii) if Rigel is a party thereto, Rigel shall be the surviving legal entity, (iv) if a Credit Party is a party thereto, the surviving Credit Party's tangible net worth is not thereby materially reduced, (v) no Event of Default has occurred and is continuing prior thereto or arises as a result therefrom and (vi) Borrower shall be in compliance with the covenants set forth in this Agreement both before and after giving effect to such transaction.

7.4 **Indebtedness.** (a) Create, incur, assume, or be liable for any Indebtedness other than Permitted Indebtedness or (b) purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness (other than with respect to the Obligations as described in Section 2.3) prior to its scheduled maturity.

7.5 **Encumbrance.** (a) Create, incur, allow, or suffer any Lien on any of its property, except for Permitted Liens, (b) permit any Collateral to fail to be subject to the first priority security interest granted herein except for Permitted Liens that may have priority by operation of applicable Law or by the terms of a written intercreditor or subordination agreement entered into by Agent, or (c) enter into any agreement, document, instrument or other arrangement (except with or in favor of Agent) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's property, except as is otherwise permitted in the definition of "Permitted Liens" herein.

7.6 **Maintenance of Collateral Accounts.** Maintain any Collateral Account, except pursuant to the terms of Section 6.6 hereof.

7.7 **Distributions; Investments and Acquisitions; Margin Stock.**

(a) Pay any dividends or make any distribution or payment (or set aside any funds for payment) with respect to or redeem, retire or purchase or repurchase any of its equity interests other than Permitted Distributions.

(b) Directly or indirectly make any Investment (including, without limitation, any additional Investment in any Subsidiary and any Acquisition) other than Permitted Investments and Permitted Acquisitions.

(c) Without limiting the foregoing, Borrower shall not, and shall not permit any of its Subsidiaries or any Credit Party to, purchase or carry Margin Stock.

7.8 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of any Credit Party, except for (a) transactions that are in the Ordinary Course of Business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions with Subsidiaries that are designated as a Borrower hereunder and that are not otherwise prohibited by Article 7 of this Agreement, (c) transactions permitted by Section 7.7(a) of this Agreement, (d) transactions constituting bona fide equity financings for capital raising purposes not otherwise in contravention of this Agreement, and (e) reasonable and customary director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans and indemnification arrangements approved by the relevant board of directors, board managers or equivalent corporate body in the Ordinary Course of Business).

7.9 **Subordinated Debt:** [***].

(a) (i) Make or permit any payment (or set aside any funds for payment) on, or any distribution in respect of, any Subordinated Debt, except to the extent expressly permitted to be made pursuant to the terms of the Subordination Agreement to which such Subordinated Debt is subject, or (ii) amend any provision in any document relating to the Subordinated Debt other than as may be expressly permitted pursuant to the terms of any applicable Subordination Agreement to which such Subordinated Debt is subject.

(b) [***].

7.10 **Compliance.** Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended or undertake as one of its important activities extending credit to purchase or carry Margin Stock, or use the proceeds of any Credit Extension for that purpose; (i) fail, or permit any ERISA Affiliate to fail, to meet "minimum funding standards" (as defined in Section 412 of the Internal Revenue Code or Section 302 of ERISA), whether or not waived, (ii) permit (with respect to any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof) a "reportable event" as defined in Section 4043(c) of ERISA (or the regulations issued thereunder) (other than an event for which the 30-day notice requirement is waived) to occur, (iii) engage in any "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code that could reasonably be expected to result in liability in excess of [***] (\$[***]) in the aggregate or that could reasonably be expected to result in a Material Adverse Change; (iv) fail to comply with the Federal Fair Labor Standards Act that could result in liability in excess of [***] (\$[***]) in the aggregate or that could reasonably be expected to result in a Material Adverse Change; (v) permit (with respect to any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof) the withdrawal from participation in any Pension Plan,

or (vi) incur, or permit any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof to incur, any liability under Title IV of ERISA (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA).

7 . 1 1 **Amendments to Organization Documents and Material Agreements.** Amend, modify or waive any provision of (a) any Material Agreement in a manner that is materially adverse to Borrower or any of its Subsidiaries, that is adverse to Agent or any Lender, that pertains to rights to assign or grant a security interest in such Material Agreement or that could or could reasonably be expected to result in a Material Adverse Change, or (b) any of its organizational documents (other than a change in registered agents, or a change that could not adversely affect the rights of Agent or the Lenders hereunder, but, for the avoidance of doubt, under no circumstances a change of its name, type of organization or jurisdiction of organization), in each case, without the prior written consent of Agent. Borrower shall provide to Agent copies of all amendments, waivers and modifications of any Material Agreement or organizational documents.

7 . 1 2 **Compliance with Anti-Terrorism Laws.** Directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower shall immediately notify Agent if Borrower has knowledge that Borrower or any Subsidiary or Affiliate is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not, nor will Borrower permit any Subsidiary or Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, 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 in Executive Order No. 13224 or other Anti-Terrorism Law. Agent hereby notifies Borrower that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and its principals, which information includes the name and address of Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws.

7.13 **Restricted Foreign Subsidiaries.**

(a) **Borrower shall not permit, at any time, the aggregate fair market value of all assets (including cash and Cash Equivalents) held by all Restricted Foreign Subsidiaries to exceed [***] (\$[***]) (or the equivalent thereof in any foreign currency), in the aggregate.**

(b) **No Restricted Foreign Subsidiary shall own, or have an exclusive license in respect of, any Material Intangible Assets or other material Intellectual Property.**

(c) **No Credit Party shall Transfer any asset (including any Intellectual Property) to or make any Investment in any Restricted Foreign Subsidiary other than Investments of cash and cash equivalents permitted to be made pursuant to clause (k) of the definition of "Permitted Investment".**

(d) No Borrower will, or will permit any Subsidiary, to commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of any Person other than a Credit Party.

8. RESERVED

9. FINANCIAL COVENANTS

9.1 [***].

9.2 [***].

10. EVENTS OF DEFAULT

10.1 ***Events of Default.*** The occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an “**Event of Default**” and Credit Parties shall thereupon be in default under this Agreement and each of the other Financing Documents:

(a) Borrower fails to (i) make any payment of principal or interest on any Credit Extension on its due date, or (ii) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 10.2 hereof).

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within thirty (30) days after the earlier of (i) the date of receipt by any Borrower of notice from Agent or the Required Lenders of such default, or (ii) the date an officer of such Credit Party becomes aware, or through the exercise of reasonable diligence should have become aware, of such default;

(c) any Credit Party defaults in the performance of or compliance with any term contained in Section 6.2, 6.4, 6.5, 6.6, 6.7(a), 6.8, 6.9, 6.10, 6.13, 6.15 or 6.16, Article 7 or Article 9;

(d) any representation, warranty, certification or statement made by any Credit Party or any other Person acting for or on behalf of a Credit Party (i) in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document, or (ii) to induce Agent and/or Lenders to enter into

this Agreement or any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(e) (i) any Credit Party materially defaults under or materially breaches any Material Agreement (after any applicable grace period contained therein and such default or breach is not effectively and permanently cured or waived by the applicable counterparties to such Material Agreement within ten (10) Business Days of the occurrence of such default or breach) or a Material Agreement shall be terminated by a third party or parties party thereto prior to the expiration thereof which termination could reasonably be expected to have a Material Adverse Change, or there is a loss of a material right of a Credit Party under any Material Agreement to which it is a party, (ii) (A) any Credit Party or any Subsidiary of a Credit Party fails to make (after any applicable grace period) any payment when due (whether due because of scheduled maturity, required prepayment provisions, acceleration, demand or otherwise) on any Indebtedness (other than the Obligations) of such Credit Party or such Subsidiary having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than [***] (\$[***]) (“Material Indebtedness”), (B) any other event shall occur or condition shall exist under any contractual obligation relating to any such Material Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of (without regard to any subordination terms with respect thereto), the maturity of such Material Indebtedness or (C) any such Material Indebtedness shall become or be declared to be due and payable, or be required to be prepaid, redeemed, defeased or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof, (iii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations, or the occurrence of any event requiring the prepayment of any Subordinated Debt, or the delivery of any notice with respect to any Subordinated Debt or pursuant to any Subordination Agreement that triggers the start of any standstill or similar period under any Subordination Agreement, or (iv) any Borrower makes any payment on account of any Indebtedness that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(f) (i) any Credit Party or any Subsidiary of a Credit Party shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally, shall make a general assignment for the benefit of creditors, or shall cease doing business as a going concern, (ii) any proceeding shall be instituted by or against any Credit Party or any Subsidiary of a Credit Party in any jurisdiction seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement,

adjustment, protection, relief, composition of it or its debts or any similar order, in each case under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, conservator, liquidating agent, liquidator, other similar official or other official with similar powers, in each case for it or for any substantial part of its property and, in the case of any such proceedings instituted against (but not by or with the consent of) such Credit Party or such Subsidiary, either such proceedings shall remain undismissed or unstayed for a period of forty-five (45) days or more or any action sought in such proceedings shall occur or (iii) any Credit Party or any Subsidiary of a Credit Party shall take any corporate or similar action or any other action to authorize any action described in clause (i) or (ii) above;

(g) (i) the service of process seeking to attach, execute or levy upon, seize or confiscate any Collateral Account, any material Intellectual Property, or any funds of any Credit Party on deposit with Agent, any Lender or any Affiliate of Agent or any Lender, or (ii) a notice of lien, levy, or assessment is filed against any assets of a Credit Party by any government agency, and the same under subclauses (i) and (ii) hereof are not discharged or stayed (whether through the posting of a bond or otherwise) prior to the earlier to occur of thirty (30) days after the occurrence thereof or such action becoming effective;

(h) (i) any court order enjoins, restrains, or prevents a Credit Party from conducting any material part of its business, (ii) the institution by any Governmental Authority of criminal proceedings against any Credit Party or its Subsidiary, or (iii) one or more judgments or orders for the payment of money (not paid or fully covered by insurance and as to which the relevant insurance company has acknowledged coverage in writing) aggregating in excess of than [***] (\$[***]) shall be rendered against any or all Credit Parties or their Subsidiaries and either (A) enforcement proceedings shall have been commenced and not effectively stayed by any creditor upon any such judgments or orders, or (B) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Financing Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens and other than solely as a result of any action or inaction of Agent or Lenders provided that such action or inaction is not caused by a Credit Party's failure to comply with the terms of the Financing Documents, or any Credit Party shall so assert; any provision of any Financing Document shall fail to be valid and binding on, or enforceable against, a Credit Party, or any Credit Party shall so assert;

(j) a Change in Control occurs;

(k) any Required Permit shall have been (i) revoked, rescinded, suspended, modified in a materially adverse manner or not renewed in the Ordinary Course of Business for a full term, or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Required Permit or that could result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or non-renewal has, or could reasonably be expected to have, a Material Adverse Change;

(1) (i) the voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category, in each case, in the United States or in any state thereof, (ii) the institution of any action or proceeding by any DEA, FDA, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, has or could reasonably be expected to result in Material Adverse Change, (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by DEA, FDA, or any other Governmental Authority which has or could reasonably be expected to result in a Material Adverse Change, or (iv) the occurrence of adverse test results in connection with a Product which has or could reasonably be expected to result in a Material Adverse Change.

(m) [reserved]; or

(n) the occurrence of any fact, event or circumstance that results in a Material Adverse Change.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

10.2 **Rights and Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to any Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 10.1(f) occurs all Obligations shall be immediately due and payable without any action by Agent or the Lenders), or (iii) by

notice to any Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between any Credit Party and Agent and/or the Lenders (but if an Event of Default described in Section 10.1(f) occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Agent and/or the Lenders shall be immediately terminated without any action by Agent or the Lenders).

(b) Without limiting the rights of Agent and the Lenders set forth in Section 10.2(a) above, upon the occurrence and during the continuance of an Event of Default, Agent shall have the right, without notice or demand, to do any or all of the following:

(i) with or without legal process, enter any premises where the Collateral may be and take possession of and remove the Collateral from the premises or store it on the premises, and foreclose upon and/or sell, lease or liquidate, the Collateral, in whole or in part;

(ii) apply to the Obligations (A) any balances and deposits of any Credit Party that Agent or any Lender or any Affiliate of Agent or a Lender holds or controls, or (B) any amount held or controlled by Agent or any Lender or any Affiliate of Agent or a Lender owing to or for the credit or the account of any Credit Party;

(iii) settle, compromise or adjust and grant releases with respect to disputes and claims directly with Account Debtors for amounts on terms and in any order that Agent considers advisable, notify any Person owing any Credit Party money of Agent's security interest in such funds, and verify the amount of such Account;

(iv) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Agent requests and make it available as Agent designates. Agent may also render any or all of the Collateral unusable at a Credit Party's premises and may dispose of such Collateral on such premises without liability for rent or costs. Borrower grants Agent a license to enter and occupy any of its premises, without charge, to exercise any of Agent's rights or remedies;

(v) pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred;

(vi) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Agent is hereby granted a non-exclusive, royalty-free license or other right to use, upon the occurrence and during the continuance of an Event of Default, without charge, Borrower's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral (and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof) and, in connection with Agent's exercise of its rights under this Article 10, Borrower's rights under all licenses and all franchise agreements shall be deemed to inure to Agent for the benefit of the Lenders, subject to any rights of third party licensors and licensees, as applicable;

(vii) place a "hold" on any account maintained with Agent or the Lenders or any Affiliate of Agent or a Lender and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(viii) demand and receive possession of the Books of Borrower and the other Credit Parties;
and

(ix) exercise all other rights and remedies available to Agent under the Financing Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

10.3 ***Notices.*** Any notice that Agent is required to give to a Credit Party under the UCC of the time and place of any public sale or the time after which any private sale or other intended disposition of the Collateral is to be made shall be deemed to constitute reasonable notice if such notice is given in accordance with this Agreement at least five (5) days prior to such action.

10.4 ***Protective Payments.*** If any Credit Party fails to pay or perform any covenant or obligation under this Agreement or any other Financing Document, Agent may pay or perform such covenant or obligation, and all amounts so paid by Agent are Protective Advances and immediately due and payable, bearing interest at the then

highest applicable rate for the Credit Facilities hereunder, and secured by the Collateral. No such payments or performance by Agent shall be construed as an agreement to make similar payments or performance in the future or constitute Agent's waiver of any Event of Default.

10.5 **Liability for Collateral No Waiver; Remedies Cumulative.** So long as Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Agent and the Lenders, Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral. Agent's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Financing Document shall not waive, affect, or diminish any right of Agent thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Agent and then is only effective for the specific instance and purpose for which it is given. Agent's rights and remedies under this Agreement and the other Financing Documents are cumulative. Agent has all rights and remedies provided under the Code, by Law, or in equity. Agent's exercise of one (1) right or remedy is not an election, and Agent's waiver of any Event of Default is not a continuing waiver. Agent's delay in exercising any remedy is not a waiver, election, or acquiescence.

10.6 **Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (i) Borrower, for itself and the other Credit Parties, irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of Borrower of all or any part of the Obligations, and, as between Borrower and the Credit Parties on the one hand and Agent and the Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent, and (ii) unless Agent and the Lenders shall agree otherwise, the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: *first*, to the Protective Advances; *second*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); *third*, to the principal amount of the Obligations outstanding; and *fourth*, to any other indebtedness or obligations of the Credit Parties owing to Agent or any Lender under the Financing Documents. Borrower shall remain fully liable for any deficiency. Any balance remaining shall be delivered to Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. Unless Agent and the Lenders shall agree otherwise, in carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category.

10.7 **Waivers.**

(a) **Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents and hereby ratifies and confirms whatever Agent or the Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's entry upon the premises of a Borrower, the taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been**

advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by any Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Credit Facilities or to any subsequent disbursement of Credit Extensions, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future Credit Extensions and Agent may at any time after such acquiescence require Borrower to comply with all such requirements. Any forbearance by Agent or a Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Credit Facilities, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Financing Documents or as a reinstatement of the Obligations or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Obligations, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and the Lenders shall not be subject to any “one action” or “election of remedies” law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or the Lenders shall remain in full force and effect until Agent or the Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrower and the Financing Documents and other security instruments or agreements securing the Obligations have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrower’s obligations under the Financing Documents.

(e) Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrower’s obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrower’s obligations under the Financing Documents. To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or the Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

10.8 ***Injunctive Relief.*** The parties acknowledge and agree that, in the event of a breach or written threatened breach of any Credit Party’s obligations under any Financing Documents, Agent and the Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or written threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or written threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section 10.8 as if this Section 10.8 were a part of each Financing Document executed by such Credit Party.

11. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Financing Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt

requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail (if an email address is specified herein) or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Agent, a Lender or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Article 11.

If to Borrower:

Rigel Pharmaceuticals, Inc.
1180 Veterans Blvd.
South San Francisco, CA 94080
Attn: _____
Fax: (____) ____ - ____
Email:

If to Agent or to MidCap (or any of its Affiliates or Approved Funds) as a Lender:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 200
Bethesda, MD 20814
Attn: Account Manager for Rigel transaction
Fax: 301-941-1450
Email: notices@midcapfinancial.com

With a copy to:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 200
Bethesda, MD 20814
Attn: Legal
Fax: 301-941-1450
Email: legalnotices@midcapfinancial.com

If to any Lender other than MidCap: at the address set forth on the signature pages to this Agreement or provided as a notice address for such in connection with any assignment hereunder.

12. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER; CALIFORNIA WAIVERS

12.1 THIS AGREEMENT, EACH SECURED PROMISSORY NOTE AND EACH OTHER FINANCING DOCUMENT (EXCLUDING THOSE FINANCING DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION), AND THE RIGHTS, REMEDIES AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT OR SUCH FINANCING DOCUMENT

(EXCLUDING THOSE FINANCING DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION), THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES AND ALL OTHER MATTERS RELATING HERETO, THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW). NOTWITHSTANDING THE FOREGOING, AGENT AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH AGENT AND THE LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF SECTION 12.1) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE AGENT'S AND LENDERS' RIGHTS AGAINST BORROWER OR ITS PROPERTY. BORROWER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE OF NEW YORK AND ANY SUCH OTHER JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS, AND OTHER PROCESS ISSUED IN SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS, AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN ARTICLE 11 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER TO OCCUR OF BORROWER'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAIL, PROPER POSTAGE PREPAID.

12.2

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, AGENT AND THE LENDERS EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE FINANCING DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

(b) IN THE EVENT THAT ANY SUCH ACTION IS COMMENCED OR MAINTAINED IN ANY COURT IN THE STATE OF CALIFORNIA, AND THE WAIVER OF JURY TRIAL SET FORTH IN THE SECTION ABOVE IS NOT ENFORCEABLE, AND EACH PARTY TO SUCH ACTION DOES NOT SUBSEQUENTLY WAIVE IN AN EFFECTIVE MANNER UNDER CALIFORNIA LAW ITS RIGHT TO A TRIAL BY JURY, THE PARTIES HERETO HEREBY ELECT TO PROCEED AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE ITEMS SPECIFIED IN CLAUSE (II) BELOW, ANY CONTROVERSY, DISPUTE OR CLAIM (EACH, A "CONTROVERSY") BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT WILL BE RESOLVED BY A REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 638, *ET SEQ.* OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, OR THEIR SUCCESSOR SECTIONS, WHICH SHALL CONSTITUTE THE EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY CONTROVERSY, INCLUDING WHETHER THE CONTROVERSY IS SUBJECT TO THE REFERENCE PROCEEDING. EXCEPT AS OTHERWISE PROVIDED ABOVE, VENUE FOR THE REFERENCE PROCEEDING WILL BE IN ANY COURT IN WHICH VENUE IS APPROPRIATE UNDER APPLICABLE LAW (THE "COURT").

(i i) THE MATTERS THAT SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING ARE THE FOLLOWING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY; (B) EXERCISE OF SELF HELP REMEDIES (INCLUDING SET-OFF); (C) APPOINTMENT OF A RECEIVER; AND (D) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) AND (B) OR TO SEEK OR OPPOSE FROM A COURT OF COMPETENT JURISDICTION ANY OF THE ITEMS DESCRIBED IN CLAUSES (C) AND (D). THE EXERCISE OF, OR OPPOSITION TO, ANY OF THOSE ITEMS DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

(i i i) THE REFEREE SHALL BE A RETIRED JUDGE OR JUSTICE SELECTED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES. IF THE PARTIES DO NOT AGREE WITHIN TEN (10) DAYS OF A WRITTEN REQUEST TO DO SO BY ANY PARTY, THEN, UPON REQUEST OF ANY PARTY, THE REFEREE SHALL BE SELECTED BY THE PRESIDING JUDGE OF THE COURT (OR HIS OR HER REPRESENTATIVE). A

REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN *EX PARTE* OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF *EX PARTE* RELIEF IS NOT GRANTED.

(i v) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT THAT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AT ANY HEARING CONDUCTED BEFORE THE REFEREE, AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH A REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR THE COURT REPORTER. SUBJECT TO THE REFEREE'S POWER TO AWARD COSTS TO THE PREVAILING PARTY, THE CREDIT PARTIES WILL PAY THE COST OF THE REFEREE AND ALL COURT REPORTERS.

(v) THE REFEREE SHALL BE REQUIRED TO DETERMINE ALL ISSUES IN ACCORDANCE WITH EXISTING APPLICABLE CASE LAW AND STATUTORY LAW. THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE COURT WILL BE APPLICABLE TO THE REFERENCE PROCEEDING. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF, ENTER EQUITABLE ORDERS THAT WILL BE BINDING ON THE PARTIES AND RULE ON ANY MOTION THAT WOULD BE AUTHORIZED IN A COURT PROCEEDING. THE REFEREE SHALL ISSUE A DECISION AT THE CLOSE OF THE REFERENCE PROCEEDING WHICH DISPOSES OF ALL CLAIMS OF THE PARTIES THAT ARE THE SUBJECT OF THE REFERENCE PROCEEDING. PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 644, SUCH DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT OR AN ORDER IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT AND ANY SUCH DECISION WILL BE FINAL, BINDING AND CONCLUSIVE. THE PARTIES RESERVE THE RIGHT TO APPEAL FROM THE FINAL JUDGMENT OR ORDER OR FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE. THE PARTIES RESERVE THE RIGHT TO FINDINGS OF FACT, CONCLUSIONS OF LAWS, A WRITTEN STATEMENT OF DECISION, AND THE RIGHT TO MOVE FOR A NEW TRIAL OR A DIFFERENT JUDGMENT, WHICH NEW TRIAL, IF GRANTED, IS ALSO TO BE A REFERENCE PROCEEDING UNDER THIS PROVISION.

(v i) NEITHER THE INCLUSION OF THIS SECTION 12.2(b), NOR ANY REFERENCE TO CALIFORNIA LAW CONTAINED HEREIN SHALL BE DEEMED TO AFFECT OR LIMIT IN ANY WAY THE PARTIES' CHOICE OF NEW YORK LAW OR IMPLY THAT THE CREDIT PARTIES HAVE AGREED TO VENUE IN CALIFORNIA.

12.3 [Reserved].

12.4 [Reserved].

12.5 California Waiver.

(a) BY SIGNING BELOW, EACH BORROWER WAIVES ANY RIGHT, UNDER CALIFORNIA CIVIL CODE SECTION 2954.10 OR OTHERWISE, TO PREPAY ANY PORTION OF THE OUTSTANDING PRINCIPAL BALANCE UNDER THIS AGREEMENT WITHOUT A PREPAYMENT FEE. EACH BORROWER ACKNOWLEDGES THAT PREPAYMENT OF THE PRINCIPAL BALANCE MAY RESULT IN AGENT AND/OR A LENDER INCURRING ADDITIONAL LOSSES, COSTS, EXPENSES AND LIABILITIES, INCLUDING LOST REVENUE AND LOST PROFITS. EACH BORROWER THEREFORE AGREES TO PAY A PREPAYMENT FEE AND HEREIN IF ANY PRINCIPAL AMOUNT IS PREPAID, WHETHER VOLUNTARILY OR BY REASON OF ACCELERATION, INCLUDING ACCELERATION UPON ANY SALE OR OTHER TRANSFER OF ANY INTEREST IN THE COLLATERAL. EACH BORROWER FURTHER AGREES THAT AGENT'S AND EACH LENDER'S WILLINGNESS TO OFFER THE INTEREST RATE DESCRIBED HEREIN TO BORROWER IS SUFFICIENT AND INDEPENDENT CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY AGENT AND THE LENDERS FOR THIS WAIVER. EACH BORROWER UNDERSTANDS THAT AGENT AND THE LENDERS WOULD NOT OFFER SUCH AN INTEREST RATE TO THE BORROWER ABSENT THIS WAIVER.

(b) **California Waiver; No Hearing Required.** Each Borrower waives any right or defense it may have at Law or equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

(c) **Borrower Acknowledgment.** California Civil Code Section 2955.5(a) provides as follows: "No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property." For purposes of the foregoing, (i) the term "hazard insurance coverage" means insurance against losses caused by perils which are commonly covered in policies described as a "Homeowner's Policy," "General Property Form," "Guaranteed Replacement Cost Insurance," "Special Building Form," "Standard Fire," "Standard Fire with Extended Coverage," "Standard Fire with Special Form

Endorsement,” or comparable insurance coverage to protect the real property against loss or damage from fire and other perils covered within the scope of a standard extended coverage endorsement, and (ii) the term “Improvements” means buildings or structures attached to the real property. Each Borrower acknowledges having received this disclosure prior to execution of the Financing Documents to be delivered by Borrower in connection with the Credit Facilities.

13. GENERAL PROVISIONS

13.1 *Successors and Assigns.*

(a) This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Agent’s prior written consent (which may be granted or withheld in Agent’s discretion). Any Lender may at any time assign to one (1) or more Eligible Assignees all or any portion of such Lender’s Applicable Commitment and/or Credit Extensions, together with all related obligations of such Lender hereunder. Borrower and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Agent shall have received and accepted an effective assignment agreement in form and substance acceptable to Agent, executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Agent reasonably shall require. Notwithstanding anything set forth in this Agreement to the contrary, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however*, 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. If requested by Agent, Borrower agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of an Applicable Commitment or Credit Extension to an assignee hereunder, (ii) make Borrower’s management available to meet with Agent and prospective participants and assignees of Applicable Commitments or Credit Extensions and (iii) assist Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of an Applicable Commitment or Credit Extension reasonably may request.

(b) From and after the date on which the conditions described above have been met, (i) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such assignment agreement, shall have the rights and obligations of a Lender hereunder, and (ii) the assigning Lender, to the extent that rights and obligations

hereunder have been assigned by it pursuant to such assignment agreement, shall be released from its rights and obligations hereunder (other than those that survive termination). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective assignment agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) secured notes in the aggregate principal amount of the Eligible Assignee's Credit Extensions or Applicable Commitments (and, as applicable, secured promissory notes in the principal amount of that portion of the principal amount of the Credit Extensions or Applicable Commitments retained by the assigning Lender).

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at its offices located in Bethesda, Maryland a copy of each assignment agreement delivered to it and a Register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount (and stated interest) of the Credit Extensions owing to, such Lender pursuant to the terms hereof (the "Register"). The entries in such Register shall be conclusive, absent manifest error, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of 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 Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; *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, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a participant register.

(d) Notwithstanding anything to the contrary contained in this Agreement, the Credit Extensions (including any Secured Promissory Notes evidencing such Credit Extensions) are intended to be registered obligations, the right, title and interest of the Lenders and their assignees in and to such Credit Extensions shall be transferable only upon notation of such transfer in the Register (or an applicable Participant Register) and no assignment thereof shall be effective until recorded therein.

It is intended that this Agreement be construed so that the Credit Extensions are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRC and Section 5f.103-1(c) of the United States Treasury Regulations.

13.2 Indemnification.

(a) Borrower hereby agrees to promptly pay (i) (A) all reasonable and documented out-of-pocket costs and expenses of Agent (including, without limitation, the costs, expenses and reasonable fees of counsel to, and independent appraisers and consultants retained by, Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, and in connection with the continued administration of the Financing Documents including (1) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (2) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons), and (B) reasonable and documented out-of-pocket costs and expenses of Agent in connection with the performance by Agent of its rights and remedies under the Financing Documents; (ii) without limitation of the preceding clause (i), all reasonable and documented out-of-pocket costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all reasonable and documented out-of-pocket costs and expenses of Agent in connection with Agent’s reservation of funds in anticipation of the funding of the Credit Extensions to be made hereunder; and (v) all costs and expenses incurred by Agent or the Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or the Lenders are a party thereto.

(b) Borrower hereby agrees to indemnify, pay and hold harmless Agent and the Lenders and the officers, directors, employees, trustees, agents, investment advisors, collateral managers, servicers, and counsel of Agent and the Lenders (collectively called the “Indemnitees”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements

of any kind or nature whatsoever (including the disbursements and reasonable fees of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or the Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the Credit Facilities, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby. This Section 13.2 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrower under this Section 13.2 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO ANY CREDIT PARTY OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

(d) Borrower for itself and all endorsers, guarantors and sureties and their heirs, legal representatives, successors and assigns, hereby further specifically waives any rights that it may have under Section 1542 of the California Civil Code (to the extent applicable), which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST

HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR,” and further waives any similar rights under applicable Laws.

(e) Without limiting the generality of Section 13.15 or any other provision hereof, each Borrower, to the maximum extent permitted by law, expressly waives:

(i) all rights and defenses arising out of an election of remedies by Agent, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Obligations, has destroyed such Borrower’s rights of subrogation and reimbursement against any Borrower by the operation of Section 580d of the California Code of Civil Procedure or otherwise; and

(ii) all rights and defenses that such Borrower may have relating to Obligations that are or become secured by real property. This means, among other things: (A) Agent may collect from such Borrower without first foreclosing on any real property or personal property collateral pledged by any other Borrower and (B) if Agent forecloses on any real property pledged by any Borrower or any Guarantor: (1) the amount of the Obligations may be reduced only by the price for which such collateral is sold at the foreclosure sale, even if such collateral is worth more than the sale price; and (2) Agent may collect from such Borrower even if Agent, by foreclosing on any such real property, has destroyed any right such Borrower may have to collect from the other Borrower. This is an unconditional and irrevocable waiver of any rights and defenses such Borrower may have relating to Obligations that are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure or any comparable statutes. As provided in Section 12.1 hereof, this Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland. The foregoing provisions are included solely out of an abundance of caution and shall not be construed to mean that any of the above referenced provisions of California law are in any way applicable to this Agreement or the Obligations.

13.3 **Time of Essence.** Time is of the essence for the payment and performance of the Obligations in this Agreement.

13.4 **Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

13.5 **Correction of Financing Documents.** Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Financing Documents consistent with the agreement of the parties.

13.6 **Integration.** This Agreement and the other Financing Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Financing Documents merge into this Agreement and the Financing Documents.

13.7 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

13.8 **Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 13.2 to indemnify each Lender and Agent shall survive until the statute of limitations with respect to such claim or cause of action shall have run. All powers of attorney and appointments of Agent or any Lender as Borrower's attorney in fact hereunder, and all of Agent's and Lenders' rights and powers in respect thereof, are coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) have been fully repaid and performed and Agent's and the Lenders' obligation to provide Credit Extensions terminates.

13.9 **Confidentiality.** In handling any confidential information of Borrower, each of the Lenders and Agent shall use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Financing Document and designated in writing by any Credit Party as confidential, but disclosure of information may be made: (a) to the Lenders' and Agent's Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Credit Extensions, provided, however, that any such Persons are bound by obligations of confidentiality substantially the same or more stringent than those set forth in this Section 13.9; (c) as required by Law, regulation, subpoena, order or other legal, administrative, governmental or regulatory request; (d) to regulators or as otherwise required in connection with an examination, audit or similar investigation by any Governmental Authority, or to any nationally recognized rating agency; (e) as Agent or any Lender considers appropriate in exercising remedies under the Financing Documents; (f) to financing sources that are advised of the confidential nature of such information and are instructed to keep such information confidential; (g) to third party service providers of the Lenders and/or Agent so long as such service providers are bound to such Lender or Agent by obligations of confidentiality; (h) to the extent necessary or customary for inclusion in league table measurements; and (i) in connection with any litigation or other proceeding to which such Lender or Agent or any of their Affiliates is a party or bound, or to the extent necessary to respond to public statements or disclosures by Credit Parties or their Affiliates referring to a Lender or Agent or any of their Affiliates. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Agent's possession when disclosed to the Lenders and/or Agent, or becomes part of the public domain after disclosure to the Lenders and/or Agent; or (ii) is disclosed to the Lenders and/or Agent by a third party, if the Lenders and/or Agent does not know that the third party is prohibited from disclosing the information. Agent and/or the Lenders may use confidential information for the development of client databases, reporting purposes, and market analysis, so long as Agent and/or the Lenders, as applicable, do not disclose Borrower's identity or the identity of any Person associated with Borrower unless otherwise permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 13.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 13.9.

13.10 **Right of Set-off.** Borrower hereby grants to Agent and to each Lender, a lien, security interest and right of set-off as security for all Obligations to Agent and each Lender hereunder, whether now existing or

hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Agent or the Lenders or any entity under the control of Agent or the Lenders (including an Agent or Lender Affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Agent or the Lenders may set-off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SET-OFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

13.11 ***Publicity.*** Borrower will not directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of Agent or any Lender or any of their Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except as required by applicable Law, subpoena or judicial or similar order, in which case Borrower shall endeavor to give Agent prior written notice of such publication or other disclosure. Each Lender and Borrower hereby authorize each Lender to publish the name of such Lender and Borrower, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any “tombstone”, comparable advertisement or press release which such Lender elects to submit for publication. In addition, each Lender and Borrower agree that each Lender may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, such authorization shall be subject to such Lender providing Borrower and the other Lenders with an opportunity to review and confer with such Lender regarding, and approve, the contents of any such tombstone, advertisement or information, as applicable, prior to its initial submission for publication, but subsequent publications of the same tombstone, advertisement or information shall not require Borrower’s approval.

13.12 ***No Strict Construction.*** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

13.13 ***Approvals.*** Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or the Lenders with respect to any matter that is the subject of this Agreement or the other Financing Documents may be granted or withheld by Agent and the Lenders in their sole and absolute discretion and credit judgment.

13.14 ***Amendments; Required Lenders; Inter-Lender Matters.***

(a) **No amendment, modification, termination or waiver of any provision of this Agreement or any other Financing Document, no approval or consent thereunder, or any consent to any departure by Borrower therefrom (in each case, other than amendments, waivers, approvals or consents deemed ministerial by Agent), shall in any event be effective unless the same shall be in writing and signed by Borrower, Agent and the Required Lenders. Except as set forth in clause (b) below, all such amendments, modifications, terminations or waivers requiring the consent of the “Lenders” shall require the written consent of Required Lenders.**

(b) No amendment, modification, termination or waiver of any provision of this Agreement or any other Financing Document shall, unless in writing and signed by Agent and by each Lender directly affected thereby: (i) increase or decrease the Applicable Commitment of any Lender (which shall be deemed to affect all Lenders), (ii) reduce the principal of or rate of interest on any Obligation or the amount of any fees payable hereunder, (iii) postpone the date fixed for or waive any payment of principal of or interest on any Credit Extension, or any fees or reimbursement obligation hereunder, (iv) release all or substantially all of the Collateral, or consent to a transfer of any of the Intellectual Property, in each case, except as otherwise expressly permitted in the Financing Documents (which shall be deemed to affect all Lenders), (v) subordinate the lien granted in favor of Agent securing the Obligations (which shall be deemed to affect all Lenders, except as otherwise provided below), (vi) release a Credit Party from, or consent to a Credit Party's assignment or delegation of, such Credit Party's obligations hereunder and under the other Financing Documents or any Guarantor from its guaranty of the Obligations (which shall be deemed to affect all Lenders) or (vii) amend, modify, terminate or waive this Section 13.14(b) or the definition of "Required Lenders" or "Pro Rata Share" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender. For purposes of the foregoing, no Lender shall be deemed affected by (i) waiver of the imposition of the Default Rate or imposition of the Default Rate to only a portion of the Obligations, (ii) waiver of the accrual of late charges, (iii) waiver of any fee solely payable to Agent under the Financing Documents, (iv) subordination of a lien granted in favor of Agent; *provided* that such subordination is limited to equipment being financed by a third party providing Permitted Indebtedness. Notwithstanding any provision in this Section 13.14 to the contrary, no amendment, modification, termination or waiver affecting or modifying the rights or obligations of Agent hereunder shall be effective unless signed by Agent and the Required Lenders

(c) Agent shall not grant its written consent to any deviation or departure by Borrower or any Credit Party from the provisions of Article 7 without the prior written consent of the Required Lenders. Required Lenders shall have the right to direct Agent to take any action described in Section 10.2(b). Upon the occurrence of any Event of Default, Agent shall have the right to exercise any and all remedies referenced in Section 10.2 without the written consent of Required Lenders following the occurrence of an "Exigent Circumstance" (as defined below). All matters requiring the satisfaction or acceptance of Agent in the definition of Subordinated Debt shall further require the satisfaction and acceptance of each Required Lender. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. As used in this Section, "Exigent Circumstance" means any event or

circumstance that, in the reasonable judgment of Agent, imminently threatens the ability of Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Agent, could result in a material diminution in value of the Collateral.

13.15 ***Borrower Liability.*** If there is more than one (1) entity comprising Borrower, then (a) any Borrower may, acting singly, request Credit Extensions hereunder, (b) each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder, (c) each Borrower shall be jointly and severally obligated to pay and perform all obligations under the Financing Documents, including, but not limited to, the obligation to repay all Credit Extensions made hereunder and all other Obligations, regardless of which Borrower actually receives said Credit Extensions, as if each Borrower directly received all Credit Extensions, and (d) each Borrower waives (1) any suretyship defenses available to it under the Code or any other applicable law, and (2) any right to require the Lenders or Agent to: (A) proceed against any Borrower or any other person; (B) proceed against or exhaust any security; or (C) pursue any other remedy. The Lenders or Agent may exercise or not exercise any right or remedy they have against any Credit Party or any security (including the right to foreclose by judicial or non-judicial sale) in accordance with the terms of the Financing Documents without affecting any other Credit Party's liability or any Lien against any other Credit Party's assets. Notwithstanding any other provision of this Agreement or other related document, until the indefeasible payment in cash in full of the Obligations (other than inchoate indemnity obligations for which no claim has yet been made) and termination of the Applicable Commitments, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of the Lenders and Agent under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Credit Party, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by any Credit Party with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by a Credit Party with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Credit Party in contravention of this Section, such Credit Party shall hold such payment in trust for the Lenders and Agent and such payment shall be promptly delivered to Agent for application to the Obligations, whether matured or unmatured.

13.16 ***Reinstatement.*** This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

13.17 ***USA PATRIOT Act Notification.*** Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies each Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrower in accordance with the USA PATRIOT Act.

14. AGENT

14.1 **Appointment and Authorization of Agent.** Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Financing Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Financing Document, together with such powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of Agent and the Lenders and none of Credit Parties nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. The duties of Agent shall be mechanical and administrative in nature. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Financing Document, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Financing Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Financing Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (a) act as collateral agent for Agent and each Lender for purposes of the perfection of all liens created by the Financing Documents and all other purposes stated therein, (b) manage, supervise and otherwise deal with the Collateral, (c) 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 Financing Documents, (d) except as may be otherwise specified in any Financing Document, exercise all remedies given to Agent and the other Lenders with respect to the Collateral, whether under the Financing Documents, applicable law or otherwise and (e) execute any amendment, consent or waiver under the Financing Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; *provided, however,* that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent and the Lenders for purposes of the perfection of all liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and Cash Equivalents 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 Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

14.2 **Successor Agent.**

(a) **Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) fifty percent (50%) or more of the Credit Extensions or Applicable Commitments then held by Agent (in its capacity as a Lender), in each case without the consent of the Lenders or Borrower. Following any such assignment, Agent shall give notice to the Lenders and Borrower. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.**

(b) **Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent; *provided,***

however, that if Agent shall notify Borrower and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this subsection (b).

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this subsection (c)). The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

14.3 ***Delegation of Duties.*** Agent may execute any of its duties under this Agreement or any other Financing Document by or through its, or its Affiliates', agents, employees or attorneys-in-fact and shall be entitled to obtain and rely upon the advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct. Any such Person to whom Agent delegates a duty shall benefit from this Article 14 to the extent provided by Agent.

14.4 ***Liability of Agent.*** Except as otherwise provided herein, no "Agent-Related Person" (as defined below) shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Financing Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Credit Party or any officer thereof, contained herein or in any other Financing Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Financing Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Document, or for any failure of any Credit Party or any other party to any Financing Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Financing Document, or to inspect the Collateral, other properties or books or records of any Credit Party or any Affiliate thereof. The term "**Agent-Related Person**" means Agent, together with its Affiliates, and the officers, directors, employees, agents, advisors, auditors and attorneys-in-fact of such Persons; *provided, however*, that no Agent-Related Person shall be an Affiliate of Borrower.

14.5 **Reliance by Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under any Financing Document (a) if such action would, in the opinion of Agent, be contrary to law or any Financing Document, (b) if such action would, in the opinion of Agent, expose Agent to any potential liability under any law, statute or regulation or (c) if Agent shall not first have received such advice or concurrence of all Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Financing Document in accordance with a request or consent of all Lenders (or Required Lenders where authorized herein) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

14.6 **Notice of Default.** Agent shall not be deemed to have knowledge or notice of the occurrence of any Default and/or Event of Default, unless Agent shall have received written notice from a Lender or Borrower, describing such default or Event of Default. Agent will notify the Lenders of its receipt of any such notice. While an Event of Default has occurred and is continuing, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as Agent shall deem advisable or in the best interests of the Lenders, including without limitation, satisfaction of other security interests, liens or encumbrances on the Collateral not permitted under the Financing Documents, payment of taxes on behalf of Borrower or any other Credit Party, payments to landlords, warehouseman, bailees and other Persons in possession of the Collateral and other actions to protect and safeguard the Collateral, and actions with respect to insurance claims for casualty events affecting a Credit Party and/or the Collateral.

14.7 **Credit Decision; Disclosure of Information by Agent.** Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of Borrower or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Financing Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Agent herein, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party which may come into the possession of any Agent-Related Person.

14.8 **Indemnification of Agent.** Whether or not the transactions contemplated hereby are consummated, each Lender shall, severally and pro rata based on its respective Pro Rata Share, indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities (which shall not include legal expenses of Agent incurred in connection with the closing of the transactions contemplated by this Agreement) incurred by it; *provided, however*, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; *provided, however*, that no action taken in accordance with the directions of the

Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Lender shall, severally and pro rata based on its respective Pro Rata Share, reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Protective Advances incurred after the closing of the transactions contemplated by this Agreement) incurred by Agent (in its capacity as Agent, and not as a Lender) in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Financing Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment in full of the Obligations, the termination of this Agreement and the resignation of Agent. The term "Indemnified Liabilities" means those liabilities described in Section 13.2(a) and Section 13.2(b).

14.9 ***Agent in its Individual Capacity.*** With respect to its Credit Extensions, MidCap shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not Agent, and the terms "Lender" and "Lenders" include MidCap in its individual capacity. MidCap and its Affiliates may lend money to, invest in, and generally engage in any kind of business with, any Credit Party and any of their Affiliates and any person who may do business with or own securities of any Credit Party or any of their Affiliates, all as if MidCap were not Agent and without any duty to account therefor to Lenders. MidCap and its Affiliates may accept fees and other consideration from a Credit Party for services in connection with this Agreement or otherwise without having to account for the same to the Lenders. Each Lender acknowledges the potential conflict of interest between MidCap as a Lender holding disproportionate interests in the Credit Extensions and MidCap as Agent, and expressly consents to, and waives, any claim based upon, such conflict of interest.

14.10 ***Agent May File Proofs of Claim.*** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, Agent (irrespective of whether the principal of any Credit Extension, shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on such Credit Party) shall be entitled and empowered, by intervention in 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 Credit Extensions 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 Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Agent and their respective agents and counsel and all other amounts due the Lenders and Agent 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 Agent and, in the event that Agent shall consent to the making of such payments directly to the Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, including Protective Advances. To the extent that Agent fails timely to do so, each Lender may file a claim relating to such Lender's claim.

14.11 **Collateral and Guaranty Matters.** The Lenders irrevocably authorize Agent, at its option and in its discretion, to release (a) any Credit Party and any Lien on any Collateral granted to or held by Agent under any Financing Document upon the date that all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) due hereunder have been fully and indefeasibly paid in full and no Applicable Commitments or other obligations of any Lender to provide funds to Borrower under this Agreement remain outstanding, and (b) any Lien on any Collateral that is transferred or to be transferred as part of or in connection with any transfer permitted hereunder or under any other Financing Document. Upon request by Agent at any time, all Lenders will confirm in writing Agent's authority to release its interest in particular types or items of Collateral pursuant to this Section 14.11.

14.12 **Advances; Payments; Non-Funding Lenders.**

(a) **Advances; Payments.** If Agent receives any payment for the account of the Lenders on or prior to 11:00 a.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Agent receives any payment for the account of the Lenders after 11:00 a.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day. To the extent that any Lender has failed to fund any Credit Extension (a "Non-Funding Lender"), Agent shall be entitled to set-off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from Borrower.

(b) **Return of Payments.**

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Credit Party and such related payment is not received by Agent, then Agent will be entitled to recover such amount (including interest accruing on such amount at the Federal Funds Rate for the first Business Day and thereafter, at the rate otherwise applicable to such Obligation) from such Lender on demand without set-off, counterclaim or deduction of any kind.

(i i) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to a Credit Party or paid to any other person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to a Credit Party or such other person, without set-off, counterclaim or deduction of any kind.

14.13 **Miscellaneous.**

(a) Neither Agent nor any Lender shall be responsible for the failure of any Non-Funding Lender to make a Credit Extension or make any other advance required hereunder. The failure of any Non-Funding Lender to make any Credit Extension or any payment required by it hereunder shall not relieve any other Lender (each such other Lender, an "Other Lender") of its obligations to make the Credit Extension or payment required by it, but neither any Other Lender nor Agent shall be responsible for the failure of any Non-Funding Lender to make a Credit Extension or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lender" hereunder) for any voting or consent rights under or with respect to any Financing Document. At Borrower's request, Agent or a person reasonably acceptable to Agent shall have the right with Agent's consent and in Agent's sole discretion (but shall have no obligation) to purchase from any Non-Funding Lender, and each Non-Funding Lender agrees that it shall, at Agent's request, sell and assign to Agent or such person, all of the Applicable Commitments and all of the outstanding Credit Extensions of that Non-Funding Lender for an amount equal to the principal balance of the Credit Extensions held by such Non-Funding Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed assignment agreement reasonably acceptable to Agent.

(b) Each Lender shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Credit Extension and the ratable distribution of interest, fees and reimbursements paid or made by any Credit Party. Notwithstanding the foregoing, if this Agreement requires payments of principal and interest to be made directly to the Lenders, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; *provided, however*, if it is determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Agent (for Agent to redistribute to itself and the Lenders in a manner to ensure the payment to Agent of any sums due Agent hereunder and the ratable repayment of each Lender's portion of any Credit Extension and the ratable distribution of interest, fees and reimbursements) such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities and whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise, shall be received by a Lender in excess of its ratable share, then (i) the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for application to the payments of amounts due on the other Lender's claims, or, in the case of Collateral, shall hold such Collateral for itself and as agent and bailee for Agent and other Lenders and (ii) such Lender shall promptly advise Agent of

the receipt of such payment, and, within five (5) Business Days of such receipt and, in the case of payments and distributions, such Lender shall purchase (for cash at face value) from the other Lenders (through Agent), without recourse, such participations in the Credit Extension made by the other Lenders as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them in accordance with the respective Pro Rata Shares of the Lenders; *provided, however*, that if all or any portion of such excess payment is thereafter recovered by or on behalf of a Credit Party from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest; *provided, further*, that the provisions of this Section shall not be construed to apply to (x) any payment made by a Credit Party pursuant to and in accordance with the express terms of this Agreement or the other Financing Documents, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Applicable Commitment pursuant to Section 13.1. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section may exercise all of its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. No documentation other than notices and the like shall be required to implement the terms of this Section. Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section and shall in each case notify the Lenders following any such purchases.

15. DEFINITIONS

In addition to any terms defined elsewhere in this Agreement, or in any schedule or exhibit attached hereto, as used in this Agreement, the following terms have the following meanings:

“**Access Agreement**” means a landlord consent, bailee letter or warehouseman’s letter, in form and substance reasonably satisfactory to Agent, in favor of Agent executed by such landlord, bailee or warehouseman, as applicable, for any third party location.

“**Account**” means any “account”, as defined in the Code, with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“**Account Debtor**” means any “account debtor”, as defined in the Code, with such additions to such term as may hereafter be made.

“**Acquisition**” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business, line of business or division or other unit of operation of a Person, (b) the acquisition of fifty percent (50%) or more of the equity interests of any Person, whether or not involving a merger or consolidation with such other Person, or otherwise causing any Person to become a Subsidiary of a Credit Party, (c) any merger or consolidation or any other combination

with another Person or (d) the acquisition (including through licensing) of any product, product line or Intellectual Property of or from any other Person.

“**Affiliate**” means, with respect to any Person, a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person (whether through the ownership of voting securities, by contract or otherwise), and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“**Agent**” means, MidCap, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders, together with its successors and assigns.

“**Agreement**” has the meaning given it in the preamble of this Agreement.

“**Anti-Terrorism Laws**” means any Laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“**Applicable Commitment**” has the meaning given it in Section 2.2

“**Applicable Floor**” means for each Credit Facility the per annum rate of interest specified on the Credit Facility Schedule.

“**Applicable Index Rate**” means, for any Applicable Interest Period, the rate per annum determined by Agent equal to the Applicable Libor Rate; *provided, however*, that in the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of Agent or any Lender, make it unlawful or impractical for Agent or such Lender to fund or maintain Obligations bearing interest based upon the Applicable Libor Rate, Agent or such Lender shall give notice of such changed circumstances to Agent and Borrower and the Applicable Index Rate for Obligations outstanding or thereafter extended or made by Agent or such Lender shall thereafter be the Applicable Prime Rate until Agent or such Lender determines (as to the portion of the Credit Extensions or Obligations owed to it) that it would no longer be unlawful or impractical to fund or maintain such Obligations or Credit Extensions at the Applicable Libor Rate. In the event that Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), as of any Applicable Interest Rate Determination Date, that adequate and fair means do not exist for ascertaining the interest rate applicable to any Credit Facility on the basis provided for herein, then Agent may select a comparable replacement index and corresponding margin.

“**Applicable Interest Period**” for each Credit Facility has the meaning specified for that Credit Facility in the Credit Facility Schedule; *provided, however*, that, at any time that the Applicable Prime Rate is the Applicable Index Rate, Applicable Interest Period shall mean the period commencing as of the most recent Applicable Interest Rate Determination Date and continuing until the next Applicable Interest Rate Determination Date or such earlier date as the Applicable Prime Rate shall no longer be the Applicable Index Rate; and *provided, further*, that, at any time the Libor Rate Index is adjusted as set forth in the definition thereof, or re-implemented

following invocation of the Applicable Prime Rate as permitted herein, the Applicable Interest Period shall mean the period commencing as of such adjustment or re-implementation and continuing until the next Applicable Interest Rate Determination Date, if any.

“Applicable Interest Rate” means a per annum rate of interest equal to the Applicable Index Rate plus the Applicable Margin.

“Applicable Interest Rate Determination Date” means the second (2nd) Business Day prior to the first (1st) day of the related Applicable Interest Period; *provided, however,* that, at any time that the Applicable Prime Rate is the Applicable Index Rate, Applicable Interest Rate Determination Date means the date of any change in the Base Rate Index; and *provided, further,* that, at any time the Libor Rate Index is adjusted as set forth in the definition thereof, the Applicable Interest Rate Determination Date shall mean the date of such adjustment or the second (2nd) Business Day prior to the first (1st) day of the related Applicable Interest Period, as elected by Agent.

“Applicable Libor Rate” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%), equal to the greater of (a) the Applicable Floor and (b) the Libor Rate Index.

“Applicable Margin” for each Credit Facility has the meaning specified for that Credit Facility in the Credit Facility Schedule.

“Applicable Prepayment Fee”, for each Credit Facility, has the meaning given it in the Credit Facility Schedule for such Credit Facility.

“Applicable Prime Rate” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%), equal to the greater of (a) the Applicable Floor and (b) the Base Rate Index.

“Approved Fund” means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“Base Rate Index” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%) as being the rate of interest announced, from time to time, within Wells Fargo Bank, N.A. (“**Wells Fargo**”) at its principal office in San Francisco as its “prime rate,” with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however,* that Agent may, upon prior written notice to any

Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate Index.

“Blocked Person” means: (a) any Person listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“Books” means all books and records of a Person, including ledgers, federal and state tax returns, records regarding the Person’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“Borrower” mean the entity(ies) described in the first paragraph of this Agreement and each of their successors and permitted assigns. The term “each Borrower” shall refer to each Person comprising the Borrower if there is more than one (1) such Person, or the sole Borrower if there is only one (1) such Person. The term “any Borrower” shall refer to any Person comprising the Borrower if there is more than one (1) such Person, or the sole Borrower if there is only one (1) such Person.

“Borrower Unrestricted Cash” means unrestricted cash and Cash Equivalents of Borrower that (a) are subject to Agent’s first priority perfected lien and held in the name of Borrower in a Deposit Account or Securities Account that is subject to a Control Agreement in favor of Agent at a bank or financial institution located in the United States, (b) is not subject to any Lien (other than a Lien in favor of Agent), and (c) are not funds for the payment of a drawn or committed but unpaid draft, ACH or EFT transaction.

“Borrowing Resolutions” means, with respect to any Person, those resolutions, in form and substance satisfactory to Agent, adopted by such Person’s Board of Directors or other appropriate governing body and delivered by such Person to Agent approving the Financing Documents to which such Person is a party and the transactions contemplated thereby, as well as any other approvals as may be necessary or desired to approve the entering into the Financing Documents or the consummation of the transactions contemplated thereby or in connection therewith.

“Business Day” means any day that is not (a) a Saturday or Sunday or (b) a day on which Agent is closed.

“Cash Equivalents” means any Investment in (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one (1) year from the date of acquisition by such Person, (b) Dollar-denominated time deposits and certificates of deposit with a duration of not more than one (1) year issued or accepted

by any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any State thereof or, the District of Columbia having capital, surplus and undivided profits aggregating in excess of \$500,000,000, (c) repurchase obligations with a term of not more than ninety (90) days for underlying securities of the types described in subsection (a) above entered into with any bank meeting the qualifications specified in subsection (b) above, (d) commercial paper issued by any issuer rated at least A-1 by Standard & Poor's Corporation or at least P-1 by Moody's Investors Service, Inc., and in each case maturing not more than one (1) year after the date of acquisition by such Person, (e) money market or mutual fund which invests only in the foregoing types of Investments, has portfolio assets in excess of \$500,000,000, complies with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act, and has the highest rating obtainable from either Standard & Poor's Corporation or Moody's Investors Service, Inc. or (f) other Investments made pursuant to Borrower's investment policy and permitted pursuant to clause (c) of the definition of Permitted Investments.

"Change in Control" means an event or series of events by which: (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities 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 [***] (\$***)% or more of the combined voting power of all voting stock of Rigel or any other Borrower (as applicable) on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); (b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; (c) Borrower ceases to own and control, directly or indirectly, all of the economic and voting rights associated with the outstanding securities of each of its Subsidiaries (except as otherwise permitted by this Agreement), or (d) the occurrence of any "change in control", "fundamental change" or any term or provision of similar effect under any Subordinated Debt Document or Borrower's Operating Documents.

"Closing Date" has the meaning given it in the preamble of this Agreement.

"Code" means the Uniform Commercial Code in effect on the date hereof, as the same may, from time to time, be enacted and in effect in the State of New York; *provided, however*, that to the extent that the Code is used to define any term herein or in any Financing Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; and *provided, further*, that in the event that, by reason of mandatory provisions of Law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Agent's Lien on any Collateral is governed by the Uniform

Commercial Code in effect in a jurisdiction other than the State of New York, the term “**Code**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and the Lenders, pursuant to this Agreement and the other Financing Documents (but excluding Excluded Property), including, without limitation, all of the property described in **Exhibit A** hereto.

“**Collateral Account**” means any Deposit Account, Securities Account or Commodity Account.

“**Commitment Commencement Date**” has the meaning given it in the Credit Facility Schedule.

“**Commitment Termination Date**” has the meaning given it in the Credit Facility Schedule.

“**Commodity Account**” means any “commodity account”, as defined in the Code, with such additions to such term as may hereafter be made.

“**Competitor**” means, at any time of determination, any Person engaged in the same or substantially the same line of business as the Borrower and the other Credit Parties and such business accounts for all or substantially all of the revenue or net income of such Person at the time of determination.

“**Compliance Certificate**” means a certificate, duly executed by an authorized officer of Borrower, appropriately completed and substantially in the form of **Exhibit B**.

“**Contingent Obligation**” means, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the Ordinary Course of Business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” means any control agreement, each of which shall be in form and substance satisfactory to Agent, entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Agent pursuant

to which Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account or Commodity Account.

“**Credit Extension**” means an advance or disbursement of proceeds to or for the account of Borrower in respect of a Credit Facility.

“**Credit Extension Form**” means that certain form attached hereto as **Exhibit C**, as the same may be from time to time revised by Agent.

“**Credit Facility**” means a term loan credit facility specified on the Credit Facility Schedule.

“**Credit Party**” means any Borrower, any Guarantor under a guarantee of the Obligations or any part thereof, and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document; and “**Credit Parties**” means all such Persons, collectively; *provided, however*, that in no event shall a Restricted Foreign Subsidiary be a “Credit Party” for purposes of this Agreement or the other Financing Documents.

“**DEA**” means the Drug Enforcement Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

“**Default**” means any fact, event or circumstance which with notice or passage of time or both, could constitute an Event of Default.

“**Default Rate**” has the meaning given it in Section 2.6(b).

“**Deposit Account**” means any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Funding Account**” is Borrower’s Deposit Account, account number [***], maintained with [***] and over which Agent has been granted a Control Agreement.

“**Disqualified Stock**” means, with respect to any Person, any equity interest in such Person that, within less than [***] days after the Maturity Date, either by its terms (or by the terms of any security or other equity interests into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Permitted Indebtedness or other equity interests in such Person or of Rigel that do not constitute Disqualified Stock and cash in lieu of fractional shares of such equity interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part (other than solely for Permitted Indebtedness or other equity interests in such Person or of Rigel that do not constitute Disqualified Stock and cash in lieu of fractional shares of such equity interests), (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness (other than Permitted Indebtedness) or any other equity interests that would constitute Disqualified Stock.

“**Dollars**,” “**dollars**” and “**\$**” each means lawful money of the United States.

“**Draw Period**” means, for each Credit Facility, the period commencing on the Commitment Commencement Date and ending on the Commitment Termination Date.

“**Drug Application**” means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDCA.

“**Eligible Assignee**” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however*, that notwithstanding the foregoing, “Eligible Assignee” shall not include (x) any Credit Party or any Subsidiary of a Credit Party or (y) so long as no Event of Default has occurred and is continuing, (i) any vulture hedge fund (other than any Affiliate of a Lender or an Approved Fund) or (ii) a Person known by Agent to be a Competitor, in each case of (i) and (ii) as reasonably determined by Agent. Notwithstanding the foregoing, in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party becoming an assignee incident to such forced divestiture.

“**Environmental Law**” means each present and future law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement or determination of an arbitrator or of a Governmental Authority and/or Required Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the workplace, the environment and natural resources, and including public notification requirements and environmental transfer of ownership, notification or approval statutes.

“**Equipment**” means all “equipment”, as defined in the Code, with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, and all regulations promulgated thereunder.

“**ERISA Affiliate**” has the meaning given it in Section 5.6.

“**Event of Default**” has the meaning given it in Section 10.1.

“**Excluded Property**” means:

(a) **all Intellectual Property except to the extent that it is necessary under applicable law to have a Lien and security interest in any such Intellectual Property in order to have a perfected Lien and security interest in and to IP Proceeds, in which case the Collateral shall automatically, and effective as of the Closing Date, include the Intellectual Property to the extent necessary to permit perfection of Agent’s, for the ratable benefit of the Lenders, security interest in such IP Proceeds. Notwithstanding the foregoing clause (a) or anything else to the contrary in this Agreement, Agent shall have a Lien and security interest in, (A) all IP Proceeds, and (B) all payments with respect**

to IP Proceeds that are received after the commencement of a bankruptcy or insolvency proceeding and in no event shall IP Proceeds or any payments in respect thereof constitute Excluded Property;

(b) any lease, license, contract, permit, letter of credit, purchase money arrangement, instrument or agreement to which any Credit Party is a party or any of its rights or interests thereunder if and to the extent that the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Credit Party therein or (ii) result in a breach or termination pursuant to the terms of, or default under, any such lease, license, contract, permit, letter of credit, purchase money arrangement, instrument or agreement; and

(c) any governmental licenses or state or local franchises, charters and authorizations, to the extent that Agent may not validly possess a security interest in any such license, franchise, charter or authorization under applicable Law;

provided that (x) any such limitation described in the foregoing clauses (b) and (c) on the security interests granted hereunder shall apply only to the extent that any such prohibition could not be rendered ineffective pursuant to the UCC or any other applicable Law (including Sections 9-406, 9-407 and 9-408 of the UCC) or principles of equity, (y) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in such contract, agreement, permit, lease or license or in any applicable Law, to the extent sufficient to permit any such item to become Collateral hereunder, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such contract, agreement, permit, lease, license, franchise, authorization or asset shall be automatically and simultaneously granted hereunder and shall be included as Collateral hereunder, and (z) all rights to payment of money due or to become due pursuant to, and all rights to the proceeds from the sale of, all Excluded Property shall be and at all times remain subject to the security interests created by this Agreement (unless such proceeds would independently constitute Excluded Property).

“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, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) 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 subdivision thereof) or (ii) that are Other Connection Taxes, (b) 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 Credit Extension or Applicable Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Credit Extension or Applicable Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.6(h)(i) or 2.6(h)(iii), 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, (c) Taxes attributable to such Recipient’s failure to comply with Sections 2.6(h)(vi) and (vii) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Exigent Circumstance” has the meaning given it in Section 13.14.

“**FATCA**” means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the IRC and any intergovernmental agreement between the United States Internal Revenue Service, the U.S. Government and any governmental or taxation authority under any other jurisdiction which agreement’s principal purposes deals with the implementation of such sections of the IRC.

“**FDA**” means the Food and Drug Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

“**FDCA**” means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided* that if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent in a commercially reasonable manner.

“**Fee Letters**” means, collectively, the fee letter agreements among Borrower and Agent and Borrower and each Lender.

“**Financing Documents**” means, collectively, this Agreement, the Perfection Certificate, the Pledge Agreement, and the other Security Documents, each Subordination Agreement and any subordination or intercreditor agreement pursuant to which any Indebtedness and/or any Liens securing such Indebtedness is subordinated to all or any portion of the Obligations, the Fee Letter(s), each note and guarantee executed by one (1) or more Credit Parties in connection with the indebtedness governed by this Agreement, and each other present or future agreement executed by one (1) or more Credit Parties and, or for the benefit of, the Lenders and/or Agent in connection with this Agreement, all as amended, restated, or otherwise modified from time to time.

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

“**Funding Date**” means any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

“**GAAP**” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

“General Intangibles” means all “general intangibles”, as defined in the Code, with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable Law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including, without limitation, key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

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“Guarantor” means any present or future guarantor of the Obligations.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” “pollutant” or other words of similar import within the meaning of any Environmental Law, including: (a) any “hazardous substance” defined as such in (or for purposes of) CERCLA, or any so-called “superfund” or “superlien” Law, including the judicial interpretation thereof; (b) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

“Hazardous Materials Contamination” means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

“Healthcare Laws” means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, distribution, importation, exportation, use, handling, quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any product produced by a Credit Party or any Subsidiary thereof (including, without limitation, any component of, or accessory to, the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) or FDCA), and similar state or foreign laws, controlled substances laws, and all laws, policies, procedures, requirements and regulations pursuant to which Required Permits are issued, in each case, as the same may be amended from time to time.

“Indebtedness” means (a) indebtedness for borrowed money (including the Obligations) or the deferred price of, or payment for, property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, *provided, however*, that any obligations relating to a lease that was accounted for by such Person as an operating lease in accordance with GAAP as of the Closing Date and any similar lease entered into after the Closing Date by such Person shall be accounted for a obligations relating to an operating lease and not as a capital lease, (d) non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, (e) equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, including all Disqualified Stock, (f) obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (g) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (h) all Indebtedness of others guaranteed by such Person, (i) off-balance sheet liabilities and/or pension plan or multiemployer plan liabilities of such Person, (j) obligations arising under non-compete agreements, (k) obligations in respect of litigation settlement agreements or similar arrangements, (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business, and (m) Contingent Obligations.

“Indemnified Liabilities” has the meaning given it in Section 14.8.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under this Agreement and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning given it in Section 13.2(b).

“Insolvency Proceeding” means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency Law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

“Inventory” means all “inventory”, as defined in the Code, with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“Investment” means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any Acquisition or (c) to make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person.

“IP Proceeds” means, collectively, all cash, Accounts, license and royalty fees, claims, products, awards, judgments, insurance claims, and other revenues, proceeds or income, arising out of, derived from or relating to any Intellectual Property of any Credit Party, and any claims for damage by way of any past, present or future infringement of any Intellectual Property of any Credit Party (including, without limitation, all cash, royalty fees, other proceeds, Accounts and General Intangibles that consist of rights of payment to or on behalf of a Credit Party and the proceeds from the sale, licensing or other disposition of all or any part of, or rights in, any Intellectual Property by or on behalf of a Credit Party).

“IRC” means the Internal Revenue Code of 1986, as amended, and any successor provisions.

“IRS” means the United States Internal Revenue Service.

“Joinder Requirements” has the meaning given it in Section 6.8.

“Laws” means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, guidance, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance.

“**Lenders**” means each of the Persons identified on the Credit Facility Schedule as amended from time to time to reflect assignments made in accordance with this Agreement.

“**Libor Rate Index**” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by dividing (a) the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first (1st) day of such Applicable Interest Period) in the amount of One Million Dollars (\$1,000,000) are offered to major banks in the London interbank market on or about 11:00 a.m. (London time) on the Applicable Interest Rate Determination Date, for a period of thirty (30) days, which determination shall be conclusive in the absence of manifest error, by (b) one hundred percent (100%) minus the Reserve Percentage; *provided, however*, that Agent may, upon prior written notice to any Borrower and in consultation with Borrower, choose a reasonably comparable index or source to use as the basis for the Libor Rate Index; *provided*, further, that if (a) the administrator responsible for determining and publishing such rate per annum, determined by Agent in accordance with its customary procedures, has made a public announcement identifying a date certain on or after which such rate shall no longer be provided or published, as the case may be; or (b) timely, adequate and reasonable means do not exist for ascertaining such rate and the circumstances giving rise to the Agent’s inability to ascertain LIBOR are unlikely to be temporary as determined in Agent’s reasonable discretion, then Agent may, upon prior written notice to Borrower, choose, in consultation with Borrower, a reasonably comparable index or source together with corresponding adjustments to “Applicable Margin” or scale factor or floor to such index that Agent, in its reasonable discretion, has determined is necessary to preserve the current all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees, but without regard to future fluctuations of such alternative index, it being acknowledged and agreed that neither Agent nor any Lender shall have any liability whatsoever from such future fluctuations) to use as the basis for the LIBOR Rate Index. The Libor Rate Index may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then Applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the Libor Rate Index; *provided, however*, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) 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 be a “change in applicable Law”, regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrower may, by notice to such affected Lender require such Lender to furnish to Borrower a statement setting forth the basis for adjusting such Libor Rate Index and the method for determining the amount of such adjustment.

“**Lien**” means a claim, mortgage, deed of trust, lien, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of Law or otherwise against any property.

“**Margin Stock**” means “margin stock” as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

“**Material Adverse Change**” means (a) a material impairment in the perfection or priority of Agent’s Lien (or any Lender’s Lien therein to the extent provided for in the Financing Documents) in the Collateral (other than solely as a result of any action or inaction of Agent or Lenders, provided that such action or inaction is not caused by a Credit Party’s failure to comply with the terms of the Financing Documents); (b) a material impairment in the value of the Collateral; (c) a material adverse change in the business, operations or financial condition of the Credit Parties taken as a whole; or (d) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Material Agreement**” means (a) the agreements listed in the **Disclosure Schedule** on the Closing Date, [***], (b) each other agreement or contract that Rigel has filed with the SEC as a material agreement, including pursuant to Item 601(b)(10) of Regulation S-K, and (c) each agreement or contract to which such Credit Party or its Subsidiaries is a party the termination of which could reasonably be expected to result in a Material Adverse Change.

“**Material Indebtedness**” has the meaning given it in Section 10.1(e).

“**Material Intangible Assets**” means (a) all of Borrower’s and its Subsidiaries Intellectual Property and (b) each license or sublicense agreements or other agreements with respect to rights in Intellectual Property, that, in the case of each of clauses (a) and (b), is material to the condition (financial or other), business or operations of Borrower and its Subsidiaries.

“**Maturity Date**” means September 1, 2024.

“**Maximum Lawful Rate**” has the meaning given it in Section 2.6(g).

“**MidCap**” has the meaning given it in the preamble of this Agreement.

“**Minimum Cash Threshold**” means [***].

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) or ERISA, to which any Credit Party or any ERISA Affiliate has at any time (whether presently or in the past) sponsored, maintained, contributed to, or had an obligation to make contributions to or to which any Credit Party or any ERISA Affiliate has any liability, contingent or otherwise.

“**Obligations**” means all of Borrower’s obligations to pay when due any debts, principal, interest, Protective Advances, fees, indemnities and other amounts Borrower owes Agent or the Lenders now or later, under this Agreement or the other Financing Documents, including, without limitation, interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Agent, and the payment

and performance of each other Credit Party's covenants and obligations under the Financing Documents. "Obligations" does not include obligations under any warrants issued to Agent or a Lender.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operating Documents**" means, for any Person, such Person's formation documents, as certified with the Secretary of State of such Person's state of formation on a date that is no earlier than thirty (30) days prior to the Closing Date, and (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices or then current business practices set forth in the most recent operating plan of Borrower to the extent approved by Agent, which shall in any event be at arms-length.

"**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 solely 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 this Agreement, or sold or assigned an interest in any Obligation hereunder).

"**Other Tax Certification**" means such certification or evidence, in each case in form and substance reasonably satisfactory to Agent and Borrower, that any Lender or prospective Lender is exempt from, or eligible for a reduction in, U.S. federal withholding tax or backup withholding tax, including evidence supporting the basis for such exemption or reduction.

"**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, this Agreement, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.6(h)(x)).

"**Participant Register**" has the meaning given it in Section 13.1(c).

"**Payment Date**" means the first (1st) calendar day of each calendar month.

"**PBGC**" means the Pension Benefit Guaranty Corporation, or any successor entity thereto.

“Pension Plan” means any employee benefit pension plan that is subject to the minimum funding standards under Section 412 of the IRC or is covered by Title IV of ERISA (including a Multiemployer Plan) that any Credit Party or any ERISA Affiliate has, at any time (whether presently or in the past) sponsored, maintained, contributed to, or had an obligation to make contributions to or to which any Credit Party or any ERISA Affiliate has any liability (contingent or otherwise).

“Perfection Certificate” means the Perfection Certificate delivered to Agent as of the Closing Date, together with any amendments thereto required under this Agreement.

“Permitted Acquisition” means any Acquisition by a Credit Party, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) the Credit parties shall have delivered to Agent and each Lender at least ten (10) Business Days prior written notice (or such shorter period as Agent may determine in its sole discretion) before the execution of any documents (other than a non-binding summary of terms, letter of intent or similar agreement) related to such proposed acquisition, including a reasonably detailed description of the terms and conditions of such acquisition (which may be included in the notice provided);

(b) as soon as available, but at least five (5) Business Days before the consummation of such Acquisition (or such shorter time as Agent may agree), Credit Parties shall have provided to Agent such information and documents that Agent may reasonably request, including, without limitation, (i) legal due diligence materials then in existence, (ii) applicable financial information, and sources of the funding, related to such Acquisition, and (iii) the respective agreements, documents and instruments pursuant to which such Acquisition is to be consummated, all schedules to such agreements, documents or instruments and all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith;

(c) Credit Parties shall and shall cause their Subsidiaries (including any new Subsidiary as required by Section 6.8) to execute and deliver the agreements, instruments and other documents required by Section 6.8 or Section 6.12 and as otherwise necessary or desirable to ensure that Agent receives a first priority perfected Lien in all entities and assets acquired in connection with the proposed Acquisition to the extent required by this Agreement;

(d) with respect to any Acquisition involving an in-license to a Credit Party, all such in-licenses or agreements related thereto shall constitute “Collateral” and Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent’s rights and remedies under this Agreement and the other Financing Documents;

(e) there is no Indebtedness or Liens incurred, created or assumed in connection with such acquisition other than Permitted Indebtedness and Permitted Liens;

(f) such acquisition shall not be hostile and shall have been approved by the board of directors (or other similar body) and/or the stockholders or other equityholders of the Person being acquired, in each case as required by such Person’s organizational documents;

(g) no Default or Event of Default shall have occurred, be continuing or would exist immediately after giving effect to such Acquisition;

(h) the Acquisition would not result in a Change in Control;

(i) the target so acquired or the assets of the target so acquired, as the case may be, shall be in or reasonably related or ancillary to the business of Credit Parties;

(j) if the Acquisition is an equity purchase, the target and its Subsidiaries must have as its jurisdiction of formation a state within the United States and if the Acquisition is an asset purchase or a merger, not less than [***]% of the fair market value of all of the assets so acquired shall be located within the United States;

(k) the sum of all cash and Cash Equivalents paid or payable in connection with all Permitted Acquisitions (including all Indebtedness, liabilities and Contingent Obligations (in each case to the extent otherwise permitted hereunder) incurred or assumed and the maximum amount of any deferred consideration, earn-out or comparable payment obligation in connection therewith, regardless of whether or not reflected on a consolidated balance sheet of Borrower) shall not exceed [***] (\$[***]) in the aggregate for any calendar year; *provided* that the foregoing shall not prohibit or limit the issuance of common stock of Rigel as consideration in connection with such Acquisition.

“Permitted Contest” has the meaning given it in Section 6.4.

“Permitted Contingent Obligations” means:

(a) **Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;**

(b) **Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed [***] (\$[***]) in the aggregate at any time outstanding;**

(c) **Contingent Obligations arising under indemnity agreements with title insurers;**

(d) **Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Article 7;**

(e) **Contingent Obligations arising under the Financing Documents;**

(f) **so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any swap contract, *provided, however,* that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for**

the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(g) unsecured Contingent Obligations existing or arising in connection with any security deposit or letter of credit obtained for the sole purpose of securing a lease of real property, or in connection with ancillary bank services such as a corporate credit card facility, *provided* that the aggregate face amount of all such security deposits, letters of credit not at any time exceed [***] (\$[***]); *provided further* that the aggregate amount of all such ancillary bank services does not at any time exceed [***] (\$[***]);

(h) the obligation of Borrower to make the [***] on and subject to the terms of the [***] as the same is in effect on the Closing Date; *provided* that no such payment shall be made except in accordance with Section 7.9(b);

(i) Guaranties by a Credit Party of Permitted Indebtedness of another Credit Party incurred in the Ordinary Course of Business; *provided*, any such Guaranty shall be subordinated to the Obligations to the same extent and on the same terms and conditions as the Indebtedness guaranteed has been subordinated to the Obligations; and

(j) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed [***] (\$[***]) in the aggregate at any time outstanding.

“Permitted Distributions” means:

(a) dividends payable solely in common stock and made in the Ordinary Course of Business;

(b) repurchases of stock of former or current employees, directors, officers or consultants pursuant to stock purchase agreements, employee stock purchase plans, employee restricted stock agreements or similar plans in an aggregate amount not to exceed [***] (\$[***]) each fiscal year;

(c) repurchases of stock of former or current employees, directors, officers or consultants pursuant to stock repurchase agreements by the cancellation of indebtedness owed by such former employees, directors, officers or consultants (and not, for the avoidance of doubt, by the payment of cash or Cash Equivalents by any Credit Party or Subsidiary thereof);

(d) payment of dividends or the making of distributions by any Subsidiary to Borrower;

(e) conversions of convertible securities (including warrants and options) into other equity securities (other than Disqualified Stock) pursuant to the terms of such convertible securities or otherwise in exchange thereof;

(f) issuance of other non-cash equity compensation (and acceleration of vesting thereof), including retention bonuses, to its officers, directors and other employees to the extent not constituting Disqualified Stock and issued in the Ordinary Course of Business;

(g) income taxes paid on behalf of employee equity award recipients in the Ordinary Course of Business in an aggregate amount not to exceed [***] (\$[***]) per fiscal year;

(h) de minimis cash payable in lieu of issuing fractional shares;

(i) repurchases of stock deemed to occur upon exercise of stock options or warrants if such stock represents a portion of the exercise price of such options or warrants and repurchases of stock deemed to occur upon the withholding of a portion of the stock granted or awarded; provided that no cash or Cash Equivalents shall be paid by any Credit Party in connection with such repurchase except to the extent otherwise constituting a Permitted Distribution; and

(j) the distribution of rights pursuant to a stockholder rights plan but not, for the avoidance of doubt, any distributions in respect of the exercise of such rights or the redemption thereof.

“Permitted Indebtedness” means:

- (a) Borrower’s Indebtedness to the Lenders and Agent under this Agreement and the other Financing Documents;
 - (b) Indebtedness existing on the Closing Date and described on the **Disclosure Schedule**;
 - (c) Indebtedness secured by Liens permitted pursuant to clause (b) of the definition of “Permitted Liens” so long as before and immediately after giving effect to the incurrence of such Indebtedness, no Event of Default has occurred and is continuing;
 - (d) Subordinated Debt;
 - (e) unsecured Indebtedness to trade creditors incurred in the Ordinary Course of Business;
 - (f) Permitted Contingent Obligations;
 - (g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness set forth in (b) and (c) above, *provided, however*, that the
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principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon the obligors thereunder;

- (h) Indebtedness in respect of netting services, overdraft protections, payment processing, automatic clearinghouse arrangements, arrangements in respect of pooled deposit or sweep accounts, check endorsement guarantees, and otherwise in connection with the deposit accounts or cash management services, in each case so long as such Indebtedness is incurred in the Ordinary Course of Business and is unsecured;
 - (i) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits (other than ERISA) pursuant to reimbursement or indemnification obligations to such Person, in each case in the Ordinary Course of Business;
 - (j) Indebtedness to finance insurance premiums financed through the applicable insurance company or other finance companies not to exceed [***] (\$[***]) at any time outstanding;
 - (k) (m) unsecured earn-out obligations and other similar unsecured milestone or contingent obligations incurred in connection with a Permitted Acquisition, in an amount not to exceed the cap set forth in clause (j) of the definition of Permitted Acquisitions after taking into account all other consideration paid or payable by the Credit Parties in connection with Permitted Acquisitions during the term of this Agreement; provided that no payment with respect to such obligations shall be made if an Event of Default has occurred and is continuing or would result from the making of such payments;
 - (l) Indebtedness consisting of unsecured intercompany loans and advances incurred by (i) any Borrower owing to any other Borrower, (ii) any Guarantor owing to any other Guarantor, (iii) any Restricted Foreign Subsidiary owing to any other Restricted Foreign Subsidiary, or (iv) any Restricted Foreign Subsidiary owing to any Borrower or any Guarantor so long as such Indebtedness constitutes a Permitted Investment of the applicable Credit Party pursuant to clause (k) of the definition of Permitted Investments; *provided, however*, that (x) upon the request of Agent at any time, any such Indebtedness owed to a Borrower or Guarantor shall be evidenced by promissory notes having terms reasonably satisfactory to Agent, the sole originally executed counterparts of which shall be pledged and delivered to Agent, for the benefit of itself and the Lenders, as security for the Obligations and (y) any such Indebtedness owed by a Credit Party shall be subordinated to the payment in full of the Obligations pursuant to documentation in form and substance reasonably satisfactory to Agent;
 - (m) Indebtedness incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;
 - (n) Indebtedness in respect custom duties relating to the importation or exportation of goods incurred in the Ordinary Course of Business; and
 - (o) Other unsecured Indebtedness not to exceed [***] (\$[***]) in the aggregate principal amount at any time.
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“**Permitted Investments**” means:

- (a) Investments existing on the Closing Date and described on the **Disclosure Schedule**;
 - (b) the holding of Cash Equivalents to the extent constituting an Investment;
 - (c) any Investments in liquid assets permitted by Borrower’s investment policy, as amended from time to time, *provided* that such investment policy (and any such amendment thereto) has been approved in writing by Agent (*provided* that, under no circumstances shall Borrower be permitted to invest in or hold Margin Stock);
 - (d) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of any Credit Party;
 - (e) Investments consisting of deposit accounts or securities accounts in which Agent has a first priority perfected security interest except as otherwise provided by Section 6.6;
 - (f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower’s board of directors in the Ordinary Course of Business and in an aggregate amount not to exceed [***] (\$[***]) in any fiscal year;
 - (g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;
 - (h) Investments consisting of note receivables of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business;
 - (i) Permitted Acquisitions;
 - (j) so long as no Event of Default exists or results therefrom, the granting of Permitted Licenses;
 - (k) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, Investments of cash and Cash Equivalents in a Restricted Foreign Subsidiary but solely to the extent that (x) the aggregate amount of such Investments made with respect to all Restricted Foreign Subsidiaries does not, at any time, exceed [***] (\$[***]) in any fiscal year and (y) with respect to any individual Restricted Foreign Subsidiary, the amount of such Investment in such Restricted Foreign Subsidiary at any time outstanding does not exceed the amount necessary to fund the current operating expenses of such Restricted Foreign Subsidiary for the applicable fiscal year (taking into account their revenue from other sources);
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- (l) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, Investment of cash and cash equivalents in joint venture or strategic alliances; *provided* that the aggregate amount of such Investments do not exceed [***] (\$[***]) per fiscal year; and
- (m) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, other Investments of cash and Cash Equivalents in an amount not exceeding [***] (\$[***]) per fiscal year.

“**Permitted License**” means:

- (a) any non-exclusive license of Intellectual Property rights of Borrower or its Subsidiaries so long as all such Permitted Licenses (i) are granted to third parties in the Ordinary Course of Business, (ii) do not result in a legal transfer of title to the licensed property, (iii) have been granted in exchange for fair consideration as determined by the Borrower in its reasonable business judgment and on commercially reasonable arms’ length terms, and (iv) no Event of Default is existing at the time such license is granted or would result from the granting thereof;
 - (b) any exclusive or co-exclusive license of Intellectual Property rights of Borrower or its Subsidiaries so long as such Permitted License (i) has been granted to third parties in the Ordinary Course of Business, (ii) does not result in a legal transfer of title to the licensed property, (iii) has been granted in exchange for fair consideration as determined by the Borrower in its reasonable business judgment and on commercially reasonable arms’ length terms, (iv) is exclusive or co-exclusive (as applicable) solely as to discrete geographical areas outside of the United States and is not exclusive or co-exclusive in any other respect, and (v) no Event of Default is existing at the time such license is granted or would result from the granting thereof;
 - (c) except in all cases with respect to the [***] and Intellectual Property related thereto (as to which no exclusive licenses shall be permitted pursuant to this clause (c)), any exclusive or co-exclusive license of other Intellectual Property rights of Borrower or its Subsidiaries so long as such Permitted License (i) is granted to third parties in the Ordinary Course of Business pursuant to standard partnership agreements (and amendments thereto) related to Borrower’s on-going [***] that are in effect as of the Closing Date, (ii) does not result in a legal transfer of title to the licensed property, (iii) has been granted in exchange for fair consideration as determined by the Borrower in its reasonable business judgment and on commercially reasonable arms’ length terms, and (iv) no Event of Default is existing at the time such license is granted or would result from the granting thereof; and
 - (d) except in all cases with respect to the [***] and Intellectual Property related thereto (as to which no exclusive licenses shall be permitted pursuant to this clause (d)), any exclusive license of other Intellectual Property rights of Borrower or its Subsidiaries so long as such Permitted License (i) is granted to third parties in the Ordinary Course of Business pursuant to standard partnership agreements (and/or amendments thereto) related to Borrower’s programs that either are partnered on the Closing Date or have
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previously been partnered prior to the Closing Date, including programs related to [***], (ii) does not result in a legal transfer of title to the licensed property, (iii) has been granted in exchange for fair consideration as determined by the Borrower in its reasonable business judgment and on commercially reasonable arms' length terms, and (iv) no Event of Default is existing at the time such license (including any amendment thereto) is granted or would result from the granting thereof.

"Permitted Liens" means:

- (a) Liens existing on the Closing Date and shown on the **Disclosure Schedule** or arising under this Agreement and the other Financing Documents;
 - (b) so long as before and immediately after giving effect to the incurrence of such Liens, no Event of Default has occurred and is continuing, purchase money Liens or capital leases securing no more than [***] (\$[***]) in the aggregate amount outstanding at any time (i) on Equipment acquired or held by a Credit Party incurred for financing the acquisition of the Equipment, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;
 - (c) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or are the subject of a Permitted Contest for which adequate reserves are maintained on the Books of the Credit Party against whose asset such Lien exists;
 - (d) carrier's, warehousemen's, mechanic's, workmen's, materialmen's or other like Liens on Collateral arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;
 - (e) leases or subleases of real property granted in the Ordinary Course of Business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property or Intellectual Property) granted in the Ordinary Course of Business, if the leases, subleases, licenses and sublicenses do not prohibit granting Agent a security interest;
 - (f) banker's liens, rights of set-off and Liens in favor of financial institutions incurred made in the Ordinary Course of Business arising in connection with a Credit Party's Collateral Accounts *provided* that such Collateral Accounts are subject to a Control Agreement to the extent required hereunder;
 - (g) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the Ordinary Course of Business (other than Liens imposed by ERISA);
 - (h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default;
 - (i) easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and similar charges or encumbrances affecting real property not constituting a Material Adverse Change;
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- (j) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases or consignments of personal property entered into the Ordinary Course of Business;
- (k) Liens that are rights of set-off, bankers' liens or similar non-consensual Liens relating to deposit or securities accounts in favor of banks, other depository institutions and securities intermediaries arising in the Ordinary Course of Business;
- (l) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the Ordinary Course of Business;
- (m) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) and (b) above, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase;
- (n) to the extent constituting a Lien and so long as no Event of Default has occurred and is continuing, the granting of a Permitted License;
- (o) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted in clause (j) of the definition of Permitted Indebtedness;
- (p) customary indemnification obligations relating to any disposition expressly permitted pursuant to the terms of this Agreement;
- (q) good faith deposits of cash in connection with any Acquisition constituting a Permitted Investment; and
- (r) deposits of cash as security for taxes subject to a Permitted Contest or import or customs duties being contested in good faith.

“**Person**” means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Pledge Agreement**” means that certain Pledge Agreement, dated as of the date hereof, executed by Borrower in favor of Agent, for the benefit of Lenders, covering all the equity interests respectively owned by the Credit Parties, as amended, restated, or otherwise modified from time to time.

“**Pro Rata Share**” means, as determined by Agent, with respect to each Credit Facility and Lender holding an Applicable Commitment or Credit Extensions in respect of such Credit Facility, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by *dividing* (a) in the case of fully-funded Credit Facilities, the amount of Credit Extensions held by such Lender in such Credit Facility *by* the aggregate amount of all outstanding Credit Extensions for such Credit Facility, and (b) in the case of Credit Facilities that are not fully-funded, the amount

of Credit Extensions and unfunded Applicable Commitments held by such Lender in such Credit Facility by the aggregate amount of all outstanding Credit Extensions and unfunded Applicable Commitments for such Credit Facility.

“**Products**” means any products manufactured, sold, developed, tested or marketed by any Borrower or any of its Subsidiaries, including without limitation, those products set forth on the **Products Schedule** (as updated from time to time in accordance with Section 6.16); *provided* that, for the avoidance of doubt, any new Product not disclosed on the **Products Schedule** shall still constitute a “Product” as herein defined.

“**Protective Advances**” means all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) of Agent and the Lenders for preparing, amending, negotiating, administering, defending and enforcing the Financing Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Agent or the Lenders in connection with the Financing Documents.

“**Recipient**” means Agent and any Lender, as applicable.

“**Register**” has the meaning given it in Section 13.1(c).

“**Registered Intellectual Property**” means any registered patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

“**Registered Organization**” means any “registered organization” as defined in the Code, with such additions to such term as may hereafter be made.

“**Regulatory Reporting Event**” has the meaning given it in Section 6.16(a).

“**Regulatory Required Permit**” means any and all licenses, approvals and permits issued by the FDA, DEA or any other applicable Governmental Authority, including without limitation Drug Applications, necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) and its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time and any drug listings and drug establishment registrations under 21 U.S.C. Section 510, registrations issued by DEA under 21 U.S.C. Section 823 (if applicable to any Product), and those issued by State governments for the conduct of Borrower’s or any Subsidiary’s business.

“**Required Lenders**” means, unless all of the Lenders and Agent agree otherwise in writing, Lenders having (a) more than sixty percent (60%) of the Applicable Commitments of all Lenders, or (b) if such Applicable Commitments have expired or been terminated, more than sixty percent (60%) of the aggregate outstanding principal amount of the Credit Extensions.

“**Required Permit**” means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, provider numbers, marketing authorizations, other authorizations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership,

warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, “**Required Permits**” includes any Regulatory Required Permit.

“**Reserve Percentage**” means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities”) of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

“**Responsible Officer**” means any of the President and Chief Executive Officer or Chief Financial Officer of Borrower.

“**Restricted Foreign Subsidiary**” means (a) Rigel Pharmaceuticals Limited, (b) Rigel Pharmaceuticals B.V., and (c) each other direct and indirect Subsidiary of Borrower not organized under the laws of the United States or any state thereof that Agent and Required Lenders may agree (in their sole discretion) in writing from time to time after the Closing Date to designate as a “Restricted Foreign Subsidiary” for purposes of this Agreement; unless and until such Subsidiary has been made a Credit Party hereunder in accordance with the provisions set forth in Section 6.12.

“**Rigel**” has the meaning set forth in the preamble to this Agreement.

“**Secretary’s Certificate**” means, with respect to any Person, a certificate, in form and substance satisfactory to Agent, executed by such Person’s secretary (or other appropriate officer acceptable to Agent in its sole but reasonable discretion) on behalf of such Person certifying (a) that such Person has the authority to execute, deliver, and perform its obligations under each of the Financing Documents to which it is a party, (b) that attached to such certificate is a true, correct, and complete copy of the Borrowing Resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Financing Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Financing Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), (d) that attached to such certificate are true, correct, and complete copies of the Operating Documents of Borrower and good standing certificates of Borrower certified by the Secretary of State of the state(s) of organization of Borrower as of a date no earlier than thirty (30) days prior to the Closing Date and (e) that a true, correct, and complete copy of each of the Borrower’s Registration Rights Agreement/Investors’ Rights Agreement, voting agreements or other agreements among shareholders and any amendments to the foregoing has been delivered to Agent.

“**Secured Promissory Note**” has the meaning given it in Section 2.7.

“**Securities Account**” means any “securities account”, as defined in the Code, with such additions to such term as may hereafter be made.

“**Security Documents**” means, collectively, each Control Agreement, and each other agreement, document or instrument executed concurrently herewith or at any time hereafter

pursuant to which one (1) or more Credit Parties or any other Person provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Specified Event of Default**” means an Event of Default described in Section 10.1(a), 10.1(c) solely with respect to a default under Article 9, 10.1(f) or 10.1(n).

“**Stated Rate**” has the meaning given it in Section 2.6(g).

“**Subordinated Debt**” means indebtedness incurred by Borrower which shall be (a) in an amount satisfactory to Agent, (b) made pursuant to documents in form and substance satisfactory to Agent (the “**Subordinated Debt Documents**”), and (c) subordinated to all of Borrower’s now or hereafter indebtedness to Agent and the Lenders pursuant to a Subordination Agreement.

“**Subordination Agreement**” means a subordination, intercreditor, or other similar agreement in form and substance, and on terms, approved by Agent in writing.

“**Subsidiary**” means, with respect to any Person, any Person of which more than fifty percent (50.0%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a 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.

“**Testing Date**” means the last date of each calendar quarter.

“**Transaction Projections**” means, [***].

“**Transfer**” has the meaning given it in Section 7.1.

“**U.S. Person**” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the IRC.

“**Withholding Agent**” means Borrower and Agent.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Closing Date.

BORROWER:

RIGEL PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____



AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

LENDERS:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

LENDERS:

APOLLO INVESTMENT CORPORATION

By: Apollo Investment Management, L.P., as Advisor

By: ACC Management, LLC, as its General Partner

By: _____

Name:

Title:

CREDIT FACILITY SCHEDULE

The following Credit Facilities are specified on this Credit Facility Schedule:

Credit Facility #1:

Credit Facility and Type: Term, Tranche 1

Lenders for and their respective Applicable Commitments to this Credit Facility:

| Lender | Applicable Commitment |
|-------------------------------|---|
| Midcap Financial Trust | Seven Million Dollars (\$7,000,000) |
| Apollo Investment Corporation | Three Million Dollars (\$3,000,000) |
| | |
| Total: | Ten Million Dollars (\$10,000,000) |

The following defined terms apply to this Credit Facility:

Applicable Interest Period: means the one-month period starting on the first (1st) day of each month and ending on the last day of such month; *provided, however*, that the first (1st) Applicable Interest Period for each Credit Extension under this Credit Facility shall commence on the date that the applicable Credit Extension is made and end on the last day of such month.

Applicable Floor: means one and one half percent (1.50%) per annum for the Applicable Libor Rate.

Applicable Margin: a rate of interest equal to five and sixty-five one-hundredths percent (5.65%) per annum.

Applicable Prepayment Fee: means the following amount, calculated as of the date (the “**Accrual Date**”) that the Applicable Prepayment Fee becomes payable in the case of prepayments required under the Financing Documents or the date any voluntary prepayment is made: (a) for an Accrual Date on or after the Closing Date through and including the date which is twelve (12) months after the Closing Date, two and one half percent (2.5%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); (b) for an Accrual Date on or after the date which is twelve (12) months after the Closing Date through and including the date which is twenty-four (24) months after the Closing Date, one and one half percent (1.5%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); and (c) for an Accrual Date on or after the date which is twenty-four (24) months after the Closing Date through and including the date immediately preceding the Maturity Date, one percent (1.0%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater).

Commitment Commencement Date: Closing Date.

Commitment Termination Date: the close of the Business Day following the Closing Date.

Minimum Credit Extension Amount: \$10,000,000.00

Credit Facility #2:

Credit Facility and Type: Term, Tranche 2

Lenders for and their respective Applicable Commitments to this Credit Facility:

| Lender | Applicable Commitment |
|-------------------------------|---|
| Midcap Financial Trust | Seven Million Dollars (\$7,000,000) |
| Apollo Investment Corporation | Three Million Dollars (\$3,000,000) |
| | |
| Total: | Ten Million Dollars (\$10,000,000) |

The following defined terms apply to this Credit Facility:

Applicable Funding Conditions: N/A.

Applicable Interest Period: means the one-month period starting on the first (1st) day of each month and ending on the last day of such month; *provided, however*, that the first (1st) Applicable Interest Period for each Credit Extension under this Credit Facility shall commence on the date that the applicable Credit Extension is made and end on the last day of such month.

Applicable Floor: means one and one half percent (1.50%) per annum for the Applicable Libor Rate.

Applicable Margin: a rate of interest equal to five and sixty-five one-hundredths percent (5.65%) per annum.

Applicable Prepayment Fee: means the following amount, calculated as of the date (the “**Accrual Date**”) that the Applicable Prepayment Fee becomes payable in the case of prepayments required under the Financing Documents or the date any voluntary prepayment is made: (a) for an Accrual Date on or after the Closing Date through and including the date which is twelve (12) months after the Closing Date, two and one half percent (2.5%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); (b) for an Accrual Date after the date which is twelve (12) months after the Closing Date through and including the date which is twenty-four (24) months after the Closing Date, one and one half percent (1.5%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); and (c) for an Accrual Date after the date which is twenty-four (24) months after the Closing Date through and including the date immediately preceding the Maturity Date, one percent (1.0%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater).

Commitment Commencement Date: Closing Date.

Commitment Termination Date: the earliest to occur of (a) December 31, 2020, (b) the date on which any Credit Extensions are made by the Lenders in respect of Credit Facility #3 or Credit Facility #4, and (c) the delivery of a written notice by Agent to Borrower terminating the Applicable Commitments following an Event of Default that has not been waived or cured at the time such notice is delivered.

Minimum Credit Extension Amount: \$10,000,000.00

Credit Facility #3:

Credit Facility and Type: Term, Tranche 3

Lenders for and their respective Applicable Commitments to this Credit Facility:

| Lender | Applicable Commitment |
|-------------------------------|--|
| Midcap Financial Trust | Fourteen Million Dollars (\$14,000,000) |
| Apollo Investment Corporation | Six Million Dollars (\$6,000,000) |
| | |
| Total: | Twenty Million Dollars (\$20,000,000) |

The following defined terms apply to this Credit Facility:

Applicable Funding Conditions: means the following:

- (a) [***]; and
- (b) [***].

Applicable Interest Period: means the one-month period starting on the first (1st) day of each month and ending on the last day of such month; *provided, however*, that the first (1st) Applicable Interest Period for each Credit Extension under this Credit Facility shall commence on the date that the applicable Credit Extension is made and end on the last day of such month.

Applicable Floor: means one and one half percent (1.50%) per annum for the Applicable Libor Rate.

Applicable Margin: a rate of interest equal to five and sixty-five one-hundredths percent (5.65%) per annum.

Applicable Prepayment Fee: means the following amount, calculated as of the date (the “**Accrual Date**”) that the Applicable Prepayment Fee becomes payable in the case of prepayments required under the Financing Documents or the date any voluntary prepayment is made: (a) for an Accrual Date on or after the Closing Date through and including the date which is twelve (12) months after the Closing Date, two and one half percent (2.5%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); (b) for an Accrual Date after the date which is twelve (12) months after the Closing Date through and including the date which is twenty-four (24) months after the Closing Date, one and one half percent (1.5%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); and (c) for an Accrual Date after the date which is twenty-four (24) months after the Closing Date through and including the date immediately preceding the Maturity Date, one percent (1.0%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater).

Commitment Commencement Date: The satisfaction of the Applicable Funding Conditions for this Credit Facility.

Commitment Termination Date: the earliest to occur of (a) March 31, 2021, (b) the date on which any Credit Extensions are made by the Lenders in respect of Credit Facility #4, and (c) the delivery of a written notice by Agent to Borrower terminating the Applicable Commitments following an Event of Default that has not been waived or cured at the time such notice is delivered.

Minimum Credit Extension Amount: \$20,000,000.00

Credit Facility #4:

Credit Facility and Type: Term, Tranche 4

Lenders for and their respective Applicable Commitments to this Credit Facility:

| Lender | Applicable Commitment |
|-------------------------------|--|
| Midcap Financial Trust | Fourteen Million Dollars (\$14,000,000) |
| Apollo Investment Corporation | Six Million Dollars (\$6,000,000) |
| | |
| Total: | Twenty Million Dollars (\$20,000,000) |

The following defined terms apply to this Credit Facility:

Applicable Funding Conditions: means the following:

- (a) [***]; and
- (b) [***].

Applicable Interest Period: means the one-month period starting on the first (1st) day of each month and ending on the last day of such month; *provided, however*, that the first (1st) Applicable Interest Period for each Credit Extension under this Credit Facility shall commence on the date that the applicable Credit Extension is made and end on the last day of such month.

Applicable Floor: means one and one half percent (1.50%) per annum for the Applicable Libor Rate.

Applicable Margin: a rate of interest equal to five and sixty-five one-hundredths percent (5.65%) per annum.

Applicable Prepayment Fee: means the following amount, calculated as of the date (the “**Accrual Date**”) that the Applicable Prepayment Fee becomes payable in the case of prepayments required under the Financing Documents or the date any voluntary prepayment is made: (a) for an Accrual Date on or after the Closing Date through and including the date which is twelve (12) months after the Closing Date, two and one half percent (2.5%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); (b) for an Accrual Date after the date which is twelve (12) months after the Closing Date through and including the date which is twenty-four (24) months after the Closing Date, one and one half percent (1.5%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); and (c) for an Accrual Date after the date which is twenty-four (24) months after the Closing Date through and including the date immediately preceding the Maturity Date, one percent (1.0%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater).

Commitment Commencement Date: The satisfaction of the Applicable Funding Conditions for this Credit Facility.

Commitment Termination Date: the earliest to occur of (a) March 31, 2022, and (b) the delivery of a written notice by Agent to Borrower terminating the Applicable Commitments following an Event of Default that has not been waived or cured at the time such notice is delivered.

Minimum Credit Extension Amount: \$20,000,000.00

AMORTIZATION SCHEDULE (FOR EACH CREDIT FACILITY)

Credit Facility #1

Commencing on October 1, 2021 (the “**Initial Amortization Start Date**”) and continuing on the first day of each calendar month thereafter, an amount equal to the aggregate principal amount advanced under Credit Facility #1 *divided by* thirty-six (36); *provided* if Borrower provides evidence satisfactory to Agent that the applicable IO Extension Conditions (as defined below) have been satisfied at least ten (10) Business Days prior to the Initial Amortization Start Date, then the Initial Amortization Start Date shall be extended such that principal payments shall commence on the applicable Extended Amortization Start Date and shall be in an amount equal to the aggregate principal amount advanced under Credit Facility #1 *divided by* the number of full calendar months remaining (including the month in which the first amortization payment is made) before the occurrence of the Maturity Date.

Credit Facility #2:

Commencing on the Initial Amortization Start Date and continuing on the first day of each calendar month thereafter, an amount equal to the aggregate principal amount advanced under Credit Facility #2 *divided by* thirty-six (36); *provided* if Borrower provides evidence satisfactory to Agent that the applicable IO Extension Conditions (as defined below) have been satisfied at least ten (10) Business Days prior to the applicable Initial Amortization Start Date, then the Initial Amortization Start Date shall be extended such that principal payments shall commence on the Extended Amortization Start Date and shall be in an amount equal to the aggregate principal amount advanced under Credit Facility #2 *divided by* the number of full calendar months remaining (including the month in which the first amortization payment is made) before the occurrence of the Maturity Date.

Credit Facility #3:

Commencing on the Initial Amortization Start Date and continuing on the first day of each calendar month thereafter, an amount equal to the aggregate principal amount advanced under Credit Facility #3 *divided by* thirty-six (36); *provided* if Borrower provides evidence satisfactory to Agent that the applicable IO Extension Conditions (as defined below) have been satisfied at least ten (10) Business Days prior to the applicable Initial Amortization Start Date, then the Initial Amortization Start Date shall be extended such that principal payments shall commence on the Extended Amortization Start Date and shall be in an amount equal to the aggregate principal amount advanced under Credit Facility #3 *divided by* the number of full calendar months remaining (including the month in which the first amortization payment is made) before the occurrence of the Maturity Date.

Credit Facility #4:

Commencing on the latest to occur of (a) the Initial Amortization Start Date, (b) the first day of the first full calendar month immediately following such Credit Extension, and (c) the applicable Extended Amortization Start Date (if any), and, in each case, continuing on the first day of each calendar month thereafter, an amount equal the outstanding Credit Extension in respect of Credit Facility #4 *divided by* the number of full calendar months remaining (including such first full calendar month) before the occurrence of the Maturity Date.

Notwithstanding anything to the contrary contained in the foregoing, the entire remaining outstanding principal balance under all Credit Extensions shall mature and be due and payable upon the Maturity Date.

For purposes hereof of this Amortization Schedule, the following terms shall have the following meanings:

“**IO Extension Conditions**” means [***].

“**Extended Amortization Start Date**” means the earlier to occur of (a) if Borrower has satisfied the First IO Extension Conditions but fails to satisfy the Second IO Extension Conditions, October 1, 2022, or (b) if Borrower has satisfied both the First IO Extension Conditions and the Second IO Extension Conditions, October 1, 2023.

CERTIFICATIONS

I, Raul R. Rodriguez, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Rigel Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(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 the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(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 control over financial reporting.

Date: November 5, 2019

/s/ RAUL R. RODRIGUEZ
Raul R. Rodriguez
Chief Executive Officer

CERTIFICATIONS

I, Dean L. Schorno, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Rigel Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(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 the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(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 control over financial reporting.

Date: November 5, 2019

/s/ DEAN L. SCHORNO
Dean L. Schorno
Chief Financial Officer

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Raul R. Rodriguez, Chief Executive Officer of Rigel Pharmaceuticals, Inc. (the "Company"), and Dean L. Schorno, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2019, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of November 5, 2019.

/s/ RAUL R. RODRIGUEZ

Raul R. Rodriguez
Chief Executive Officer

/s/ DEAN L. SCHORNO

Dean L. Schorno
Chief Financial Officer

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Rigel Pharmaceuticals, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.
