**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, 2022

or

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

For the transition period from _____ to _____

Commission file number: 001-40880

# XERIS BIOPHARMA HOLDINGS, INC.

(Exact name of the registrant as specified in its charter)

| **Delaware** | **87-1082097** |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| **180 N. LaSalle Street, Suite 1600 Chicago, Illinois** | **60601** |
| (Address of principal executive offices) | (Zip Code) |

**(844) 445-5704**

(Registrant's telephone number, including area code)

**Not applicable**

(Former name, former address and former fiscal year, if changed since last report)

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

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|---|---|
| **Common Stock, $0.0001 par value per share** | **XERS** | **The Nasdaq Global Select 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 | ☐ | Accelerated filer | ☐ |
| Non-accelerated filer | ☒ | Smaller reporting company | ☒ |
| | | Emerging growth company | ☒ |

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

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

As of October 31, 2022, 135,985,090 shares, par value $0.0001 per share, of common stock were outstanding.

**Summary of the Material Risks Associated with Our Business**

Our business is subject to numerous risks and uncertainties that you should be aware of in evaluating our business. These risks include, but are not limited to, the following:

- Our business may be adversely affected by the ongoing COVID-19 pandemic.
- As a company, we have a limited operating history and limited experience commercializing pharmaceutical products and have incurred significant losses since inception. We expect to incur losses over the next few years and may not be able to achieve or sustain revenues or profitability in the future.
- Although we generate revenue from Gvoke, Keveyis, and Recorlev, we have not yet generated revenue from any of our current or future product candidates, and may never be profitable.
- We may require additional capital to sustain our business, and this capital may cause dilution to our stockholders and might not be available on terms favorable to us, or at all, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.
- Our business depends entirely on the commercial success of our products and product candidates. Even if approved, our product candidates may not be accepted in the marketplace and our business may be materially harmed.
- If we are unable to establish or do not maintain sufficient marketing, sales and distribution capabilities or enter into agreements with third parties to market, sell and distribute our products on terms acceptable to us, we may not be able to generate product revenue and our business, results of operations, and financial condition will be materially adversely affected.
- Our reliance on third-party suppliers, including single-source suppliers, and a limited number of options for alternate sources for Gvoke, Keveyis, and Recorlev or our product candidates could harm our ability to develop our product candidates or to continue to commercialize Gvoke, Keveyis, Recorlev or any product candidates that are approved.
- Reimbursement decisions by third-party payors and consolidation within the healthcare industry and among competitors more generally may have an adverse effect on pricing and market acceptance. If there is not sufficient reimbursement for our products, it is less likely that they will be widely used and pricing pressure may impact our ability to sell our products at prices necessary to support our current business strategies.
- Clinical failure may occur at any stage of clinical development, and the results of our clinical trials may not support our proposed indications for our product candidates. If our clinical trials fail to demonstrate efficacy and safety to the satisfaction of the FDA or other regulatory authorities, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development of such product candidate.
- Gvoke, Keveyis, Recorlev and our product candidates may have undesirable side effects which may delay or prevent marketing approval, or, if approval is received, require them to include safety warnings, require them to be taken off the market or otherwise limit their sales.
- Our failure to successfully identify, develop and market additional product candidates, or acquire additional product candidates or enter into collaborations or other commercial agreements could impair our ability to grow.
- We operate in a competitive business environment and, if we are unable to compete successfully against our existing or potential competitors, our sales and operating results may be negatively affected and we may not successfully commercialize our products or product candidates, even if approved.
- Our success depends on our ability to protect our intellectual property and proprietary technology, as well as the ability of our collaborators to protect their intellectual property and proprietary technology.
- Our stock price has been and will likely continue to be volatile, and you may not be able to resell shares of our common stock at or above the price you paid.

The summary risk factors described above should be read together with the text of the full risk factors below in the section entitled "Risk Factors" and the other information set forth in this Quarterly Report on Form 10-Q, including our condensed consolidated financial statements and the related notes, as well as in other documents that we file with the U.S. Securities and Exchange Commission. The risks summarized above or described in full below are not the only risks that we face. Additional risks and uncertainties not precisely known to us or that we currently deem to be immaterial may also materially adversely affect our business, financial condition, results of operations and future growth prospects.

**XERIS BIOPHARMA HOLDINGS, INC.**

**Index to Quarterly Report on Form 10-Q**


| | Page |
|---|---|
| **Part I. Financial Information** | |
| Item 1. Financial Statements | |
| Condensed Consolidated Balance Sheets as of September 30, 2022 (unaudited) and December 31, 2021 | 4 |
| Condensed Consolidated Statements of Operations and Comprehensive Loss (unaudited) for the three and nine months ended September 30, 2022 and 2021 | 5 |
| Condensed Consolidated Statements of Stockholders' Equity (unaudited) for the three and nine months ended September 30, 2022 and 2021 | 6 |
| Condensed Consolidated Statements of Cash Flows (unaudited) for the nine months ended September 30, 2022 and 2021 | 7 |
| Notes to Condensed Consolidated Financial Statements | 8 |
| Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations | 30 |
| Item 3. Quantitative and Qualitative Disclosures About Market Risk | 38 |
| Item 4. Controls and Procedures | 39 |
| **Part II. Other Information** | |
| Item 1. Legal Proceedings | 39 |
| Item 1A. Risk Factors | 40 |
| Item 2. Unregistered Sales of Equity Securities and Use of Proceeds | 74 |
| Item 3. Defaults Upon Senior Securities | 75 |
| Item 4. Mine Safety Disclosures | 75 |
| Item 5. Other Information | 75 |
| Item 6. Exhibits | 76 |
| **Signatures** | 77 |


Solely for convenience, the trademarks and trade names in this Quarterly Report on Form 10-Q (this "Quarterly Report") are referred to without the ® and ™ symbols, but absence of such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto. The trademarks, trade names and service marks appearing in this Quarterly Report are the property of their respective owners.

**PART I. FINANCIAL INFORMATION**
**ITEM 1. FINANCIAL STATEMENTS**

**XERIS BIOPHARMA HOLDINGS, INC.**
**Condensed Consolidated Balance Sheets**
(in thousands, except share and par value)

| | September 30, 2022 | December 31, 2021 |
|---|---|---|
| **Assets** | (unaudited) | |
| Current assets: | | |
| Cash and cash equivalents | $ 84,109 | $ 67,271 |
| Short-term investments | 9,324 | 35,162 |
| Trade accounts receivable, net | 27,518 | 17,456 |
| Inventory | 20,121 | 18,118 |
| Prepaid expenses and other current assets | 7,847 | 4,589 |
| Total current assets | 148,919 | 142,596 |
| Property and equipment, net | 5,751 | 6,627 |
| Goodwill | 22,859 | 22,859 |
| Intangible assets, net | 123,318 | 131,450 |
| Other assets | 2,170 | 829 |
| Total assets | $ 303,017 | $ 304,361 |
| **Liabilities and Stockholders' Equity** | | |
| Current liabilities: | | |
| Accounts payable | $ 3,916 | $ 8,924 |
| Other accrued liabilities | 37,707 | 49,088 |
| Accrued trade discounts and rebates | 19,321 | 15,041 |
| Accrued returns reserve | 7,277 | 4,000 |
| Other current liabilities | 337 | 1,987 |
| Total current liabilities | 68,558 | 79,040 |
| Long-term debt, net of unamortized debt issuance costs | 138,507 | 88,067 |
| Contingent value rights | 30,100 | 22,531 |
| Supply agreement liability, less current portion | — | 5,991 |
| Deferred rent | 6,645 | 6,883 |
| Deferred tax liabilities | 3,856 | 4,942 |
| Other liabilities | 311 | 1,676 |
| Total liabilities | 247,977 | 209,130 |
| Commitments and contingencies (Note 16) | | |
| Stockholders' equity: | | |
| Preferred stock—par value $0.0001, 25,000,000 shares and 25,000,000 shares authorized and no shares issued and outstanding as of September 30, 2022 and December 31, 2021, respectively | — | — |
| Common stock—par value $0.0001, 350,000,000 shares and 350,000,000 shares authorized as of September 30, 2022 and December 31, 2021, respectively; 135,961,552 and 124,873,316 shares issued and outstanding as of September 30, 2022 and December 31, 2021, respectively | 14 | 13 |
| Additional paid in capital | 596,903 | 555,359 |
| Accumulated deficit | (541,840) | (460,110) |
| Accumulated other comprehensive loss | (37) | (31) |
| Total stockholders' equity | 55,040 | 95,231 |
| Total liabilities and stockholders' equity | $ 303,017 | $ 304,361 |

See accompanying notes to condensed consolidated financial statements.

**XERIS BIOPHARMA HOLDINGS, INC.**
**Condensed Consolidated Statements of Operations and Comprehensive Loss**
(in thousands, except share and per share data; unaudited)

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2022 | 2021 | 2022 | 2021 |
| Product revenue, net | $ 29,554 | $ 11,035 | $ 76,724 | $ 27,921 |
| Royalty, contract and other revenue | 171 | 25 | 380 | 240 |
| Total revenue | 29,725 | 11,060 | 77,104 | 28,161 |
| Costs and expenses: | | | | |
| Cost of goods sold, excluding amortization of intangible assets | 5,260 | 3,220 | 16,343 | 8,429 |
| Research and development | 6,043 | 5,663 | 16,011 | 15,078 |
| Selling, general and administrative | 34,491 | 26,535 | 103,388 | 71,539 |
| Amortization of intangible assets | 2,711 | — | 8,132 | — |
| Total costs and expenses | 48,505 | 35,418 | 143,874 | 95,046 |
| Loss from operations | (18,780) | (24,358) | (66,770) | (66,885) |
| Other income (expense): | | | | |
| Interest and other income | 472 | 66 | 735 | 243 |
| Interest expense | (3,989) | (1,798) | (10,958) | (5,384) |
| Change in fair value of warrants | 9 | 81 | 1,746 | 91 |
| Change in fair value of contingent value rights | 118 | — | (7,569) | — |
| Total other expense | (3,390) | (1,651) | (16,046) | (5,050) |
| Net loss before benefit from income taxes | (22,170) | (26,009) | (82,816) | (71,935) |
| Benefit from income taxes | 339 | — | 1,086 | — |
| Net loss | $ (21,831) | $ (26,009) | $ (81,730) | $ (71,935) |
| Other comprehensive loss, net of tax: | | | | |
| Unrealized gains (losses) on investments | 16 | (5) | (5) | (34) |
| Foreign currency translation adjustments | (1) | (1) | (1) | 2 |
| Comprehensive loss | $ (21,816) | $ (26,015) | $ (81,736) | $ (71,967) |
| Net loss per common share - basic and diluted | $ (0.16) | $ (0.39) | $ (0.60) | $ (1.11) |
| Weighted average common shares outstanding - basic and diluted | 135,951,761 | 66,497,593 | 135,508,203 | 64,722,552 |

See accompanying notes to condensed consolidated financial statements.

**XERIS BIOPHARMA HOLDINGS, INC.**
**Condensed Consolidated Statements of Stockholders' Equity**
(in thousands, except share data; unaudited)

| | Common Stock | | Additional Paid In Capital | Accumulated Other Comprehensive Income (Loss) | Accumulated Deficit | Total Stockholders' Equity |
|---|---|---|---|---|---|---|
| | Shares | Amount | | | | |
| Balance, December 31, 2020 | 59,611,202 | $ 6 | $ 371,134 | $ 6 | $ (337,385) | $ 33,761 |
| Net loss | — | — | — | — | (18,411) | (18,411) |
| Issuance of common stock upon equity offering | 6,553,398 | 1 | 26,924 | — | — | 26,925 |
| Exercise of stock options | 20,213 | — | 32 | — | — | 32 |
| Vesting of restricted stock units (net of 71,782 shares withheld for tax) | 148,643 | — | (365) | — | — | (365) |
| Stock-based compensation | — | — | 2,461 | — | — | 2,461 |
| Other comprehensive loss | — | — | — | (16) | — | (16) |
| Balance, March 31, 2021 | 66,333,456 | $ 7 | $ 400,186 | $ (10) | $ (355,796) | $ 44,387 |
| Net loss | — | — | — | — | (27,515) | (27,515) |
| Exercise of stock options | 55,818 | — | 140 | — | — | 140 |
| Stock-based compensation | — | — | 2,512 | — | — | 2,512 |
| Issuance of common stock through employee stock purchase plan | 108,096 | — | 374 | — | — | 374 |
| Other comprehensive loss | — | — | — | (10) | — | (10) |
| Balance, June 30, 2021 | 66,497,370 | $ 7 | $ 403,212 | $ (20) | $ (383,311) | 19,888 |
| Net loss | — | — | — | — | (26,009) | (26,009) |
| Exercise of stock options | 525 | — | 1 | — | — | 1 |
| Stock-based compensation | — | — | 3,665 | — | — | 3,665 |
| Other comprehensive loss | — | — | — | (6) | — | (6) |
| Balance, September 30, 2021 | 66,497,895 | $ 7 | $ 406,878 | $ (26) | $ (409,320) | (2,461) |

| | Common Stock | | Additional Paid In Capital | Accumulated Other Comprehensive Income (Loss) | Accumulated Deficit | Total Stockholders' Equity |
|---|---|---|---|---|---|---|
| | Shares | Amount | | | | |
| Balance, December 31, 2021 | 124,873,316 | $ 13 | $ 555,359 | $ (31) | $ (460,110) | $ 95,231 |
| Net loss | — | — | — | — | (33,714) | (33,714) |
| Issuance of common stock and warrants upon equity offering | 10,238,908 | 1 | 29,999 | — | — | 30,000 |
| Issuance of warrants related to loan agreement | — | — | 2,080 | — | — | 2,080 |
| Exercise of stock options | 11,228 | — | 8 | — | — | 8 |
| Vesting of restricted stock units (net of 197,257 shares withheld for tax) | 404,743 | — | (416) | — | — | (416) |
| Stock-based compensation | — | — | 3,301 | — | — | 3,301 |
| Other comprehensive loss | — | — | — | (35) | — | (35) |
| Balance, March 31, 2022 | 135,528,195 | $ 14 | $ 590,331 | $ (66) | $ (493,824) | $ 96,455 |
| Net loss | — | — | — | — | (26,185) | (26,185) |
| Vesting of restricted stock units (net of 1,317 shares withheld for tax) | 2,561 | — | (3) | — | — | (3) |
| Stock-based compensation | — | — | 3,152 | — | — | 3,152 |
| Issuance of common stock through employee stock purchase plan | 389,987 | — | 510 | — | — | 510 |
| Other comprehensive loss | — | — | — | 14 | — | 14 |
| Balance, June 30, 2022 | 135,920,743 | $ 14 | $ 593,990 | $ (52) | $ (520,009) | $ 73,943 |
| Net loss | — | — | — | — | (21,831) | (21,831) |
| Vesting of restricted stock units (net of 19,007 shares withheld for tax) | 40,809 | — | (28) | — | — | (28) |
| Stock-based compensation | — | — | 2,941 | — | — | 2,941 |
| Other comprehensive loss | — | — | — | 15 | — | 15 |
| Balance, September 30, 2022 | 135,961,552 | $ 14 | $ 596,903 | $ (37) | $ (541,840) | $ 55,040 |

See accompanying notes to condensed consolidated financial statements.

**XERIS BIOPHARMA HOLDINGS, INC.**
**Condensed Consolidated Statements of Cash Flows**
(in thousands; unaudited)

| | Nine Months Ended September 30, | |
|---|---|---|
| | **2022** | **2021** |
| Cash flows from operating activities: | | |
| Net loss | $ (81,730) | $ (71,935) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation | 1,033 | 980 |
| Amortization of intangible assets | 8,132 | — |
| Amortization of investments | 148 | 353 |
| Amortization of debt issuance costs | 1,111 | 727 |
| Stock-based compensation | 9,394 | 8,638 |
| Loss on extinguishment of debt | 1,223 | — |
| Loss on disposal of property and equipment | 236 | — |
| Change in fair value of warrants | (1,746) | (91) |
| Change in fair value of contingent value rights | 7,569 | — |
| Changes in operating assets and liabilities: | | |
| Trade accounts receivable | (10,062) | (6,686) |
| Prepaid expenses and other current assets | (2,758) | (386) |
| Inventory | (1,960) | (5,144) |
| Accounts payable | (5,008) | 1,173 |
| Other accrued liabilities | (12,135) | 4,650 |
| Accrued trade discounts and rebates | 4,280 | 798 |
| Accrued returns reserve | 3,277 | 272 |
| Deferred rent | (238) | — |
| Supply agreement liabilities | (5,280) | — |
| Other | (2,258) | 62 |
| Net cash used in operating activities | (86,772) | (66,589) |
| Cash flows from investing activities: | | |
| Capital expenditures | (392) | (954) |
| Purchases of investments | — | (30,784) |
| Sales and maturities of investments | 25,685 | 93,100 |
| Net cash provided by investing activities | 25,293 | 61,362 |
| Cash flows from financing activities: | | |
| Proceeds from equity offerings | 30,000 | 27,000 |
| Payments of equity offering costs | — | (54) |
| Proceeds from issuance of debt | 97,295 | — |
| Repayment of debt | (43,496) | — |
| Payments of debt issuance costs | (4,816) | — |
| Payments for loss on extinguishment of debt | (737) | — |
| Proceeds from issuance of employee stock purchase plan shares | 510 | 374 |
| Proceeds from exercise of stock awards | 8 | 167 |
| Repurchase of common stock withheld for taxes | (447) | (365) |
| Net cash provided by financing activities | 78,317 | 27,122 |
| Effect of exchange rate changes on cash and cash equivalents | — | (1) |
| Increase in cash and cash equivalents | 16,838 | 21,894 |
| Cash and cash equivalents, beginning of period | 67,271 | 37,598 |
| Cash and cash equivalents, end of period | $ 84,109 | $ 59,492 |
| Supplemental schedule of cash flow information: | | |
| Cash paid for interest | $ 7,689 | $ 5,350 |
| Supplemental schedule of non-cash investing and financing activities: | | |
| Issuance of warrants related to loan agreement | $ 2,080 | $ — |

See accompanying notes to condensed consolidated financial statements.

**Note 1. Organization and nature of the business**

***Nature of business***

Xeris Biopharma Holdings, Inc. ("Xeris Biopharma" or the "Company") is a growth-oriented biopharmaceutical company committed to improving patients' lives by developing and commercializing innovative products across a range of therapies. The Company currently has three commercially available products: Gvoke, a ready-to-use liquid glucagon for the treatment of severe hypoglycemia; Keveyis, the first and only U.S. Food and Drug Administration ("FDA") approved therapy for primary periodic paralysis ("PPP"); and Recorlev, approved by the FDA in December 2021 for the treatment of endogenous hypercortisolemia in adult patients with Cushing's Syndrome. The Company also has a pipeline of development programs to bring new products forward using its proprietary formulation technology platforms, XeriSol™ and XeriJect™.

On October 5, 2021, Xeris Pharmaceuticals, Inc. ("Xeris Pharma") acquired Strongbridge Biopharma plc ("Strongbridge"), a biopharmaceutical company commercializing therapies for rare diseases with significant unmet needs. Immediately following the acquisition and related transactions, both Xeris Pharma and Strongbridge became wholly-owned subsidiaries of Xeris Biopharma. The common stock of Xeris Pharma and the ordinary shares of Strongbridge were de-registered after completion of the Transactions (as defined below in Note 4). On October 6, 2021, Xeris Biopharma's common stock, par value $0.0001 per share, commenced trading on the Nasdaq Global Select Market ("Nasdaq") under the ticker symbol "XERS". See "Note 4 – Business combination" for a more detailed description of the Transactions.

As used herein, the "Company" or "Xeris" refers to Xeris Pharma when referring to periods prior to the acquisition of Strongbridge on October 5, 2021 and to Xeris Biopharma when referring to periods on or subsequent to October 5, 2021. Throughout this document, unless otherwise noted, references to Gvoke include Gvoke PFS, Gvoke HypoPen, Gvoke Kit and Ogluo (glucagon).

***Liquidity and capital resources***

The Company has incurred operating losses since inception and has an accumulated deficit of $541.8 million as of September 30, 2022. The Company expects to continue to incur net losses for at least the next 12 months beyond the issuance date of these consolidated financials. Based on the Company's current operating plans, existing working capital at September 30, 2022, capital raised in the first quarter and access to the additional $50.0 million remaining from the Credit Agreement and Guaranty with Hayfin Services LLP, the Company believes that its cash resources are sufficient to sustain operations and capital expenditure requirements for at least the next 12 months from the issuance date of these condensed consolidated financial statements. If needed, the Company may elect to finance its operations through equity or debt financing along with revenues.

There can be no assurance that such funding may be available to the Company on acceptable terms, or at all, or that the Company will be able to successfully market and sell Gvoke, Keveyis and Recorlev. Market volatility resulting from the COVID-19 pandemic, and geopolitical instability resulting from the ongoing military conflict between Russia and Ukraine, rising interest rates, inflationary pressures, the tightening of lending standards or other factors could also adversely impact the Company's ability to access capital as and when needed. The issuance of equity securities may result in dilution to stockholders. If the Company raises additional funds through the issuance of additional debt, which may have rights, preferences and privileges senior to those of our common stockholders, the terms of the debt could impose significant restrictions on the Company's operations. The failure to raise funds as and when needed could have a negative impact on the Company's financial condition and ability to pursue its business strategies. If additional funding is not secured when required, the Company may need to delay or curtail its operations until such funding is received, which would have a material adverse impact on the business prospects and results of operations.

**Note 2. Basis of presentation and summary of significant accounting policies and estimates**

***Basis of presentation***

The condensed consolidated financial statements are unaudited and have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"), including those for interim financial information, and with the instructions for Quarterly Reports on Form 10-Q and Article 10 of Regulation S-X issued by the U.S. Securities and Exchange Commission (the "SEC").

In the opinion of management, the accompanying condensed consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments, considered necessary for a fair presentation of the Company's financial position, results of operations and cash flows for the periods presented. The results of operations for such periods are not necessarily indicative of the results that may be expected for any future period. The accompanying financial statements should be read in conjunction with the audited financial statements and the related notes thereto for the year ended December 31, 2021 included in the Company's Annual Report on Form 10-K filed with the SEC on March 11, 2022.

Any reference in these notes to applicable guidance is meant to refer to GAAP as found in the Accounting Standards Codification ("ASC") and Accounting Standards Update ("ASU") issued by the Financial Accounting Standards Board ("FASB").

***Basis of consolidation***

These condensed consolidated financial statements include the financial statements of Xeris Biopharma Holdings, Inc. and subsidiaries. All intercompany transactions have been eliminated.

***Use of estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses included in the financial statements and accompanying notes. Actual results could differ from those estimates.

***Revenue recognition***

The Company applies the guidance in ASC 606, *Revenue Recognition*, to all contracts with customers within the scope of the standard.

The Company sells product primarily to wholesalers or a specialty pharmacy who subsequently resell to retail pharmacies or patients. The Company enters into arrangements with payors, group purchasing organizations, and healthcare providers that provide for government-mandated or privately-negotiated rebates, chargebacks and discounts related to the Company's products. The Company currently sells Gvoke, Keveyis and Recorlev in the United States only and Ogluo (the brand name in the European Union and United Kingdom for the Company's ready-to-use liquid glucagon product) in the United Kingdom.

Revenue is recognized when the Company's customer (e.g., a wholesaler or specialty pharmacy) obtains control of promised goods or services, which is when the Company's obligations under the terms of the contract with the customer are satisfied, based on the consideration the Company expects to receive in exchange for those goods or services.

Revenues are recorded at the net product sales price, which includes estimated allowances for patient copay assistance programs, prompt payment discounts, payor rebates, chargebacks, service fees, and product returns, all of which are recorded at the time of sale to the pharmaceutical wholesaler or other customer. The Company applies significant judgments and estimates in determining some of these allowances. If actual results differ from its estimates, adjustments are made to these allowances in the period in which the actual results or updates to estimates become known.

Refer to the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021 for further discussion of the Company's accounting policies.

***Concentration of credit risk***

For the three and nine months ended September 30, 2022, four customers accounted for 97% and 96% of the Company's gross product revenues, respectively. For the three and nine months ended September 30, 2021, three customers accounted for 94% and 94% of the Company's gross product revenues, respectively. At both September 30, 2022 and December 31, 2021, the same four customers accounted for 99% of the trade accounts receivable, net.

***New accounting pronouncements***

*Adopted accounting standards*

In May 2021, the FASB issued ASU No. 2021-04, *Earnings Per Share (Topic 260), Debt-Modifications and Extinguishments (Subtopic 470-50), Compensation-Stock Compensation (Topic 718), and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40)*. This standard addresses issuers' accounting for certain modifications or exchanges of freestanding equity-classified written call options. This standard is effective for all entities, for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. The Company adopted this standard in first quarter 2022 and it did not have a material impact on the financial statements.

*Pending accounting standards*

In October 2020, the FASB issued ASU 2020-10, *Codification Improvements*, to make incremental improvements to GAAP and address stakeholder suggestions, including, among other things, clarifying that the requirement to provide comparative information in the financial statements extends to the corresponding disclosures section. This standard will be effective for the Company for annual periods beginning after December 15, 2021 and interim periods within fiscal years beginning after December 15, 2022. Early adoption of this standard is permitted. The Company does not currently expect the adoption of this new standard to have a material impact on the financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. This standard eliminates certain accounting models to simplify the accounting for convertible instruments, expands the disclosure requirements related to the terms and features of convertible instruments, and amends the guidance for the derivatives scope exception for contracts settled in an entity's own equity. This standard enhances the consistency of earnings-per-

share ("EPS") calculations by requiring that an entity use the if-converted method and that the effect of potential share settlement be included in diluted EPS calculations and disclosures. This standard is effective for the Company for fiscal years beginning after December 15, 2023. Early adoption is permitted but not earlier than periods beginning after December 15, 2020. The Company is currently evaluating the impact the adoption of this new standard will have on the financial statements and disclosures.

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This standard provides optional expedients for application of GAAP, if certain criteria are met, to contracts and other transactions that reference London Inter-bank Offered Rate ("LIBOR") or other reference rates that are expected to be discontinued because of reference rate reform. This standard is effective for all entities as of March 12, 2020 through December 31, 2022. The Company does not currently expect the adoption of this new standard to have a material impact on the financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. This standard eliminates certain exceptions in the current guidance related to the approach for intra-period tax allocation and the methodology for calculating income taxes in an interim period and amends other aspects of the guidance to help clarify and simplify U.S. GAAP. This standard is effective for the Company for annual periods beginning after December 15, 2021 and interim periods within fiscal years beginning after December 15, 2022. Early adoption of this standard is permitted. The Company does not currently expect the adoption of this new standard to have a material impact on the financial statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. This standard requires entities to estimate an expected lifetime credit loss on financial assets ranging from short-term trade accounts receivable to long-term financings and report credit losses using an expected losses model rather than the incurred losses model that was previously used and establishes additional disclosures related to credit risks. For available-for-sale debt securities with unrealized losses, the standard requires allowances to be recorded instead of reducing the amortized cost of the investment. This standard limits the amount of credit losses to be recognized for available-for-sale debt securities to the amount by which carrying value exceeds fair value and requires the reversal of previously recognized credit losses if the fair value increases. This standard would have been effective for the Company for fiscal years beginning after December 15, 2020, and interim periods within fiscal years beginning after December 15, 2021. The effective date of ASC Topic 326 was then delayed until fiscal years beginning after December 15, 2022 for SEC filers that are eligible to be smaller reporting companies under the SEC’s definition, as well as private companies and not-for-profit entities. The Company is currently evaluating the impact the adoption of this new standard will have on the financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842).* The new standard requires lessees to record a right-of-use asset and a lease liability for all leases with a term of greater than twelve months regardless of their classification. Leases will be classified as either operating or finance leases under the new guidance. Operating leases will result in straight-line expense in the income statement, similar to current operating leases, and finance leases will result in more expense being recognized in the earlier years of the lease term, similar to current capital leases. This standard is effective for the Company for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. The FASB has extended the effective date of this standard for certain companies. As amended in ASU 2020-05, this standard will be effective for the Company for fiscal years beginning after December 15, 2021 and interim periods within fiscal years beginning after December 15, 2022.

The Company will adopt the new standard using the modified retrospective approach by recognizing and measuring leases without revising comparative period information or disclosures. The Company will also elect the transition package of three practical expedients permitted within the standard, which among other things, allows for the carryforward of historical lease classifications.

The Company is still evaluating the impact of this new standard on the financial statements and related disclosures. The current estimated impact of the adoption of this new standard is the recognition of a right of use ("ROU") asset within the range of $5.0 million to $7.0 million and a lease liability within the range of $12.0 million to $14.0 million to be recorded as of January 1, 2022, but not reflected until we officially adopted the standard in the fourth quarter of 2022. The Company does not anticipate that the adoption of this standard will have a significant impact on the consolidated statements of operations and comprehensive loss or the consolidated statements of cash flows.

**Note 3. Disaggregated revenue**

The Company’s revenue is comprised primarily of sales of products and royalty revenue. Depending on the type of contract, the method of accounting and timing of revenue recognition may differ. Below is a description of the Company’s different types of revenue.

- Product revenue - The Company sells product primarily to wholesalers or a specialty pharmacy who subsequently resell to retail pharmacies or patients. The Company enters into arrangements with payors, group purchasing organizations, and healthcare providers that provide for government-mandated or privately-negotiated rebates, chargebacks and discounts related to the Company’s products. Revenue is recognized at the point in time when the Company's customer (e.g., a

wholesaler or specialty pharmacy) obtains control of promised goods or services, which is when the Company's obligations under the terms of the contract with the customer are satisfied, based on the consideration the Company expects to receive in exchange for those goods or services.

- Royalty, contract and other revenue - Royalty and contract revenue is recognized as earned in accordance with contract terms when it can be reasonably estimated and collectability is reasonably assured.

The disaggregated revenue by primary products is as follows:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2022 | 2021 | 2022 | 2021 |
| Product revenue (in thousands): | | | | |
| Gvoke | $ 13,663 | $ 11,035 | $ 37,595 | $ 27,921 |
| Keveyis | 13,371 | — | 35,506 | — |
| Recorlev | 2,520 | — | 3,623 | — |
| Product revenue, net | 29,554 | 11,035 | 76,724 | 27,921 |
| Royalty, contract and other revenue | 171 | 25 | 380 | 240 |
| Total revenue | $ 29,725 | $ 11,060 | $ 77,104 | $ 28,161 |

**Note 4. Business combination**

On October 5, 2021 (the "acquisition closing date"), pursuant to the Transaction Agreement, dated as of May 24, 2021 (the "Transaction Agreement"), among Xeris Pharma, Strongbridge, Xeris Biopharma and Wells MergerSub, Inc., Xeris Pharma completed the acquisition of Strongbridge (the "Acquisition"). Upon completion of the Acquisition, (a) the Company acquired Strongbridge by means of a scheme of arrangement (the "Scheme") under Irish law pursuant to which the Company acquired all of the outstanding ordinary shares of Strongbridge ("Strongbridge Shares") in exchange for (i) 0.7840 of a share of the Company’s common stock ("Company Shares") and cash in lieu of fractions of Company Shares in exchange for each Strongbridge Share held by such Strongbridge Shareholders and (ii) one (1) non-tradeable Contingent Value Right ("CVR"), worth up to a maximum of $1.00 per Strongbridge Share settleable in cash, additional Company Shares, or a combination of cash and additional Company Shares, at the Company’s sole election and (b) MergerSub merged with and into Xeris Pharma, with Xeris Pharma, as the surviving corporation in the merger (the “Merger,” and the Merger together with the Acquisition, the "Transactions").

Upon completion of the Merger, (a) each share of Xeris Pharma common stock was assumed by the Company and converted into the right to receive one Company Share and any cash in lieu of fractional entitlements due to a Xeris Pharma shareholder and (b) each Xeris Pharma option, stock appreciation right, restricted share award and other Xeris Pharma share based award that was outstanding was assumed by the Company and converted into an equivalent equity award of the Company, which award was subject to the same number of shares and the same terms and conditions as were applicable to the Xeris Pharma award in respect of which it was issued. On October 6, 2021, the Company’s common stock, par value $0.0001 per share, commenced trading on the Nasdaq Global Select Market ("Nasdaq") under the ticker symbol "XERS".

See "Note 15 – Stock compensation plans" for a more detailed description of the equity award plans assumed in the Transactions. See "Note 12 – Warrants" for a more detailed description of the warrants assumed in the Transactions.

The Acquisition was accounted for as a business combination using the acquisition method of accounting under the provisions of ASC 805, *Business Combinations*.

The Acquisition has and will continue to diversify and increase the Company’s revenue base into the specialized commercial platforms and expand the development pipeline. Additionally, the Company expects to achieve significant synergies by eliminating redundant processes and reducing headcount, most notably within the commercial, executive and general and administrative functions.

***Acquisition consideration***

The acquisition-date fair value of the consideration transferred totaled $169.1 million, which consisted of the following:

| Fair value of consideration transferred (in thousands, except share number) | | |
|---|---|---|
| Xeris Biopharma Holdings, Inc. common shares (58,082,606 shares) | $ | 137,655 |
| Unexercised Strongbridge options assumed by Xeris Pharma and converted into options to purchase Company Shares | | 6,404 |
| Strongbridge warrants | | 2,467 |
| Contingent consideration (Contingent value rights) | | 22,531 |
| Total consideration | $ | 169,057 |

The fair value of the common stock issued was determined based on the closing market price of shares of the Company's common stock on the acquisition date. There were no changes to the purchase price allocation in 2022 and the measurement period closed on June 30, 2022.

The fair value of the equity accounting warrants, which were assumed by the Company in connection with the Transactions, was determined using the Black-Scholes valuation model, which considers the expected terms of the warrants from the acquisition closing date as well as the risk-free interest rate, new exercise price after the 0.7840 conversion rate multiplied by and a volatility of 89.63% (a weighting of 60% of Xeris volatility and 40% of Strongbridge volatility is used).

The fair value of the private placement warrants which were assumed by the Company in connection with the Transactions, was determined using the Black-Scholes valuation model which considers the expected terms of the private placement warrants from the acquisition closing date as well as the risk-free interest rate, current exercise price of $2.50 multiplied by (the average of Xeris Pharma closing prices for the 20-day period ending three trading days prior to acquisition closing date/the average of Strongbridge closing prices for the 20-day period ending three trading days prior to acquisition closing date) and a volatility of 50%.

The CVRs represent contingent additional consideration of up to $1.00 for each CVR, payable to CVR holders, to satisfy future performance milestones, settleable in cash, common stock, or a combination of cash and common stock, at the Company's sole election. The CVRs are conditioned upon the achievement of the following:

- Keveyis Milestone: $0.25 per CVR, upon the earlier of the first listing of any patent in the FDA's Orange Book for Keveyis by the end of 2023 or the first achievement of at least $40 million in net revenue of Keveyis in 2023;
- 2023 Recorlev Milestone: $0.25 per CVR, upon the first achievement of at least $40 million in net revenue of Recorlev in 2023; and
- 2024 Recorlev Milestone: $0.50 per CVR, upon the first achievement of at least $80 million in net revenue of Recorlev in 2024.

Refer to "Note 13 - Fair Value Measurements", for information related to the fair value measurements on CVRs and valuation methods utilized.

As of the acquisition closing date, there were approximately 74.1 million CVRs. There will be additional issuances of up to 10.5 million CVRs to holders of Strongbridge rollover options and assumed warrants upon exercise.

***Purchase price allocation***

In accordance with ASC 805, Xeris Pharma was determined to be the accounting acquirer in the Acquisition. The Company has applied the acquisition method of accounting that requires, among other things, that identifiable assets acquired and liabilities assumed generally be recognized on the balance sheet at fair value as of the acquisition date. In determining the fair value, the Company utilized various forms of the income, cost and market approaches depending on the asset or liability being fair valued. The estimation of fair value required significant judgment related to future net cash flows (including revenue, operating expenses, and working capital), discount rates reflecting the risk inherent in each cash flow stream, competitive trends, market comparables and other factors. Inputs were generally determined by taking into account historical data (supplemented by current and anticipated market conditions), trends and growth rates.

The table below presents the estimated fair value that was allocated to Strongbridge's assets and liabilities based upon fair values as determined by the Company (in thousands):

| | | Fair Value |
|---|---|---|
| Cash and cash equivalents | $ | 38,469 |
| Trade accounts receivable | | 4,344 |
| Inventory | | 1,862 |
| Prepaid expenses and other current assets | | 4,683 |
| Property and equipment | | 161 |
| IPR&D | | 121,000 |
| Other intangible asset | | 11,000 |
| Other assets | | 860 |
| Total identifiable assets acquired | | 182,379 |
| Accounts payable | | (279) |
| Other accrued liabilities | | (13,703) |
| Accrued trade discounts and rebates | | (4,844) |
| Supply agreement liability | | (12,000) |
| Deferred tax liabilities | | (4,942) |
| Other liabilities | | (413) |
| Total liabilities assumed | | (36,181) |
| Net identifiable assets acquired | | 146,198 |
| Goodwill | | 22,859 |
| Net assets acquired | $ | 169,057 |

There were no changes to the purchase price allocation in 2022 and the measurement period closed on June 30, 2022.

The following is a description of the methods used to determine the fair values of significant assets and liabilities.

*In-process research and development ("IPR&D") and other intangible asset*

The IPR&D intangible asset represents the recording of the acquired IPR&D indefinite-lived intangible asset related to Recorlev. The other intangible asset represents the commercial product in the form of Keveyis. The fair value for the IPR&D and other intangible assets were based on assumptions developed by management and other information compiled by management including, but not limited to, discounted future expected cash flows. The fair value of intangibles relies heavily on projected future net cash flows including, but not limited to, key assumptions for revenue and operating expenses. The discount rates used for intangible assets are based on current market rates and reflect the risk inherent in each cash flow stream. The estimated useful life of the intangible asset of Keveyis is five years which reflects the time period in which the Company expects to receive the benefits of the related cash flows.

*Goodwill*

The excess of the consideration transferred over the fair value of assets acquired and liabilities assumed was recognized as goodwill. Goodwill is generated from operational synergies and cost savings the Company expects to achieve from the combined operations and Strongbridge's knowledgeable and experienced workforce. The majority of the goodwill is not expected to be deductible for tax purposes.

***Transaction costs***

In connection with the Transactions, the Company incurred significant expenses in 2021, including transaction costs (e.g., bankers' fees, legal fees, consultant fees, etc.). Such transaction costs totaled $8.6 million and were recorded in the selling, general and administrative expenses in third quarter 2021 through second quarter 2022. No additional transaction costs were incurred in third quarter 2022.

***Supplemental pro forma information***

The following unaudited supplemental pro forma financial information assumes the companies were combined as of January 1, 2021. The pro forma financial information as presented below is for informational purposes only and is based on estimates and assumptions that have been made solely for purposes of developing such pro forma information. This is not necessarily indicative of the results of

operations that would have been achieved if the Acquisition had taken place on January 1, 2021, nor is it necessarily indicative of future results. Consequently, actual results could differ materially from the unaudited pro forma financial information presented below. The following table presents the pro forma operating results as if Strongbridge had been included in the Company's Condensed Consolidated Statements of Operations as of January 1, 2021 (unaudited, in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2022 | 2021 | 2022 | 2021 |
| Revenue | $ 29,725 | $ 22,556 | $ 77,104 | $ 58,081 |
| Net loss | $ (21,831) | $ (28,566) | $ (81,730) | $ (96,544) |

These amounts have been calculated after applying the Company's accounting policies and adjusting the results of Xeris to reflect the additional depreciation and amortization that would have been charged assuming the fair value adjustments to intangible assets had been applied on January 1, 2021.

The unaudited supplemental pro forma information above does not include any cost saving synergies from operating efficiencies. There is a tax impact on the pro forma adjustments due to deferred tax liabilities being greater than the deferred tax assets in Ireland. For the other non-Irish entities, there is no tax impact of the pro forma adjustments reflected as both companies are, and have been for some time, in net operating loss positions and have full valuation allowances against their net deferred tax assets on both a historical and pro forma basis.

**Note 5. Short-term investments**

The Company classifies investments in debt securities as available-for-sale. Debt securities are comprised of highly liquid investments with minimum "A" rated securities and, as of September 30, 2022, consist of U.S. Treasury and agency bonds and corporate entity commercial paper and securities, all with maturities of more than three months but less than one year at the date of purchase. Debt securities as of September 30, 2022 had an average remaining maturity of 0.1 years. The debt securities are reported at fair value with unrealized gains or losses recorded in accumulated other comprehensive income (loss) in the Condensed Consolidated Balance Sheets. Refer to "Note 13 - Fair Value Measurements", for information related to the fair value measurements and valuation methods utilized.

The following table represents the Company's available-for-sale investments by major security type as of September 30, 2022 and December 31, 2021 (in thousands):

| | September 30, 2022 | | | |
|---|---|---|---|---|
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Total Fair Value |
| Investments: | | | | |
| Commercial paper | $ 5,399 | $ — | $ — | $ 5,399 |
| Corporate securities | 2,624 | — | (7) | 2,617 |
| Foreign government securities | 1,313 | — | (5) | 1,308 |
| Total available-for-sale investments | $ 9,336 | $ — | $ (12) | $ 9,324 |

| | December 31, 2021 | | | |
|---|---|---|---|---|
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Total Fair Value |
| Investments: | | | | |
| Commercial paper | $ 21,773 | $ — | $ — | $ 21,773 |
| Corporate securities | 12,072 | 2 | (7) | 12,067 |
| Foreign government securities | 1,324 | — | (2) | 1,322 |
| Total available-for-sale investments | $ 35,169 | $ 2 | $ (9) | $ 35,162 |

The Company reviews available-for-sale investments for other-than-temporary impairment loss periodically. The Company considers factors such as the duration, severity of and reason for the decline in value, the potential recovery period and our intent to sell. For

debt securities, the Company also considers whether (i) it is more likely than not that the Company will be required to sell the debt securities before recovery of their amortized cost basis and (ii) the amortized cost basis cannot be recovered as a result of credit losses. During the nine months ended September 30, 2022 and 2021, the Company did not recognize any other-than-temporary impairment losses. All marketable securities with unrealized losses have been in a loss position for less than twelve months.

**Note 6. Inventory**

The components of inventories consisted of the following (in thousands):

| | September 30, 2022 | December 31, 2021 |
|---|---|---|
| Raw materials | $ 6,047 | $ 5,181 |
| Work in process | 9,380 | 7,442 |
| Finished goods | 4,694 | 5,495 |
| Inventory | $ 20,121 | $ 18,118 |

Inventory reserves were $1.2 million and $1.0 million at September 30, 2022 and December 31, 2021, respectively.

**Note 7. Property and equipment**

Property and equipment consisted of the following (in thousands):

| | September 30, 2022 | December 31, 2021 |
|---|---|---|
| Lab equipment | $ 3,710 | $ 3,739 |
| Furniture and fixtures | 1,355 | 1,355 |
| Computer equipment | 473 | 307 |
| Office equipment | 8 | 28 |
| Software | 307 | 307 |
| Leasehold improvements | 5,066 | 5,026 |
| Total property and equipment | 10,919 | 10,762 |
| Less: accumulated depreciation and amortization | (5,168) | (4,135) |
| Property and equipment, net | $ 5,751 | $ 6,627 |

Depreciation and amortization expense relating to property and equipment was $0.4 million and $0.3 million for the three months ended September 30, 2022 and September 30, 2021, respectively. Depreciation and amortization expense relating to property and equipment was $1.0 million and $1.0 million for the nine months ended September 30, 2022 and September 30, 2021, respectively.

**Note 8. Intangible assets**

Identified intangible assets consisted of the following (in thousands):

| | | September 30, 2022 | | | December 31, 2021 | | |
|---|---|---|---|---|---|---|---|
| | Life (Years) | Gross assets | Accumulated amortization | Net | Gross assets | Accumulated amortization | Net |
| Definite-lived intangible asset - Keveyis | 5 | $ 11,000 | $ (2,200) | $ 8,800 | $ 11,000 | $ (550) | $ 10,450 |
| Definite-lived intangible asset - Recorlev | 14 | 121,000 | (6,482) | 114,518 | 121,000 | — | 121,000 |
| Total intangible assets | | $ 132,000 | $ (8,682) | $ 123,318 | $ 132,000 | $ (550) | $ 131,450 |

Keveyis is the developed product rights obtained from Strongbridge's acquisition of U.S. marketing rights to Keveyis (dichlorphenamide) from Taro Pharmaceuticals U.S.A., Inc. ("Taro").

Recorlev was acquired as a result of the Acquisition and was approved by the FDA on December 30, 2021. The IPR&D asset was reclassified as a definite-lived intangible asset in 2021 and began being amortized on a straight-line basis over an estimated useful life of 14 years assigned based on the economic life and remaining patent life.

As of September 30, 2022, expected amortization expense for intangible assets subject to amortization for the next five years is as follows (in thousands):

| | |
|---|---|
| 2022 remaining | $ 2,711 |
| 2023 | 10,843 |
| 2024 | 10,843 |
| 2025 | 10,843 |
| 2026 | 10,293 |
| Thereafter | 77,785 |
| Total | $ 123,318 |

**Note 9. Other accrued liabilities**

Other accrued liabilities consisted of the following (in thousands):

| | September 30, 2022 | December 31, 2021 |
|---|---|---|
| Accrued employee costs | $ 10,792 | $ 19,638 |
| Supply agreement - current portion | 6,720 | 6,009 |
| Accrued supply chain costs | 1,287 | 595 |
| Accrued marketing costs | 3,714 | 3,237 |
| Accrued research and development costs | 1,417 | 1,998 |
| Accrued restructuring charges | 3,854 | 6,715 |
| Accrued interest expense | 3,459 | 1,413 |
| Accrued Strongbridge transaction costs | — | 1,839 |
| Accrued other costs | 6,464 | 7,644 |
| Other accrued liabilities | $ 37,707 | $ 49,088 |

**Note 10. Restructuring costs**

After the completion of the Acquisition on October 5, 2021, the Company undertook a strategic restructuring to streamline the organization and realize operating expense synergies. The costs associated with the restructuring include employee termination costs. The Company expects to incur total restructuring cost of approximately $11.1 million related to this plan, which has been fully recorded as of September 30, 2022. Costs of $1.5 million were incurred in the nine months ended September 30, 2022, with the majority incurred in first quarter 2022. The majority of the restructuring costs are included in selling, general and administrative expenses in the Condensed Consolidated Statements of Operations and Comprehensive Loss. The Company anticipates the restructuring related to the Strongbridge acquisition to be substantially complete by fourth quarter 2023. The restructuring reserve is included in other accrued liabilities and other liabilities in the Condensed Consolidated Balance Sheets.

The following table summarizes the initial restructuring reserve in connection with the Strongbridge acquisition and the payments made during the nine months ended September 30, 2022 (in thousands):

| | Restructuring Costs |
|---|---|
| Balance accrued at December 31, 2021 | $ 6,713 |
| Restructuring costs | 1,488 |
| Payments | (4,068) |
| Balance accrued at September 30, 2022 [1] | $ 4,133 |

[1] Approximately $279,000 of the restructuring cost was included in the other long-term liabilities as of September 30, 2022.

**Note 11. Long-term debt**

*Convertible Senior Notes*

In June 2020, Xeris Pharma completed a public offering of $86.3 million aggregate principal amount of Xeris Pharma's 5.00% Convertible Senior Notes due 2025 (the "Convertible Notes"), including $11.3 million pursuant to the underwriters' option to purchase additional notes, which was exercised in full in July 2020. Xeris Pharma incurred debt issuance costs of $5.1 million in connection with the issuance of the Convertible Notes. Xeris Pharma used $20.0 million and $4.2 million of the net proceeds from the sale to prepay a portion of the principal amount on the Term A Loan (as defined below) and the remaining amount of borrowings outstanding under the PPP Loan (as defined below), respectively.

The Convertible Notes are governed by the terms of a base indenture for senior debt securities dated June 30, 2020 (the "Base Indenture"), between Xeris Pharma and U.S. Bank National Association, as trustee, as supplemented by the first supplemental indenture thereto dated June 30, 2020 (the "First Supplemental Indenture"), between U.S. Bank National Association, as trustee, and the second supplemental indenture thereto dated October 5, 2021 (the "Supplemental Indenture" and together with the Base Indenture and First Supplemental Indenture, the "Indenture"), among the Company, Xeris Pharma and U.S. Bank National Association, as trustee. The Convertible Notes bear cash interest at the rate of 5.00% per annum, payable semi-annually in arrears on January 15 and July 15 of each year, beginning on January 15, 2021, to holders of record at the close of business on the preceding January 1 and July

1, respectively. The Convertible Notes will mature on July 15, 2025, unless earlier converted or redeemed or repurchased by the Company.

At any time before the close of business on the second scheduled trading day immediately before the maturity date, holders of Convertible Notes may convert their Convertible Notes at their option into shares of the Company's common stock, together, if applicable, with cash in lieu of any fractional share, at the then-applicable conversion rate. The conversion rate for the Convertible Notes will initially be 326.7974 shares of the Company's common stock per $1,000 principal amount of Convertible Notes, which represents an initial conversion price of approximately $3.06 per share of common stock, and is subject to adjustment under the terms of the Convertible Notes. In the event of certain circumstances, the Company will increase the conversion rate, provided that the conversion rate will not exceed 367.6470 shares of the Company's common stock per $1,000 principal amount of Convertible Notes.

In the second half of 2020, $8.4 million in principal amount of Convertible Notes were converted into 2,736,591 shares of Xeris Pharma's common stock at the conversion rate of 326.7974 shares per $1,000 principal amount of Convertible Notes. Additionally, in the fourth quarter of 2020, Xeris Pharma entered into separate, privately negotiated exchange agreements with certain holders of Convertible Notes to exchange $30.7 million in principal amount of Convertible Notes for 10,435,200 shares of Xeris Pharma's common stock. Xeris Pharma recognized a $2.6 million loss related to the convertible note exchange transactions.

The Convertible Notes are senior, unsecured obligations and are equal in right of payment with Xeris Pharma's existing and future senior, unsecured indebtedness, senior in right of payment to its future indebtedness, if any, that is expressly subordinated to the Convertible Notes, and effectively subordinated to its existing and future secured indebtedness to the extent of the value of the collateral securing that indebtedness. The Convertible Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent Xeris Pharma is not a holder thereof) preferred equity, if any, of the Company's other direct and indirect subsidiaries.

As a result of the Transactions, and pursuant to the Second Supplemental Indenture, the Convertible Notes are no longer convertible into shares of common stock of Xeris Pharma common stock. Instead, subject to the terms and conditions of the Indenture, the Convertible Notes will be exchangeable into cash and shares of common stock of the Company in proportion to the transaction consideration payable pursuant to the Transaction Agreement, and the "Reference Property" provisions in the Indenture.

Pursuant to the Second Supplemental Indenture, the Company agreed to guarantee (a) the full and punctual payment when due of all monetary obligations of Xeris Pharma under the Indenture and (b) the full and punctual performance within applicable grace periods of all other obligations of Xeris Pharma under the Indenture.

*Loan Agreement*

In September 2019, Xeris Pharma entered into an Amended and Restated Loan and Security Agreement (the "Amended Loan Agreement") with Oxford Finance LLC ("Oxford"), as the collateral agent (in such capacity, the "Collateral Agent") and a lender, and Silicon Valley Bank, as a lender ("SVB", and together with Oxford, the "Prior Lenders"), which amended and restated that certain Loan and Security Agreement dated February 28, 2018 with the Prior Lenders, in its entirety. The Amended Loan Agreement provided for the Prior Lenders to extend up to $85.0 million in term loans to Xeris Pharma in three tranches of which $60.0 million was drawn down in September 2019.

In March 2022, the Company, Xeris Pharma and certain subsidiary guarantors of the Company entered into a Credit Agreement and Guaranty (the "Hayfin Loan Agreement") with the lenders from time to time parties thereto (the "Lenders") and Hayfin Services LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the "Agent"), pursuant to which the Company and its subsidiaries party thereto granted a first priority security interest on substantially all of their assets, including intellectual property, subject to certain exceptions. The Hayfin Loan Agreement provided for the Lenders to extend $100.0 million in term loans (the "Initial Loan") to the Company on the closing date and up to an additional $50.0 million in delayed draw term loans during the one year period immediately following the closing date (the "Delayed Draw Term Loan" and, together with the Initial Loan, the "Loans") in no more than three drawings of no less than $10.0 million per drawing, subject to the Company being in pro forma compliance with the financial covenants and other conditions set forth therein. In conjunction with the execution of the Hayfin Loan Agreement, the Amended Loan Agreement balance of $43.5 million was repaid in full and fees of $2.1 million in connection with the loan repayment were paid. In addition to utilizing the proceeds to repay the obligations under the Amended Loan Agreement in full, the proceeds will otherwise be used for general corporate purposes. After repayment, the Loans may not be re-borrowed.

All of the Loans incur interest at a floating per annum rate in an amount equal to the sum of (i) 9.0% (or 8.0% per annum if the replacement rate in effect is the Wall Street Journal Prime Rate) plus (ii) the greater of (x) (1) CME Group Benchmark Administration Limited (CBA) Term SOFR (or the replacement rate, if applicable) if CBA Term SOFR is greater than 1.00% plus 0.26161% or (2) 1.00% if CME Term SOFR is less than 1.00% and (y) one percent (1.00%) per annum (or 2.0% per annum if the replacement rate in effect is the Wall Street Journal Prime Rate). The Company has incurred total debt issuance costs of approximately $3.5 million related to the Hayfin Loan Agreement, which are being amortized to interest expense over the life of the loan using the effective interest method. The remaining balance of unamortized debt issuance costs have been reflected as a direct reduction to the loan

balance. The effective interest rate, including the amortization of debt discount and debt issuance costs, amounts to 12.1%, maturing March 2027. The debt outstanding under the Hayfin Loan Agreement approximates fair value due to the variable interest rate on the debt.

The Loans will mature on March 8, 2027; provided, however, that the Loans will mature on January 15, 2025 if the Convertible Notes are still outstanding as of such date and either (i) the maturity date thereof has not been extended to a date on or after September 4, 2027 or (ii) the Company has not received net cash proceeds from one or more permitted equity raises or permitted raises of convertible debt which, together with no more than $15.0 million of cash on hand, is sufficient to redeem and discharge the Convertible Notes in full.

The Hayfin Loan Agreement allows the Company to voluntarily prepay the outstanding amounts thereunder. The Company is subject to an early prepayment fee equal to (i) for any prepayment that occurs prior to the second anniversary of the closing date, the applicable make-whole amount, (ii) for any prepayment that occurs after the second anniversary of the closing date but on or prior to the fourth anniversary of the closing date: (x) the amount of any principal so prepaid, multiplied by (y) for any prepayment that occurs (A) after the second anniversary of the closing date and on or prior to the third anniversary of the closing date, five percent (5.0%), (B) after the third anniversary of the closing date and on or prior to the fourth anniversary of the closing date, three percent (3.0%), and (C) after the fourth anniversary of the closing date, zero percent (0.0%).

The Hayfin Loan Agreement contains customary representations and warranties, events of default and affirmative and negative covenants, including, among others, covenants that limit or restrict the Company's ability to incur additional indebtedness, grant liens, merge or consolidate, make acquisitions, pay dividends or other distributions or repurchase equity, make investments, dispose of assets and enter into certain transactions with affiliates, in each case subject to certain exceptions. Associated with the Hayfin Loan Agreement, the Lenders also received warrants to purchase 1,315,789 shares of the common stock of the Company at a price of $2.28 per share. Refer to "Note 12 - Warrants" for further information on the warrants.

On September 29, 2022, the Company entered into Amendment No. 1 to Credit Agreement and Guaranty ("Amendment No. 1") with Xeris Pharma, the Lenders parties thereto and the Agent, to amend the Hayfin Loan Agreement. Amendment No. 1 provides for the Lenders' consent to and allows for the issuance of the letter of credit that was issued to the landlord under the Amended and Restated Lease dated September 29, 2022 between Xeris Pharma and Fulton Ogden Venture, LLC, as the landlord, for the premises located at 1375 West Fulton Street in Chicago.

The components of debt are as follows (in thousands):

| | September 30, 2022 | December 31, 2021 |
|---|---|---|
| Convertible Notes | $ 47,175 | $ 47,175 |
| Loan facility | 96,140 | 43,500 |
| Less: unamortized debt issuance costs | (4,808) | (2,608) |
| Long-term debt, net of unamortized debt issuance costs | $ 138,507 | $ 88,067 |

The following table sets forth the Company's future minimum principal payments on the Convertible Note and the loan facility (in thousands):

| | |
|---|---|
| 2022 remaining | $ — |
| 2023 | — |
| 2024 | — |
| 2025 | 47,175 |
| 2026 | — |
| Thereafter | 100,000 |
| | $ 147,175 |

For the three and nine months ended September 30, 2022, the Company recognized interest expense of $4.0 million and $11.0 million, respectively, of which $0.4 million and $1.1 million, respectively, related to the amortization of debt discount and issuance costs and a $1.2 million loss on extinguishment of debt in the nine months ended September 30, 2022 related to the Amended Loan Agreement with the Prior Lenders, which ceased in March 2022. For the three and nine months ended September 30, 2021, the Company recognized interest expense of $1.8 million and $5.4 million, respectively, of which $0.2 million and $0.7 million, respectively, related to the amortization of debt issuance costs.

**Note 12. Warrants**

On completion of the Strongbridge Acquisition, (a) each outstanding and unexercised Strongbridge warrant (except private placement warrants) was assumed by the Company such that, upon exercise, the applicable holders will have the right to have delivered to them the reference property (as such term is defined in the Strongbridge assumed warrants) and (b) each outstanding and unexercised Strongbridge private placement warrant was assumed by the Company such that the applicable holders will have the right to subscribe for Company Shares, in accordance with certain terms of the Strongbridge private placement warrants. The assumed Strongbridge private placement warrants expired in June 2022.

Associated with the Armistice securities purchase agreement disclosed in "Note 14 - Stockholders' equity", the Company also issued warrants (the "Armistice Warrants") to purchase an aggregate of 5,119,454 shares of the Company's common stock at an exercise price of $3.223 per share. The warrants became exercisable immediately upon the closing of the transaction and have a term of five years from the earliest of the date (a) of effectiveness of the resale registration statement, which was February 7, 2022, (b) all of the shares of the Company's common stock issued or issuable to Armistice under the securities purchase agreement and all shares of the Company's common stock issuable upon exercise of the warrants (the "Warrant Shares") have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions, (c) following the one-year anniversary of the date of closing provided that the holder of Shares or Warrant Shares is not an affiliate of the Company, or (d) all of the shares and Warrant Shares may be sold pursuant to an exemption from registration under Section 4(a)(1) of the Securities Act without volume or manner-of-sale restrictions.

Associated with the Hayfin Loan Agreement disclosed in "Note 11 - Long-term Debt", the Lenders also received warrants to purchase 1,315,789 shares of the common stock of the Company at a price of $2.28 per share. The warrants are (i) exercisable until the seventh (7th) anniversary of the closing date; (ii) freely transferable and detachable from the Loans; and (iii) subject to customary warrant holder rights and protections, including structural-based anti-dilution protection and adjustments for stock dividends, splits, combinations, reclassifications and the like.

As of September 30, 2022, the following warrants were outstanding:

| | Outstanding Warrants | Exercise Price per Warrant | Expiration Date |
|---|---|---|---|
| **Warrants classified as liabilities:** | | | |
| 2018 Term A Warrants | 53,720 | $11.169 | February 2025 |
| 2018 Term B Warrants | 40,292 | $11.169 | September 2025 |
| | 94,012 | | |
| **Warrants classified as equities:** | | | |
| Warrants in connection with CRG loan agreement | 309,122 | $9.410 | July 2024 |
| Warrants in connection with CRG loan amendment in January 2018 | 978,628 | $12.760 | January 2025 |
| Warrants in connection with Avenue Capital loan agreement | 209,633 | $2.390 | May 2025 |
| Warrants in connection with Avenue Capital loan agreement | 209,633 | $2.390 | December 2025 |
| Warrants in connection with Horizon and Oxford loan agreement | 125,999 | $3.130 | December 2026 |
| Warrants in connection with Armistice securities purchase agreement | 5,119,454 | $3.223 | February 2027 |
| Warrants in connection with Hayfin loan agreement | 1,315,789 | $2.280 | March 2029 |
| | 8,268,258 | | |

The Company recognized gains of $8,000 and $1,000 upon the change in fair value of the warrants during the three months ended September 30, 2022 related to the 2018 Term A Warrants and the 2018 Term B Warrants, respectively. The Company recognized losses of $46,000 and $35,000 upon the change in fair value of the warrants during the three months ended September 30, 2021 related to the 2018 Term A Warrants and the 2018 Term B Warrants, respectively.

The Company recognized gains of $42,000 and $27,000 upon the change in fair value of the warrants during the nine months ended September 30, 2022 related to the 2018 Term A Warrants and the 2018 Term B Warrants, respectively. The Company recognized gains of $1.7 million related to the change in fair value and the expiration of the assumed Strongbridge private placement warrants in June 2022. The Company recognized gains of $53,000 and $38,000 upon the change in fair value of the warrants during the nine months ended September 30, 2021 related to the 2018 Term A Warrants and the 2018 Term B Warrants, respectively.

**Note 13. Fair value measurements**

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value measurements are classified and disclosed in one of the following categories:

Level 1: Measured using unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.

Level 2: Measured using quoted prices in active markets for similar assets or liabilities, quoted prices for identical or similar assets or liabilities in markets that are not active, or inputs, other than quoted prices in active markets, that are observable either directly or indirectly.

Level 3: Measured based on prices or valuation models that require inputs that are both significant to the fair value measurement and less observable from objective sources (i.e., supported by little or no market activity).

Fair value measurements are classified based on the lowest level of input that is significant to the measurement. The Company's assessment of the significance of a particular input to the fair value measurement requires judgment, which may affect the valuation of the assets and liabilities and their placement within the fair value hierarchy levels. The determination of the fair values stated below takes into account the market for the financial assets and liabilities, the associated credit risk and other factors as required. The Company considers active markets as those in which transactions for the assets or liabilities occur in sufficient frequency and volume to provide pricing information on an ongoing basis.

The following tables present the Company's fair value hierarchy for those assets and liabilities measured at fair value as of September 30, 2022 and December 31, 2021 (in thousands):

| | Total as of September 30, 2022 | Level 1 | Level 2 | Level 3 |
|---|---|---|---|---|
| *Assets* | | | | |
| Cash and cash equivalents: | | | | |
| Cash and money market funds | $ 84,109 | $ 84,109 | $ — | $ — |
| Investments: | | | | |
| Corporate securities | 2,617 | — | 2,617 | — |
| Commercial paper | 5,399 | — | 5,399 | — |
| Foreign government | 1,308 | — | 1,308 | — |
| Total investments | $ 9,324 | $ — | $ 9,324 | $ — |
| *Liabilities* | | | | |
| Contingent value rights | $ 30,100 | $ — | $ — | $ 30,100 |
| Warrant liabilities | $ 23 | $ — | $ — | $ 23 |

| | Total as of December 31, 2021 | Level 1 | Level 2 | Level 3 |
|---|---|---|---|---|
| *Assets* | | | | |
| Cash and cash equivalents: | | | | |
| Cash and money market funds | $ 67,271 | $ 67,271 | $ — | $ — |
| Investments: | | | | |
| Corporate securities | 12,067 | — | 12,067 | — |
| Commercial paper | 21,773 | — | 21,773 | — |
| Foreign government | 1,322 | $ — | 1,322 | — |
| Total investments | $ 35,162 | $ — | $ 35,162 | $ — |
| *Liabilities* | | | | |
| Contingent value rights | $ 22,531 | $ — | $ — | $ 22,531 |
| Warrant liabilities | $ 1,769 | $ — | $ — | $ 1,769 |

*Contingent Value Rights*

Upon completion of the Merger described in "Note 4 – Business combination", the Company acquired all of the outstanding Strongbridge Shares in exchange for (i) 0.7840 of a share of the Company Shares and cash in lieu of fractions of Company Shares in exchange for each Strongbridge Share held by such Strongbridge Shareholders and (ii) one CVR. Strongbridge's outstanding equity awards were treated as set forth in the Transaction Agreement, such that (i) each Strongbridge Share Award was vested and settled for Strongbridge Shares immediately prior to the effective time of the Scheme, (ii) each Strongbridge Option became fully vested and exercisable immediately prior to the effective time of the Scheme, (iii) each unexercised Strongbridge Option was assumed by the Company and converted into an option to purchase Company Shares.

The fair value of the CVRs is calculated by using a discounted cash flow method for the Keveyis patent milestone and an option pricing method for the Recorlev and Keveyis sales milestones. In the case of Keveyis milestones, the Company applies a scenario-based method and weighted them based on the possible achievement of the milestone. This fair value measurement is based on significant inputs not observable in the market and thus represents a Level 3 measurement as defined in ASC 820, *Fair Value Measurement*. The key assumptions used include the discount rate and sales growth. The estimated value of the CVR consideration is preliminary only and is based upon available information and certain assumptions which the Company's management believes are reasonable under the circumstances. The ultimate payout under the CVRs may differ materially from the assumptions used in determining the fair value of the CVR consideration.

Contingent consideration obligations are recorded at their estimated fair values and these obligations are revalued each reporting period until the related contingencies are resolved. The contingent value rights are adjusted to fair value using the methods described above at the end of each reporting period. Significant changes which increase or decrease the probabilities of achieving the related milestones or shorten or lengthen the time required to achieve such events would result in corresponding increases or decreases in the fair values of these obligations.

The Company has determined that the CVR liabilities' fair values are Level 3 items within the fair value hierarchy. The following table presents the change in the CVR liabilities (in thousands):

| | | |
|---|---|---|
| Balance at December 31, 2021 | $ | 22,531 |
| Change in fair value of CVRs | | 7,569 |
| Balance at September 30, 2022 | $ | 30,100 |

As of September 30, 2022, the CVRs were revalued at $30.1 million using the same methods described above. During the nine months ended September 30, 2022, a loss of $7.6 million was recognized in the Condensed Consolidated Statements of Operations and Comprehensive Loss for the changes in the fair values of the CVRs. Refer to "Note 16 – Commitments and contingencies" for additional information on the CVRs.

*Warrant liability*

The fair value of the Company's warrant liabilities is based on a Black-Scholes valuation, which considers the expected term of the warrants as well as the risk-free interest rate and expected volatility of the Company's common stock. The uncertainty of the fair value measurement due to the use of unobservable inputs and interrelationships between these unobservable inputs could result in higher or lower fair value measurement.

The Company has determined that the warrant liabilities' fair values are Level 3 items within the fair value hierarchy. The following table presents the change in the warrant liabilities (in thousands):

| | | |
|---|---|---|
| Balance at December 31, 2021 | $ | 1,769 |
| Change in fair value of warrants | | (1,746) |
| Balance at September 30, 2022 | $ | 23 |

There were no transfers between any of the levels of the fair value hierarchy during the nine months ended September 30, 2022.

**Note 14. Stockholders' equity**

The Company has not paid any cash dividends on the common stock during the periods presented.

On January 3, 2022, the Company entered into a securities purchase agreement in connection with a private placement with an affiliate of Armistice Capital, LLC ("Armistice") for aggregate gross proceeds of approximately $30.0 million. In accordance with the purchase agreement, the Company issued to Armistice an aggregate of (i) 10,238,908 shares of the Company's common stock, par value $0.0001 per share at a purchase price of $2.93 per share, and (ii) warrants to purchase an aggregate of 5,119,454 shares of the

Company's common stock at an exercise price of $3.223 per share. The warrants became exercisable immediately upon the closing of the transaction and have a term of five years from the earliest of the date (a) of effectiveness of the resale registration statement, which was February 7, 2022, (b) all of the shares and the Company's common stock issuable upon exercise of the warrants (the "Warrant Shares") have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions, (c) following the one-year anniversary of the date of closing provided that the holder of Shares or Warrant Shares is not an affiliate of the Company, or (d) all of the shares and Warrant Shares may be sold pursuant to an exemption from registration under Section 4(a)(1) of the Securities Act without volume or manner-of-sale restrictions.

**Note 15. Stock compensation plan**

In 2011, the Company adopted the 2011 Stock Option Issuance Plan (the "2011 Plan") and subsequently amended it to authorize the Board of Directors to issue up to 4,714,982 incentive stock option and non-qualified stock option awards.

The 2018 Stock Option and Incentive Plan (the "2018 Plan") was adopted by the Board of Directors in April 2018 and approved by the Company's stockholders in June 2018 to award up to 1,822,000 shares of common stock. This plan became effective on the date immediately prior to the effectiveness of the Company's IPO registration statement. The 2018 Plan replaced the 2011 Plan as the Board of Directors decided not to make additional awards under the 2011 Plan following the closing of the IPO, which occurred in June 2018. The 2018 Plan allows the compensation committee to make equity-based and cash-based incentive awards to the Company's officers, employees, directors and other key persons (including consultants). No grants of stock options or other awards may be made under the 2018 Plan after the tenth anniversary of the effective date.

The 2018 Plan provides that the number of shares reserved and available for issuance under the plan will automatically increase each January 1, beginning on January 1, 2019, and each January 1 thereafter, by 4% of the outstanding number of shares of our common stock on the immediately preceding December 31, or such lesser number of shares as determined by the compensation committee. This number is subject to adjustment in the event of a stock split, stock dividend or other change affecting the Company's common stock. On January 1, 2022 and 2021, the number of shares of common stock available for issuance under the 2018 Plan was automatically increased by 4,994,933 shares and 2,384,448 shares, respectively. As of September 30, 2022, there were 3,115,603 shares of common stock available for future issuance under the 2018 Plan.

The 2018 Employee Stock Purchase Plan (the "ESPP") was adopted by the Board of Directors in April 2018 and approved by the Company's stockholders in June 2018 to issue up to 193,000 shares of common stock to participating employees. Through the ESPP, eligible employees may authorize payroll deductions of up to 15% of their compensation to purchase up to the number of shares of common stock determined by dividing $25,000 by the closing market price of Xeris common stock on the offering date. The purchase price per share at each purchase date is equal to 85% of the lower of (i) the closing market price per share of Xeris common stock on the employee’s offering date or (ii) the closing market price per share of Xeris common stock on the purchase date. Each offering period has a six-month duration and purchase interval with a purchase date of the last business day of June and December each year. This plan became effective on the date immediately prior to the effectiveness of the Company's IPO registration statement. The ESPP provides that the number of shares reserved and available for issuance will automatically increase each January 1, beginning on January 1, 2019 and each January 1 thereafter through January 1, 2028, by the least of (i) 1% of the outstanding number of shares of our common stock on the immediately preceding December 31; (ii) 386,000 shares or (iii) such lesser number of shares as determined by the ESPP administrator. On January 1, 2022 and 2021, the number of shares of common stock available for issuance under the ESPP increased by 386,000 shares and 386,000 shares, respectively. The number of shares reserved under the ESPP is subject to adjustment in the event of a stock split, stock dividend or other change affecting the Company's common stock. The Company issued 389,987 shares at a price of $1.54 per share for the ESPP offering period which ended June 30, 2022. As of September 30, 2022, there were 473,740 shares available for issuance under the ESPP.

The Equity Inducement Plan (the "Inducement Plan") was adopted by the Board of Directors in February 2019. The Inducement Plan was adopted without stockholder approval pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules. The Inducement Plan allows the Company to make stock option or restricted stock unit awards to prospective employees of the Company as an inducement to such individuals to commence employment with the Company. The Company uses this Inducement Plan to help it attract and retain prospective employees who are necessary to support the commercialization of products and the expansion of the Company generally. The Company initially reserved 750,000 shares of common stock for the issuance of awards under the Inducement Plan. This number is subject to adjustment in the event of a stock split, stock dividend or other change affecting the Company's common stock. As of September 30, 2022, there were 241,885 shares of common stock available for future issuance under the Inducement Plan.

On October 8, 2020, the Company's stockholders, upon recommendation of the Board of Directors, approved an amendment to the Company's 2011 Plan and 2018 Plan to allow the Company to permit certain employee option holders, subject to specified conditions, to exchange some or all of their outstanding options to purchase shares of the Company's common stock for a lesser number of new options to purchase shares of the Company’s common stock (the "Option Exchange").

On November 10, 2020, the Company filed with the SEC a Tender Offer Statement on Schedule TO defining the terms and conditions of the Option Exchange. The total number of shares of common stock underlying a new option with respect to an exchanged eligible option was determined by dividing the number of shares of common stock underlying the exchanged eligible option by the applicable exchange ratio and rounding to the nearest whole number, subject to the terms and conditions described in the Exchange Offer. On December 10, 2020, the completion date of the Option Exchange, the Company canceled the options accepted for exchange and granted 832,907 new options to purchase shares of common stock in exchange for 1,127,906 options issued under the 2011 Plan and 2018 Plan. The exercise price per share of the options granted pursuant to the Exchange Offer was $4.09 per share, which was the closing price per share of common stock on The Nasdaq Global Select Market on the grant date of such new options. The new options will vest and become exercisable in two equal installments following the grant date, subject to an option holder's continuous service, and expire seven years from the grant date. On the grant date, the fair values of the options exchanged were similar to the fair values of the new options granted and, as such, the incremental compensation cost related to the Option Exchange was not material.

*Assumed Plans*

At the effective time of the Scheme, Strongbridge’s outstanding equity awards were treated as set forth in the Transaction Agreement, such that (i) each award (other than options to buy shares, each a "Strongbridge Share Award") denominated in Strongbridge Shares was vested and settled for Strongbridge Shares immediately prior to the effective time of the Scheme, (ii) each Strongbridge Option became fully vested and exercisable immediately prior to the effective time of the Scheme, (iii) each unexercised Strongbridge Option was assumed by the Company and converted into an option to purchase Company shares (each, a "Strongbridge Rollover Option"), with the exercise price per Company share and the number of Company shares underlying the Strongbridge Rollover Option adjusted to reflect the conversion from Strongbridge Shares into Company shares, provided that each Strongbridge Rollover Option will continue to have, and be subject to, the same terms and conditions that applied to the corresponding Strongbridge Rollover Option (except for terms rendered inoperative by reason of the Acquisition or for immaterial administrative or ministerial changes that are not adverse to any holder other than in any de minimis respect), provided that the terms of each Strongbridge Rollover Option with an exercise price of $4.50 or less (prior to the adjustment described above) were amended to provide that it shall remain exercisable for a period of time following the effective time of the Scheme equal to the lesser of (A) the maximum remaining term of such corresponding Strongbridge Option and (B) the fourth anniversary of the effective date of the Merger, in each case regardless of whether the holder of such Strongbridge Rollover Option experiences a termination of employment or service on or following the effective time of the Scheme.

On the acquisition closing date, the Company assumed all then-outstanding stock options and shares available and reserved for issuance under some legacy equity incentive plans of Strongbridge, including the Strongbridge 2015 equity compensation plan and Strongbridge 2017 inducement plan (collectively, the "Assumed Plans"). Shares reserved under the Assumed Plans will be available for future grants. The Company also assumed all then-outstanding stock options from the rest of the legacy equity incentive plans of Strongbridge without assuming the shares available and reserved for issuance under these plans. The number of shares subject to stock options outstanding under all Strongbridge legacy equity incentive plans are included in the tables below. As of September 30, 2022, there were 3,481,192 shares reserved for future grants under the Assumed Plans.

CVRs were also issued to the holders of Strongbridge vested and unexercised options that were outstanding and assumed by the Company at the acquisition date, provided that in no event shall such holder be entitled to any payments with respect to such CVR unless the corresponding option has been exercised on or prior to any such payment.

*Stock options*

Stock options are granted with an exercise price equal to the market price of the Company’s stock at the date of grant. Stock option awards typically vest over either two, three or four years after the grant date and expire seven to ten years from the grant date.

The fair value of each option is estimated on the date of grant using a Black-Scholes option valuation model that uses the assumptions noted in the following table. The expected term of options represents the period of time that options granted are expected to be outstanding. The risk-free interest rate for periods during the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant. The expected stock price volatility assumption is based on the historical volatilities of a peer group of publicly traded companies as well as the historical volatility of the Company's common stock since the Company began trading subsequent to the IPO in June 2018 over the period corresponding to the expected life as of the grant date. The expected dividend yield is based on the expected annual dividend as a percentage of the market value of the Company’s ordinary shares as of the grant date.

The fair value of stock options granted during the period was estimated with the following weighted average assumptions:

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2022 | 2021 |
| Expected term (years) | 5.5 | 6.0 |
| Risk-free interest rate | 3.01% | 1.14% |
| Expected volatility | 80.18% | 76.30% |
| Expected dividends | — | — |

Stock option activity under the 2011 Plan, 2018 Plan, Inducement Plan and Assumed Plans for the nine months ended September 30, 2022 was as follows:

| | Number of Options | Weighted Average Exercise Price Per Share | Weighted Average Contractual Life (Years) |
|---|---|---|---|
| Outstanding - December 31, 2021 | 11,362,336 | $ 5.86 | 5.62 |
| Granted | 175,000 | 2.10 | |
| Exercised | (11,228) | 0.69 | |
| Forfeited | (74,665) | 5.26 | |
| Expired | (1,632,695) | 8.57 | |
| Outstanding - September 30, 2022 | 9,818,748 | $ 5.35 | 4.91 |
| Exercisable - September 30, 2022 | 8,720,670 | $ 5.45 | 4.58 |
| Vested and expected to vest at September 30, 2022 | 9,818,748 | $ 5.35 | 4.91 |

The weighted average fair value of awards granted during the nine months ended September 30, 2022 was $1.43 per share.

At September 30, 2022, there was a total of $2.6 million of unrecognized stock-based compensation expense related to stock options that is expected to be recognized over a weighted average period of 1.2 years.

*Restricted Share Units*

The Company grants RSUs to employees. RSUs that are granted vest over either three or four years in equal annual installments beginning on the one-year anniversary of the date of grant, provided that the employee is employed by the Company on such vesting date. If and when the RSUs vest, the Company will issue one share of common stock for each whole RSU that has vested, subject to satisfaction of the employee's tax withholding obligations. Upon vesting and settlement of RSUs or exercise of stock options, at the election of the grantee, the Company does not collect withholding taxes in cash from employees. Instead, the Company withholds upon settlement as RSUs vest, or as stock options are exercised, the portion of those shares with a fair market value equal to the amount of the minimum statutory withholding taxes due. The withheld shares are accounted for as repurchases of common stock. Stock-based compensation expense related to RSUs is recognized on a straight-line basis over the employee's requisite service period.

A summary of outstanding RSU awards and the activity for the nine months ended September 30, 2022 was as follows:

| | Number of Units | Weighted Average Grant Date Fair Value Per Share |
|---|---|---|
| Unvested balance - December 31, 2021 | 2,005,041 | $ 5.15 |
| Granted | 4,299,100 | 2.75 |
| Vested | (665,569) | 5.63 |
| Forfeited | (409,611) | 2.94 |
| Unvested balance - September 30, 2022 | 5,228,961 | $ 3.29 |

As of September 30, 2022, there was $12.2 million of unrecognized stock-based compensation expense related to RSUs, which is expected to be recognized over the weighted-average remaining vesting period of 2.1 years.

The following table summarizes the reporting of total stock-based compensation expense resulting from stock options, RSUs and the ESPP (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2022 | 2021 | 2022 | 2021 |
| Cost of goods sold | $ — | $ 31 | $ — | $ 78 |
| Research and development | 332 | 398 | 1,295 | 1,152 |
| Selling, general and administrative | 2,609 | 3,236 | 8,099 | 7,408 |
| Total stock-based compensation expense | $ 2,941 | $ 3,665 | $ 9,394 | $ 8,638 |

**Note 16. Commitments and contingencies**

***Commitments***

Commitments to Taro Pharmaceuticals U.S.A., Inc. ("Taro")

Upon the completion of Strongbridge acquisition, the Company also acquired the supply agreement Strongbridge had with Taro to produce Keveyis. Strongbridge was obligated to purchase annual minimum amounts of product totaling approximately $29.1 million over a six-year period from Taro. As of September 30, 2022, the remaining obligation under the Supply Agreement was $8.0 million. The term of the agreement with Taro was renewed for an additional two years beyond the termination of the orphan exclusivity period. If Taro declines to renew the agreement during the next renewal period, the Company has the right to manufacture the product on its own or have the product manufactured by a third party on its behalf. The Company is also required to reimburse Taro for a royalty obligation resulting from its sale of Keveyis to the Company.

Leases

The Company has non-cancellable operating leases for office and laboratory space, which expire at various times in 2031 and 2037. The non-cancellable lease agreements provide for monthly lease payments which increase during the term of each lease agreement.

On September 29, 2022, Xeris Pharma entered into an Amended and Restated Lease (the "Lease") with Fulton Ogden Venture, LLC ("Landlord") whereby Xeris Pharma will lease approximately 87,032 square feet of office and laboratory space at 1375 West Fulton Street, Chicago, Illinois (the "Premises"), which Premises includes Xeris Pharma's existing laboratory space. The term of the original lease commenced on January 1, 2020 as to Xeris Pharma's existing space at 1375 West Fulton Street, and the Lease will commence on the later of the substantial completion of the Landlord's improvement work and April 1, 2023 ("Expansion Commencement Date") as

to the expansion portion of the Premises, and for the entire Premises, the term will expire on the earlier of the last day of the One Hundred Fifty-Sixth ($156^{th}$) full calendar month following the Expansion Commencement Date and March 31, 2037, unless extended or earlier terminated pursuant to the terms of the Lease. Xeris Pharma has the option to extend the term of the Lease for two successive five-year periods, subject to the terms and conditions of the Lease. In addition, the Lease contains customary default provisions, including, without limitation, those relating to payment default and bankruptcy events.

A copy of the Lease is filed as an exhibit to this Form 10-Q.

Future minimum lease payments under operating leases at September 30, 2022 are as follows (in thousands):

| | | |
|---|---|---|
| 2022 remaining | $ | 356 |
| 2023 | | 1,444 |
| 2024 | | 4,890 |
| 2025 | | 6,080 |
| 2026 | | 6,232 |
| Thereafter | | 58,378 |
| Total minimum lease payments | $ | 77,380 |

Total rent expense under these operating leases was $0.7 million and $0.6 million for the three months ended September 30, 2022 and September 30, 2021, respectively, and $2.2 million and $1.8 million for the nine months ended September 30, 2022 and September 30, 2021, respectively.

As of September 30, 2022, the Company had unused letters of credit of $1.5 million, which were issued primarily to secure leases. Amendment No. 1 to the Hayfin Loan Agreement disclosed in "Note 11 - Long-term Debt", which provides for the Lenders' consent to and allows for the issuance of the Letter of Credit that is to be issued to the Landlord under the Lease, Xeris Pharma amended the existing letter of credit to increase its face value from $0.4 million to $3.2 million to secure its obligations under the Lease in October.

***Contingencies***

CVR liability

Upon closing the Transactions, the Company entered into a CVR Agreement. Each CVR entitles its holder to receive additional consideration of up to $1.00, to satisfy future performance milestones, settleable in cash, common stock, or a combination of cash and common stock, at the Company's sole election. As of the acquisition closing date, there were approximately 74.1 million CVRs. There will be additional issuances of up to 10.5 million CVRs to holders of Strongbridge rollover options and assumed warrants upon exercise.

Litigation

From time to time, the Company may become involved in various legal actions arising in the ordinary course of business. As of September 30, 2022, management was not aware of any existing, pending or threatened legal actions that would have a material impact on the financial position or results of operations of the Company.

Long Term Debt

In the event the Convertible Notes are still outstanding as of January 15, 2025 and the maturity date thereof has not been extended to a date on or after September 4, 2027, then unless the Company has received net cash proceeds from one or more permitted equity raises or permitted raises of convertible debt which, together with no more than $15.0 million of cash on hand, is sufficient to redeem and discharge the Convertible Notes in full, then the loans outstanding under the Hayfin Loan Agreement will mature on January 15, 2025.

**Note 17. Net loss per common share**

Basic and diluted net loss per common share are determined by dividing net loss applicable to common stockholders by the weighted average common shares outstanding during the period. For all periods presented, the shares issuable upon conversion, exercise or vesting of Convertible Notes, warrants, stock option awards and RSUs have been excluded from the calculation because their effects would be anti-dilutive. Therefore, the weighted average common shares outstanding used to calculate both basic and diluted net loss per common share are the same.

The following potentially dilutive securities were excluded from the computation of diluted weighted average common shares outstanding due to their anti-dilutive effect:

| | As of September 30, | |
|---|---|---|
| | **2022** | **2021** |
| Shares to be issued upon conversion of Convertible Notes | 15,416,667 | 15,416,667 |
| Vested and unvested stock options | 9,818,748 | 5,013,525 |
| Restricted stock units | 5,228,961 | 2,062,907 |
| Warrants | 8,362,270 | 94,012 |
| Total anti-dilutive securities excluded from EPS computation [2] | 38,826,646 | 22,587,111 |

[2] Total anti-dilutive securities exclude CVRs which are settleable in cash, additional Xeris Biopharma shares, or a combination, at the election of the Company.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

**Cautionary statements for forward-looking information**

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our financial statements and notes to those financial statements appearing elsewhere in this Quarterly Report on Form 10-Q and with the audited financial statements and the notes to those financial statements included in the Annual Report on Form 10-K filed on March 11, 2022 with the U.S. Securities and Exchange Commission. In addition to financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. All statements in this document other than statements of historical fact are, or could be, "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as "will," "would," "may," "should," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continue," and terms of similar meaning are also generally intended to identify forward-looking statements. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors, including without limitation, the regulatory approval of our product candidates, our ability to market and sell our products and product candidates if approved, the effect of uncertainties related to the current coronavirus pandemic, or any other health epidemic, on U.S. and global markets, our business, financial condition, operations, third-party suppliers or the global economy as a whole, and other factors discussed in Item 1A of Part II of this Quarterly Report on Form 10-Q. Any forward-looking statements contained herein speak only as of the date hereof, and Xeris expressly disclaims any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

**Overview**

Unless otherwise indicated, references to "Xeris," the "Company," "we," "our" and "us" in this Quarterly Report on Form 10-Q refer to Xeris Pharmaceuticals, Inc. ("Xeris Pharma") when referring to periods prior to the acquisition of Strongbridge Biopharma plc, an Irish public limited company ("Strongbridge") (discussed below) on October 5, 2021 and to Xeris Biopharma Holdings, Inc. when referring to periods on or subsequent to October 5, 2021. Throughout this document, unless otherwise noted, references to Gvoke include Gvoke PFS, Gvoke HypoPen, Gvoke Kit and Ogluo (glucagon).

We are a growth-oriented biopharmaceutical company committed to improving patients lives by developing and commercializing innovative products across a range of therapies. We currently have three commercially available products, Gvoke, a ready-to-use liquid glucagon for the treatment of severe hypoglycemia, Keveyis, the first and only U.S. Food and Drug Administration ("FDA") approved therapy for primary periodic paralysis ("PPP") and Recorlev, approved by the FDA in December 2021 for the treatment of endogenous hypercortisolemia in adult patients with Cushing's Syndrome. We also have a pipeline of development programs to bring new products forward using our proprietary formulation technology platforms, XeriSol™ and XeriJect™.

***Acquisition of Strongbridge***

On May 24, 2021, Xeris Pharma and Strongbridge entered into the Transaction Agreement together with Xeris Biopharma Holdings, Inc., a Delaware corporation ("the Company"), and Wells MergerSub, Inc., a Delaware corporation ("MergerSub") (the "Transaction Agreement") whereby we would acquire Strongbridge (the "Acquisition") pursuant to a scheme of arrangement (the "Scheme") under Irish law. Under the terms of the Transaction Agreement, (i) the Company acquired Strongbridge by means of the Acquisition pursuant to the Scheme and (ii) MergerSub merged with and into Xeris Pharma, with Xeris Pharma as the surviving corporation in the merger (the "Merger," and the Merger together with the Acquisition, the "Transactions"). As a result of the Transactions, both Xeris Pharma and Strongbridge became wholly owned subsidiaries of the Company. The Company acquired all of the outstanding Strongbridge ordinary shares ("Strongbridge Shares") in exchange for (i) 0.7840 of a share of the Company's common stock ("Company Shares") and cash in lieu of fractions of Company Shares due to a holder of Strongbridge Shares per Strongbridge Share and (ii) one (1) non-tradeable contingent value right, worth up to a maximum of $1.00 per Strongbridge Share settleable in cash, additional Company Shares, or a combination of cash and additional Company Shares, at the Company's sole discretion. On October 5, 2021, pursuant to the Transaction Agreement, we completed the Transactions.

Through the Acquisition, we added Keveyis (dichlorphenamide) to our commercial product portfolio. Keveyis is the first and only treatment approved by FDA for hyperkalemic, hypokalemic, and related variants of primary periodic paralysis ("PPP"), a group of rare hereditary disorders that cause episodes of muscle weakness or paralysis. In addition, we added a clinical-stage product candidate for rare endocrine diseases, Recorlev. Recorlev (levoketoconazole), the pure 2S,4R enantiomer of the enantiomeric pair comprising ketoconazole, is a next-generation steroidogenesis inhibitor which serves as a chronic therapy for adults with endogenous Cushing's syndrome. Levoketoconazole has received orphan designation from the FDA and the European Medicines Agency. Recorlev was acquired as an in-process research and development asset and subsequently approved by the FDA on December 30, 2021 for the treatment of endogenous hypercortisolemia in adult patients with Cushing's syndrome for whom surgery is not an option or has not been curative. Recorlev was commercially launched in January 2022.

***Patents***

We currently own 143 patents issued globally, including a composition of matter patent covering our ready-to-use glucagon formulation that expires in 2036. Upon completion of the Transactions, Xeris Biopharma Holdings, Inc. controls the patents of Xeris Pharma and Strongbridge Dublin Limited, the latter of which has 53 granted patents globally related to proprietary formulations of levoketoconazole (the active pharmaceutical ingredient in Recorlev) and the uses of such formulations in treating certain endocrine-related diseases and syndromes. This includes US Patent No. 11,020,393, which was granted on June 1, 2021, and which provides patent protection through 2040 for the use of Recorlev in the treatment of certain patients with persistent or recurrent Cushing's syndrome.

***Outlook and strategies***

Our goal is to build a leading and profitable biopharmaceutical company that innovates products that improve the lives of patients. To achieve our goal, we are pursuing the following strategies:

- ***Maximize the commercial potential of our three commercial products.*** We have built out a robust endocrinology and rare disease-focused commercial infrastructure – including fully operational patient and provider support teams – primed to bring the benefits of our products to a wider range of patients with unmet needs. Our sales, marketing, market access and patient service capabilities in the United States are positioned to drive the growth of our products. We believe that our ability to execute on this strategy is enhanced by the significant commercial experience of key members of our management team.
- ***Create momentum through commercial execution leading to profitability.*** We have three innovative commercial assets: Gvoke, Keveyis and Recorlev. Gvoke and Keveyis are growing in large untapped addressable markets. We are executing the launch of Recorlev, leveraging our experienced, endocrinology-focused commercial infrastructure, in a large and unsatisfied Cushing Syndrome marketplace. Through the momentum created by the execution of our three commercial products, we believe we will have a path to profitability.
- ***Continue to leverage our technology and expertise to develop a portfolio of product candidates.*** We have a pipeline of development programs to bring new products forward using our formulation technology platforms, supporting long-term product development and commercial success. XeriSol and XeriJect have broad application and have the potential to be utilized across a range of potential product candidates in multiple therapeutic areas.
- ***Collaborate with pharmaceutical and biotechnology companies to apply our technology platforms to enhance the formulations of their proprietary products and candidates***. We are pursuing formulation and development partnerships to apply our XeriSol and XeriJect technology platforms to broaden our revenue stream and enhance the formulation, delivery and clinical profile of other companies' proprietary drugs and biologics. We currently are collaborating with several major pharmaceutical companies on the development of formulations of their proprietary therapeutics with XeriSol or XeriJect. Our strategic goal is to ultimately enter into commercial licensing agreements with these partners upon successful completion of formulation development.

We believe these four pillars of our strategy can bring new products to market and transform the lives of patients with life-impacting diseases and ultimately drive value for Xeris' shareholders. Pursuing these strategies provides Xeris with a range of value driving opportunities that are incremental to the value already realized by the Xeris enterprise.

***Financing***

We have funded our operations to date primarily with proceeds from the sale of our preferred and common stock and debt financing. We have received gross proceeds of $253.0 million from public equity offerings of our common stock (including our June 2018 initial public offering ("IPO") and our February 2019, February 2020, June 2020, March 2021 offerings), $30.0 million from a private placement of our common stock in January 2022, $104.9 million from sales of our preferred stock, $86.3 million from our June 2020 Convertible Notes offering, $63.5 million from the Amended and Restated Loan and Security Agreement (as amended, the "Amended Loan Agreement") with Oxford Finance LLC and Silicon Valley Bank, of which $20.0 million was repaid in June 2020 and the remaining $43.5 million was repaid in March 2022, and $100.0 million (and access to the additional $50 million remaining) from the Hayfin Loan Agreement in March 2022.

For the three months ended September 30, 2022 and September 30, 2021, we reported net losses of $21.8 million and $26.0 million, respectively. For the nine months ended September 30, 2022 and September 30, 2021, we reported net losses of $81.7 million and $71.9 million, respectively. We have not been profitable since inception, and, as of September 30, 2022, our accumulated deficit was $541.8 million. In the near term, we expect to continue to incur significant expenses, operating losses and net losses as we:

- continue our marketing and selling efforts related to commercialization of Gvoke, Keveyis and Recorlev;
- continue our research and development efforts; and
- continue to operate as a public company.

We may continue to seek public equity and debt financing to meet our capital requirements. There can be no assurance that such funding may be available to us on acceptable terms, or at all, or that we will be able to commercialize our product candidates, if approved. In addition, we may not be profitable even if we commercialize any of our product candidates.

***Development of product candidates***

*Active programs:*

- *Ready-to-Use Product for Endocrinology (Levothyroxine; XP-8121)*: We are currently in Phase 1 development with product candidate XP-8121, a potential once weekly sub-cutaneous injection designed to address maintenance therapy in patients with congenital or acquired hypothyroidism who require daily thyroid hormone replacement. The third dosage cohort has been conducted and we are compiling the data. We have requested a meeting with the FDA and expect feedback by year-end to end our Phase 1 interaction and propose our Phase 2 and Phase 3 programs.

*Unfunded programs:*

- *Ready-to-Use Glucagon (XP-9164) for Gastroenterology*: We have completed Phase 1 development with product candidate XP-9164, an early-stage compound for gastroenterology. XP-9164 is intended to address unmet needs in the growing procedural gastroenterology market.
- *Ready-to-Use Glucagon for Exercise-Induced Hypoglycemia (EIH) in Diabetes:* We have completed Phase 2 for our ready-to-use glucagon for exercise-induced hypoglycemia in diabetes. Based on FDA interactions and expectations for a registrational program to support a mini-dose prevention indication for Glucagon RTU in EIH, we submitted an IND in February 2022 and received FDA clearance in March 2022.

*Inactive programs:*

- *XeriSol Pramlintide-Insulin Co-formulation (XP-3924)*: We have developed a novel, investigational fixed-ratio co-formulation of pramlintide and regular human insulin (XP-3924) to improve glycemic control in adult and pediatric patients with diabetes mellitus (T1D and T2D). Xeris' proprietary formulation technology (XeriSol™) enables the 2 peptides (pramlintide and insulin), which require different aqueous pH environments for optimal stability, to be co-formulated in a stable ready-to-use solution. The current formulation patent exists through at least Q4 2032, expected to extend through 2041-2042 with the ongoing formulation development work. This product is available for license of the development and commercialization rights in the US.
- *Ready-to-Use Diazepam (XP-0863)*: XP-0863 is a liquid formulation of diazepam for intramuscular injection being studied for the treatment of ARS. Xeris' patent protected technology XeriSol™ has been used to develop a room-temperature stable, ready-to-use, small-volume solution of diazepam for intramuscular injection delivered by an auto-injector, which will provide patients and caregivers an alternative to rectal and nasal administrations of benzodiazepines. XP-0863 is designed to address variable absorption, and suboptimal PK profiles of the currently marketed formulations of benzodiazepines, by offering a longer duration of action, consistent absorption of drug delivered through intramuscular administration, and a convenient and reliable form factor of the autoinjector. XP-0863 has been granted an orphan designation by the FDA for the treatment of ARS and Dravet syndrome in patients with epilepsy. At this time we are not actively seeking a license agreement for this development project.

**Impact of COVID-19**

The COVID-19 pandemic has presented a substantial public health and economic challenge around the world and has impacted our business operations, employees, patients and communities as well as the global economy and financial markets. The COVID-19 pandemic continues to evolve and has, over time, led to the implementation of various public health responses.

To date, we and our suppliers and third-party manufacturing partners have been able to continue to supply our products and product candidates to our patients and clinical trials, respectively, and currently do not anticipate any interruptions in supply. However, while our third-party contract manufacturing partners continue to operate at or near normal levels, we are seeing increasingly long lead times. While we currently do not anticipate any interruptions in our manufacturing process that would impact supply of our products and product candidates, it is possible that the COVID-19 pandemic, response efforts related to COVID-19, and its repercussions such as supply chain delays, may have an impact in the future on our third-party suppliers and contract manufacturing partners' ability to supply and/or manufacture our products and product candidates.

We believe that customer demand for our products has been adversely impacted by COVID-19 due to the disruption the pandemic has caused in patients' normal access to healthcare as well as our sales and marketing personnel's access to customers. Remote interactions, when required, generally are not as effective as in-person interactions. In addition, several conferences and other programs at which we intended to market our products were postponed, canceled and/or transitioned to virtual meetings.

We have incurred operating losses since inception, and we have an accumulated deficit of $541.8 million at September 30, 2022. Although we believe that our cash, cash equivalents, investments, and expected revenue from sales of Gvoke, Keveyis, and Recorlev

will enable us to fund our operating and capital expenditure requirements for at least the next 12 months, we cannot predict the impact of the COVID-19 pandemic on our future results of operations and financial condition due to a variety of factors, including the health of our employees, the ability of suppliers to continue to operate and deliver, the ability of Xeris and our customers to maintain operations, continued access to transportation resources, the changing needs and priorities of customers, any further government and/or public actions taken in response to the pandemic, the emergence of variants and acceptance of vaccines, and if COVID-19 persists. As further detailed in "Liquidity and Capital Resources" below, we have relied on equity and debt financing for our funding to date and completed concurrent convertible debt and equity offerings in June/July 2020 under which we raised gross proceeds of $109.4 million and a registered direct offering in March 2021 under which we raised gross proceeds of $27.0 million. On January 3, 2022, we entered into a securities purchase agreement in connection with a private placement for aggregate gross proceeds of approximately $30.0 million. In March 2022, we entered into a Credit Agreement and Guaranty which provided for the lenders to extend $100.0 million in term loans to us on the closing date and up to an additional $50.0 million in delayed draw term loans during the one year period immediately following the closing date.

We are closely monitoring the impact of the COVID-19 pandemic on all aspects of our business, including the impact on our operations and the operations of our customers, suppliers, vendors and business partners. We may take further precautionary and preemptive actions as may be required by federal, state or local authorities. In addition, we have taken and continue to take steps to try and minimize the current environment’s impact on our business, including devising contingency plans and backup resources.

The full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition, including sales, expenses, reserves and allowances, manufacturing, clinical trials, research and development costs and employee-related costs, will depend on future developments that are highly uncertain, including as a result of new information that may emerge concerning COVID-19 and the actions taken to contain or treat it, as well as the economic impact on local, regional, national and international markets. If we, or any of the third parties with whom we engage, were to experience shutdowns or other business disruptions, our ability to conduct our business in the manner and on the timelines presently planned could be materially or negatively affected, which could have a material adverse impact on our business, results of operations and financial condition.

**Components of our Results of Operations**

The following discussion sets forth certain components of our statement of operations of Xeris for three and nine months ended September 30, 2022 and September 30, 2021 as well as factors that impact those items.

***Product revenue, net***

Product revenue, net, represent gross product sales less estimated allowances for patient copay assistance programs, prompt payment discounts, payor rebates, chargebacks, service fees, and product returns, all of which are recorded at the time of sale to the pharmaceutical wholesaler or other customer. We apply significant judgments and estimates in determining some of these allowances. If actual results differ from our estimates, we make adjustments to these allowances in the period in which the actual results or updates to estimates become known.

***Cost of goods sold***

Cost of goods sold primarily includes product costs, which include all costs directly related to the purchase of raw materials, charges from our contract manufacturing organizations, and manufacturing overhead costs, as well as shipping and distribution charges. Cost of goods sold also includes losses from excess, slow-moving or obsolete inventory and inventory purchase commitments, if any. Manufacturing costs for Gvoke and Recorlev incurred prior to approval and initial commercialization were expensed as research and development expenses.

***Research and development expenses***

Research and development expenses consist of expenses incurred in connection with the discovery and development of our product candidates. We recognize research and development expenses as incurred. Research and development expenses that are paid in

advance of performance are capitalized until services are provided or goods are delivered. Research and development expenses include:

- the cost of acquiring and manufacturing preclinical study and clinical trial materials and manufacturing costs related to commercial production and scale-up until a product is approved and initially available for commercial sale;
- expenses incurred under agreements with contract research organizations ("CROs") as well as investigative sites and consultants that conduct our preclinical studies and clinical trials;
- personnel-related expenses, which include salaries, benefits and stock-based compensation;
- laboratory materials and supplies used to support our research activities;
- outsourced product development services;
- expenses relating to regulatory activities, including filing fees paid to regulatory agencies; and
- allocated expenses for facility-related costs.

Research and development activities are central to our business model. We expect to continue to incur significant research and development expenses as we advance our pipeline candidates and in particular plan and conduct clinical trials, prepare regulatory filings for our product candidates, and utilize internal resources to support these efforts. Our research and development costs have declined as compared to previous levels as a result of directing significant funding to our commercial activities.

Our research and development expenses may vary significantly over time due to uncertainties relating to the timing and results of our clinical trials, feedback received from interactions with the FDA and the timing of regulatory approvals.

***Selling, general and administrative expenses***

Selling, general and administrative expenses consist principally of compensation and related personnel costs, marketing and selling expenses, professional fees and facility costs not otherwise included in research and development expenses. We expect to continue to incur significant marketing and selling expenses in the near term related to the commercialization of Gvoke, Keveyis and Recorlev in the United States.

As a public reporting company, we have incurred greater expenses, including increased payroll, legal and compliance, accounting, insurance and investor relations costs. We expect some of these costs to continue to increase in conjunction with our anticipated growth and complexity as a public reporting company.

***Amortization of intangible assets***

Amortization of intangible assets relates to the amortization of our products: Keveyis and Recorlev. These two intangible assets are being amortized over a five-year and fourteen-year period, respectively, using the straight-line method.

***Other income (expense)***

Other income (expense) consists primarily of interest expense related to our convertible debt, Hayfin Loan Agreement, Amended Loan Agreement, interest income earned on deposits and investments, and the change in fair value of our warrants and CVRs.

**Results of Operations**

The following table summarizes our results of operations for the three and nine months ended September 30, 2022 and September 30, 2021 (in thousands):

| | Three Months Ended September 30, | | Change | | Nine Months Ended September 30, | | Change | |
|---|---|---|---|---|---|---|---|---|
| | 2022 | 2021 | $ | % | 2022 | 2021 | $ | % |
| Product revenue: | | | | | | | | |
| Gvoke | $ 13,663 | $ 11,035 | $ 2,628 | 23.8 | $ 37,595 | $ 27,921 | $ 9,674 | 34.6 |
| Keveyis | 13,371 | — | 13,371 | nm | 35,506 | — | 35,506 | nm |
| Recorlev | 2,520 | — | 2,520 | nm | 3,623 | — | 3,623 | nm |
| Product revenue, net | $ 29,554 | $ 11,035 | $ 18,519 | 167.8 | $ 76,724 | $ 27,921 | $ 48,803 | 174.8 |
| Royalty, contract and other revenue | 171 | 25 | 146 | nm | 380 | 240 | 140 | 58.3 |
| Total revenue | 29,725 | 11,060 | 18,665 | 168.8 | 77,104 | 28,161 | 48,943 | 173.8 |
| Cost and expenses: | | | | | | | | |
| Cost of goods sold, excluding amortization of intangible assets | 5,260 | 3,220 | 2,040 | 63.4 | 16,343 | 8,429 | 7,914 | 93.9 |
| Research and development | 6,043 | 5,663 | 380 | 6.7 | 16,011 | 15,078 | 933 | 6.2 |
| Selling, general and administrative | 34,491 | 26,535 | 7,956 | 30.0 | 103,388 | 71,539 | 31,849 | 44.5 |
| Amortization of intangible assets | 2,711 | — | 2,711 | nm | 8,132 | — | 8,132 | nm |
| Total cost and expenses | 48,505 | 35,418 | 13,087 | 37.0 | 143,874 | 95,046 | 48,828 | 51.4 |
| Loss from operations | (18,780) | (24,358) | 5,578 | (22.9) | (66,770) | (66,885) | 115 | (0.2) |
| Other income (expense): | | | | | | | | |
| Interest and other income | 472 | 66 | 406 | nm | 735 | 243 | 492 | 202.5 |
| Interest expense | (3,989) | (1,798) | (2,191) | 121.9 | (10,958) | (5,384) | (5,574) | 103.5 |
| Change in fair value of warrants | 9 | 81 | (72) | (88.9) | 1,746 | 91 | 1,655 | nm |
| Change in fair value of contingent considerations | 118 | — | 118 | nm | (7,569) | — | (7,569) | nm |
| Total other expense | (3,390) | (1,651) | (1,739) | 105.3 | (16,046) | (5,050) | (10,996) | 217.7 |
| Net loss before benefit from income taxes | (22,170) | (26,009) | 3,839 | (14.8) | (82,816) | (71,935) | (10,881) | 15.1 |
| Benefit from income taxes | 339 | — | 339 | nm | 1,086 | — | 1,086 | nm |
| Net loss | $ (21,831) | $ (26,009) | $ 4,178 | (16.1) | $ (81,730) | $ (71,935) | $ (9,795) | 13.6 |

[1] nm: not meaningful

***Product revenue, net***

Gvoke net revenue increased by $2.6 million or 23.8% and $9.7 million or 34.6% for the three and nine months ended September 30, 2022 compared to the same periods ended September 30, 2021, respectively. Gvoke prescriptions grew 40.9% and 59.2% during the three and nine months ended September 30, 2022 compared to the same periods ended September 30, 2021. The growth in product demand was partially offset by a decrease in net pricing.

Keveyis, which was added to our commercial product portfolio through the Acquisition, had net revenue of $13.4 million and $35.5 million for the three and nine months ended September 30, 2022, respectively.

Recorlev, which received FDA approval in December 2021, had net revenue of $2.5 million and $3.6 million for the three and nine months ended September 30, 2022, respectively.

***Cost of goods sold***

Cost of goods sold were $5.3 million and $16.3 million for the three and nine months ended September 30, 2022, respectively. The increases were attributable to an increase in sales as well as product mix and increased costs.

***Research and development expenses***

Research and development expenses increased $0.4 million or 6.7% for the three months ended September 30, 2022 when compared to the same period ended September 30, 2021. The increase was primarily driven by clinical services costs.

Research and development expenses increased $0.9 million or 6.2% for the nine months ended September 30, 2022 compared to the same period ended September 30, 2021. The increase was primarily driven by higher personnel related costs, offset by lower product development costs.

***Selling, general and administrative expenses***

Selling, general and administrative expenses increased $8.0 million or 30.0% and $31.8 million or 44.5% for the three and nine months ended September 30, 2022, respectively, compared to the same periods ended September 30, 2021. Personnel-related costs increased by $4.6 million and $24.2 million, respectively, primarily to support Keveyis, acquired in October 2021, and Recorlev, launched in 2022, as well as an expansion of our endocrinology sales force. We also had a $2.6 million and $4.5 million increase in marketing expenses, respectively, primarily to support the launch of Recorlev.

***Amortization of intangible assets***

For the three and nine months ended September 30, 2022, amortization of intangible assets was $2.7 million and $8.1 million, respectively, from Keveyis and Recorlev, each of which was acquired as part of the Strongbridge Acquisition in October 2021.

***Other income (expense)***

For the three and nine months ended September 30, 2022, interest expense increased $2.2 million or 121.9% and $5.6 million or 103.5% in comparison to the same periods ended September 30, 2021, respectively. The higher interest expenses in both periods was primarily due to higher interest expense related to the Hayfin loan.

**Liquidity and Capital Resources**

Our primary uses of cash are to fund costs related to the manufacturing, marketing and selling of products, the research and development of our product candidates, general and administrative expenses and working capital requirements. Historically, we have funded our operations primarily through private placements of convertible preferred stock, public equity offerings of common stock, and issuance of debt. In June 2018, we completed our IPO of 6,555,000 shares of our common stock at a price of $15.00 per share for aggregate net proceeds of $88.9 million after deducting underwriting discounts and commissions as well as other equity offering expenses. In February 2019, we completed an equity offering and sold an aggregate of 5,996,775 shares of common stock at a price of $10.00 per share. Net proceeds from this equity offering were $55.5 million after deducting underwriting discounts and commissions as well as other equity offering expenses. In September 2019, we entered into the Amended Loan Agreement that provided for term loans of up to an aggregate of $85.0 million, of which $60.0 million was drawn in September 2019 and of which $20.0 million was repaid in June 2020. In August 2019, we filed a shelf registration statement on Form S-3 with the SEC, which covered the offering, issuance and sale by us of up to an aggregate of $250.0 million of our common stock, preferred stock, debt securities, warrants and/or units. We simultaneously entered into a Sales Agreement with Jefferies LLC, as sales agent, to provide for the offering, issuance and sale by us of up to $50.0 million of our common stock from time to time in "at-the-market" offerings under the shelf. As of October 5, 2021, the acquisition closing date, we have sold an aggregate of 204,427 shares of common stock in at-the-market offerings under the shelf for gross proceeds of $1.8 million. The shelf ceased to be available upon the consummation of the Transactions. In January 2022, we filed a shelf registration statement on Form S-3 with the SEC, which was declared effective on February 7, 2022, and which covers the offering, issuance and sale by us of up to an aggregate of $250.0 million of our common stock, preferred stock, debt securities, warrants and/or units.

In February 2020, we completed an equity offering and sold 10,299,769 shares of common stock. Net proceeds from this equity offering were $39.8 million after deducting underwriting discounts and commissions as well as other equity offering expenses. In June 2020, we completed a public notes offering and sold $86.3 million aggregate principal amount of 5.00% Convertible Senior Notes, including $11.3 million pursuant to the underwriters' option to purchase additional notes which was fully exercised in July 2020. Concurrently with the public notes offering, in June 2020, we completed an equity offering and sold 8,510,000 shares of common stock, including 1,110,000 shares pursuant to the underwriters’ option to purchase additional shares of common stock which was also fully exercised in July 2020. Net proceeds from both June 2020 offerings (including the net proceeds from the exercise of the underwriters' over-allotment options in July 2020) were $102.8 million after deducting underwriting discounts and commissions as well as other offering expenses. During the second half of 2020, $39.1 million in principal amount of Convertible Notes were converted into 13,171,791 shares of our common stock. In March 2021, we completed a registered direct offering of 6,553,398 shares of our common stock, the net proceeds of which were $26.9 million. As of September 30, 2022, the outstanding balance of Convertible Notes was $47.2 million. In October 2020, we entered into a fourth amendment to the Amended Loan Agreement which provided for an additional $3.5 million term loan which was drawn in November 2020. On January 2, 2022, we entered into a securities purchase agreement in connection with the Private Placement with Armistice for aggregate gross proceeds of approximately $30.0 million and completed the transaction on January 3, 2022.

In March 2022, we, Xeris Pharma and certain subsidiary guarantors, entered into a Credit Agreement and Guaranty (the "Hayfin Loan Agreement") with the lenders from time to time parties thereto (the “Lenders”) and Hayfin Services LLP, as administrative agent for the Lenders, pursuant to which we and our subsidiaries party thereto granted a first priority security interest on substantially all of our assets, including intellectual property, subject to certain exceptions. The Hayfin Loan Agreement provided for the Lenders to extend $100.0 million in term loans (the “Initial Loan”) to us on the closing date and up to an additional $50.0 million in delayed draw term loans during the one year period immediately following the closing date (the “Delayed Draw Term Loans” and, together with the Initial Loan, the "Loans") in no more than three drawings of no less than $10.0 million per drawing subject to us being in pro forma compliance with the financial covenants and other conditions set forth therein. In conjunction with the execution of the Hayfin Loan Agreement, the Amended Loan Agreement balance of $43.5 million was repaid in full and fees of $2.1 million in connection with the loan repayment were paid. In addition to utilizing the proceeds to repay the obligations under the Amended Loan Agreement in full, the proceeds will otherwise be used for general corporate purposes. After repayment, the Loans may not be re-borrowed. On September 29, 2022, the Company entered into Amendment No. 1 to Credit Agreement and Guaranty, which provides for the Lenders’ consent to and allows for the issuance of the letter of credit that was issued to the landlord under the Amended and Restated Lease dated September 29, 2022.

***Capital Resources and Funding Requirements***

We have incurred operating losses since inception, and we have an accumulated deficit of $541.8 million at September 30, 2022. Based on our current operating plans and existing working capital at September 30, 2022 and access to the additional $50.0 million remaining from the Hayfin Loan Agreement, we believe that our cash resources are sufficient to sustain operations and capital expenditure requirements for at least the next 12 months. We expect to incur substantial additional expenditures in the near term to support the marketing and selling of Gvoke, Keveyis and Recorlev as well as our ongoing research and development activities. We expect to continue to incur net losses for at least the next 12 months. Our ability to fund marketing and selling of Gvoke, Keveyis and Recorlev, as well as our product development and clinical operations, including completion of future clinical trials, will depend on the amount and timing of cash received from product revenue and potential future financings. Our future capital requirements will depend on many factors, including:

- our degree of success in commercializing Gvoke, Keveyis and Recorlev;
- the successful integration of the Acquisition and achievement of expected revenue and synergies;
- the costs of commercialization activities, including product marketing, sales and distribution;
- the costs, timing and outcomes of clinical trials and regulatory reviews associated with our product candidates;
- the effect on our product development activities of actions taken by the FDA or other regulatory authorities;
- the number and types of future products we develop and commercialize;
- the emergence of competing technologies and products and other adverse market developments; and
- the costs of preparing, filing and prosecuting patent applications and maintaining, enforcing and defending intellectual property-related claims.

As we continue the marketing and selling of Gvoke, Keveyis and Recorlev, we may not generate a sufficient amount of product revenue to fund our cash requirements. Accordingly, we may need to obtain additional financing in the future which may include public or private debt and/or equity financings. There can be no assurance that such funding may be available to us on acceptable terms, or at all, or that we will be able to successfully market and sell Gvoke, Keveyis and Recorlev. Market volatility resulting from the COVID-19 pandemic or other factors could also adversely impact our ability to access capital as and when needed. The issuance of equity securities may result in dilution to stockholders. If we raise additional funds through the issuance of additional debt, which may have rights, preferences and privileges senior to those of our common stockholders, the terms of the debt could impose significant restrictions on our operations. The failure to raise funds as and when needed could have a negative impact on our financial condition and ability to pursue our business strategies. If additional funding is not secured when required, we may need to delay or curtail our operations until such funding is received, which would have a material adverse impact on our business prospects and results of operations.

***Cash Flows***

| | Nine Months Ended September 30, | |
|---|---|---|
| (**in thousands**) | **2022** | **2021** |
| Net cash used in operating activities | $ (86,772) | $ (66,589) |
| Net cash provided by investing activities | 25,293 | 61,362 |
| Net cash provided by financing activities | 78,317 | 27,122 |

*Operating activities*

Net cash used in operating activities was $86.8 million for the nine months ended September 30, 2022, compared to $66.6 million for the nine months ended September 30, 2021. The increase in net cash used in operating activities was primarily driven by higher

personnel related costs from increased headcount and restructuring costs related to the Strongbridge acquisition. For a discussion regarding product revenue, net and increases in spending, refer to "Results of Operations" included in this "Item 2 - Management's Discussion and Analysis of Financial Condition and Results of Operations."

*Investing activities*

Net cash provided by investing activities was $25.3 million for the nine months ended September 30, 2022, compared to $61.4 million for the nine months ended September 30, 2021. The decrease in cash provided by investing activities in 2022 was primarily due to a lower number of investments maturing or being sold.

*Financing activities*

Net cash provided by financing activities was $78.3 million for the nine months ended September 30, 2022, compared to $27.1 million for the nine months ended September 30, 2021. The increase was primarily due to the net proceeds of $30.0 million from the January 2022 private placement of our common stock with an affiliate of Armistice, proceeds net of debt issuance costs of $92.5 million from the March 2022 Hayfin Loan Agreement, partially offset by the payoff of the principles on the Amended Loan Agreement of $43.5 million in March 2022, as compared to the proceeds of $27.0 million from the March 2021 registered direct offering of our common stock.

**CRITICAL ACCOUNTING POLICIES AND USE OF ESTIMATES AND ASSUMPTIONS**

Our Annual Report on Form 10-K for the year ended December 31, 2021 describes the critical accounting policies for which management uses significant judgments and estimates in the preparation of our consolidated financial statements. There have been no significant changes to our critical accounting policies since December 31, 2021.

**NEW ACCOUNTING STANDARDS**

Refer to "Note 2 - Basis of presentation and summary of significant accounting policies and estimates", for a description of recent accounting pronouncements applicable to our financial statements.

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

We are exposed to certain market risks arising from transactions in the normal course of business, principally risk associated with interest rate and foreign currency exchange rate fluctuations.

***Interest Rate Risk***

*Cash and Cash Equivalents and Investments*—We are exposed to the risk of interest rate fluctuations on the interest income earned on our cash and cash equivalents and investments. A hypothetical one-percentage point increase or decrease in interest rates applicable to our cash and cash equivalents and investments outstanding at September 30, 2022 would increase or decrease interest income by approximately one million dollars on an annual basis.

*Long-term Debt*—Our interest rate risk relates primarily to U.S. dollar SOFR-indexed borrowings. Based on our outstanding borrowings pursuant to the Hayfin Loan Agreement at September 30, 2022, interest is incurred at a floating per annum rate in an amount equal to the sum of (i) 9.0% (or 8.0% per annum if the replacement rate in effect is the Wall Street Journal Prime Rate) plus (ii) the greater of (x) (1) CME Group Benchmark Administration Limited (CBA) Term SOFR (or the replacement rate, if applicable) if CBA Term SOFR is greater than 1.00% plus 0.26161% or (2) 1.00% if CME Term SOFR is less than 1.00% and (y) one percent (1.00%) per annum (or 2.0% per annum if the replacement rate in effect is the Wall Street Journal Prime Rate). Interest on the Convertible Notes is assessed at a fixed rate of 5.0% annually and therefore does not subject us to interest rate risk.

***Foreign Exchange Risk***

We contract with research organizations outside the United States at times. We may be subject to fluctuations in foreign currency exchange rates in connection with certain of these agreements. Transactions denominated in currencies other than the functional currency are recorded based on exchange rates at the time such transactions arise. As of September 30, 2022, we had immaterial liabilities denominated in the Australian Dollar. Net foreign currency gains and losses did not have a material effect on our results of operations for the nine months ended September 30, 2022.

**ITEM 4. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended ("Exchange Act"). Based on such evaluation, our principal executive officer and principal financial officer have concluded that the disclosure controls and procedures were effective as of September 30, 2022 to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time period specified in the U.S. Securities and Exchange Commission's ("SEC") rules and forms, and to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure.

**Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended September 30, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

We are not currently subject to any material legal proceedings. From time to time, we may be subject to various legal proceedings and claims that arise in the ordinary course of our business activities. Although the results of litigation and claims cannot be predicted with certainty, as of the date of this report, we do not believe we are party to any claim or litigation the outcome of which, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our business. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

**ITEM 1A. RISK FACTORS**

*Investing in our common stock involves a high degree of risk. Careful consideration should be given to the following risk factors, in evaluating us and our business. If any of the following risks and uncertainties actually occurs, our business, prospects, financial condition and results of operations could be materially and adversely affected. The risks summarized and described below are not intended to be exhaustive and are not the only risks facing us. New risk factors can emerge from time to time, and it is not possible to predict the impact that any factor or combination of factors may have on our business, prospects, financial condition and results of operations.*

**Risk Related to the Impact of the COVID-19 Pandemic**

***Our business may be adversely affected by the ongoing COVID-19 pandemic.***

The COVID-19 pandemic continues to affect many businesses, including ours. Among these impacts are ongoing personnel absences and the effectiveness of return-to-office transition plans. If we are unable to manage these absences and our return-to-office transition, we may experience short-term and/or long-term impacts on our business and business growth that could be material and adverse.

In addition, as a result of the ongoing and evolving COVID-19 pandemic, we may experience disruptions that could severely impact our business, preclinical studies and clinical trials, including:

- If restrictive measures to reduce the spread of the virus are reintroduced, our sales and marketing personnel's access to customers may be adversely impacted. Remote interactions, if required, may be less effective than in-person interactions and could adversely impact demand for our products. In addition, several conferences and other programs at which we intended to market our products were postponed, canceled and/or transitioned to virtual meetings and if restrictions are reintroduced, we may be similarly impacted again.
- We currently rely on third-party suppliers and contract manufacturing organizations ("CMOs") for the manufacturing of Gvoke, Keveyis, and Recorlev, as well as to perform third-party logistics functions, including warehousing and distribution of Gvoke, Keveyis, and Recorlev. In addition, we rely on third parties to perform quality testing and supply other goods and services to run our business. Certain of our third party suppliers in our supply chain for materials have been adversely impacted by restrictions resulting from the COVID-19 pandemic or supply chain issues, including staffing shortages, production slowdowns and disruptions in delivery systems, and may continue to be impacted such that our supply chain may be disrupted, limiting our ability to manufacture commercial quantities of our products.
- Our increased reliance on personnel working from home may negatively impact productivity, or disrupt, delay, or otherwise adversely impact our business. Further, this could increase our cybersecurity risk, create data accessibility concerns, and make us more susceptible to communication disruptions, any of which could adversely impact our business operations or delay necessary interactions with local and federal regulators, ethics committees, manufacturing sites, research or clinical trial sites and other important agencies and contractors. Additionally, if personnel absences persist and if our return-to-office plans are not well received, we may experience short-term and/or long-term impacts on our business and business growth that could be material and adverse.
- Health regulatory agencies globally may experience disruptions in their operations as a result of the coronavirus pandemic. The FDA and comparable foreign regulatory agencies may have slower response times or be under-resourced to continue to monitor our clinical trials and, as a result, review, inspection, and other timelines may be materially delayed. It is unknown how long these disruptions could continue, were they to occur. Any elongation or deprioritization of our clinical trials or delay in regulatory review resulting from such disruptions could materially affect the development and study of our product candidates. For example, regulatory authorities may require that we not distribute a product candidate lot until the relevant agency authorizes its release. Such release authorization may be delayed as a result of the COVID-19 pandemic and could result in delays to our clinical trials.
- The trading prices for our common shares have been highly volatile as a result of the COVID-19 pandemic and its effects. As a result, we may face difficulties raising further capital through sales of our common shares or convertible debt or such sales may be on unfavorable terms. In addition, a recession, depression or other sustained adverse market event resulting from the spread of the coronavirus could materially and adversely affect our business and the value of our common shares.

Since the beginning of the COVID-19 pandemic, several vaccines for COVID-19 have received Emergency Use Authorization by the FDA and a number of those later received marketing approval. Additional vaccines may be authorized or approved in the future. The resultant demand for vaccines and potential for manufacturing facilities and materials to be commandeered under the Defense Production Act of 1950, or equivalent foreign legislation, may make it more difficult to schedule batch manufacturing activities or obtain materials needed for our clinical trials and/or commercial products. These supply chain disruptions may lead to delays in these trials and/or issues with our commercial supply.

The coronavirus pandemic and its effects continue to impact our business. The ultimate impact of the coronavirus pandemic on our business operations is highly uncertain and subject to change and will depend on future developments, which cannot be accurately predicted, including the duration of the pandemic, the emergence of new variants, the efficacy, acceptance and availability of vaccines in various geographies, additional or modified government actions, new information that will emerge concerning the severity and impact of COVID-19 and the actions taken to contain the coronavirus or address its impact in the short and long term, among others.

We do not yet know the full extent of potential impacts on our business, our clinical trials, our research programs, healthcare systems or the global economy. We will continue to monitor the situation closely.

**Risks Related to our Financial Position and Need for Financing**

Risks Related to Our Operating History

***As a company, we have a limited operating history and limited experience commercializing pharmaceutical products and have incurred significant losses since inception. We expect to incur losses over the next few years and may not be able to achieve or sustain revenues or profitability in the future.***

Historically, we have funded our operations primarily through private placements of convertible preferred stock, public offerings of common stock and convertible notes, and debt issuances. We have five pharmaceutical products that were commercially launched in the past six years, i.e., Keveyis (2017), Gvoke PFS (2019), Gvoke HypoPen (2020), Recorlev (2022) and Gvoke Kit (2022). We are in the early stages of commercializing our biopharmaceutical products and have a limited operating history. Biopharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. Accordingly, you should consider our prospects in light of the costs, uncertainties, delays and difficulties frequently encountered by companies prior to and at the early stages of commercialization of any product candidates, especially biopharmaceutical companies such as ours. Any predictions you make about our future success or viability may not be as accurate as they could be if we had a longer operating history or a history of successfully commercializing biopharmaceutical products. We may encounter unforeseen expenses, difficulties, complications, delays and other known or unknown factors in achieving our business objectives. We will need to successfully execute our commercialization strategy and may not be successful in doing so. We expect our financial condition and operating results to continue to fluctuate significantly from quarter to quarter and year to year due to a variety of factors, many of which are beyond our control. Accordingly, you should not rely upon the results of any quarterly or annual periods as indications of future operating performance.

We have incurred significant losses in every fiscal year since inception. For the nine months ended September 30, 2022 and 2021, we reported a net loss of $81.7 million and $71.9 million, respectively. In addition, our accumulated deficit as of September 30, 2022 was $541.8 million.

We expect to continue to incur significant operating expenses as we continue the commercialization of Gvoke, Keveyis and Recorlev, develop, enhance and commercialize new products, and incur additional operational and reporting costs associated with being a public company. In particular, we anticipate that we will continue to incur significant expenses as we:

- execute our Gvoke, Keveyis and Recorlev commercial strategies in the U.S.;
- continue our research and development efforts;
- seek regulatory approval for new product candidates and product enhancements; and
- continue to operate as a public company.

Our ability to generate revenue to transition to profitability and generate positive cash flows is uncertain and depends on the successful commercialization of Gvoke, Keveyis and Recorlev and any of our product candidates for which we obtain marketing approval. Many of our product candidates are still in development. Successful development and commercialization will require achievement of key milestones, including completing clinical trials and obtaining marketing approval for our product candidates, manufacturing, marketing and selling those products for which we, or any of our future collaborators, may obtain marketing approval, satisfying any post-marketing requirements and obtaining reimbursement for our products from private insurance or government payors. Because of the uncertainties and risks associated with these activities, we are unable to accurately predict the timing and amount of revenues, and if or when we might achieve profitability. We and any future collaborators may never succeed in these activities and, even if we or any future collaborators do, we may never generate revenues that are sufficient enough for us to achieve profitability. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis.

Our failure to become and remain profitable would depress the market price of our common stock and could impair our ability to raise capital, expand our business, diversify our product offerings or continue our operations. If we continue to suffer losses as we have in the past, investors may not receive any return on their investment and may lose their entire investment.

***Although we generate revenue from Gvoke, Keveyis, and Recorlev, we have not yet generated revenue from any of our current or future product candidates, and may never be profitable.***

Our ability to generate revenue from Gvoke, Keveyis and Recorlev, and our product candidates, if successfully developed and approved, depends on a number of factors, including, but not limited to, our ability to:

- obtain commercial quantities of our products at acceptable cost levels;
- successfully manage inventory;
- sell and distribute our products on terms acceptable to us;

- achieve an adequate level of market acceptance of our products in the medical community and with third-party payors, including placement in accepted clinical guidelines for the conditions for which our product candidates are intended to target;
- obtain and maintain third-party coverage and adequate reimbursement for our products; and
- launch and commercialize our products utilizing our own sales force or by entering into partnership or co-promotion arrangements with third parties.

We have incurred and expect to continue to incur significant sales and marketing costs as we commercialize Gvoke, Keveyis and Recorlev. Regardless of these expenditures, our products and our product candidates, if developed and approved, may not be commercially successful. Although we generate revenue from Gvoke, Keveyis and Recorlev, if we are unable to generate sufficient product revenue, we will not become profitable and may be unable to continue operations without additional funding.

Risks Related to Future Financial Condition

***We may require additional capital to sustain our business, and this capital may cause dilution to our stockholders and might not be available on terms favorable to us, or at all, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.***

Biopharmaceutical development is a time consuming, expensive and uncertain process that takes years to complete. We are incurring significant commercialization expenses related to product sales, marketing, manufacturing, packaging and distribution of Gvoke, Keveyis and Recorlev and expect to continue to incur such expenses for our products, as well as for any of our product candidates, if approved. We expect to require additional capital to complete the clinical trials associated with our product candidates and begin commercialization efforts, if approved. Accordingly, we may need additional funding in connection with our continuing operations. In the future, if we are unable to raise capital when needed or on attractive terms, we may be forced to delay, reduce or eliminate our research and development programs and/or sales and marketing activities. Market volatility resulting from the ongoing COVID-19 pandemic and geopolitical instability resulting from the ongoing military conflict between Russia and Ukraine, rising interest rates, the tightening of lending standards or other factors could also adversely impact our ability to access capital as and when needed.

We may be required to or choose to obtain further funding through public equity offerings, debt financings, royalty-based financing arrangements, collaborations and licensing arrangements or other sources. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing obtained by us would be senior to our common stock, would likely cause us to incur interest expense, and could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may increase our expenses and make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions and in-licensing opportunities. Under our existing credit facility dated March 8, 2022, with the lenders from time to time parties thereto (the "Lenders"), Hayfin Services LLP, as administrative agent for the Lenders, Xeris Pharmaceuticals, Inc. and Xeris Biopharma Holdings, Inc., as amended by Amendment No. 1 to Credit Agreement and Guaranty dated September 29, 2022 (the "Hayfin Loan Agreement"), we are restricted in our ability to incur additional indebtedness and to pay dividends. Any additional debt financing that we may secure in the future could include similar or more restrictive covenants relating to our capital raising activities, buying or selling assets and other financial and operational matters, which may make it more difficult for us to obtain additional capital, manage our business and pursue business opportunities. We may also be required to secure any such debt obligations with some or all of our assets. For example, our Hayfin Loan Agreement is secured by substantially all of our property and assets, including our intellectual property assets, subject to certain exceptions.

If we raise additional funds through collaborations or marketing, distribution or licensing, or royalty-based financing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams or product candidates or grant licenses on terms that may not be favorable to us. Securing financing could require a substantial amount of time and attention from our management and may divert a disproportionate amount of their attention away from day-to-day activities, which may adversely affect our management’s ability to oversee the commercialization of our products and development and commercialization, if approved, of our product candidates. It is also possible that we may allocate significant amounts of capital toward solutions or technologies for which market demand is lower than anticipated and, as a result, abandon such efforts. Any of these negative developments could have a material adverse effect on our business, operating results, financial condition and common stock price.

***We may not have cash available to us in an amount sufficient to enable us to make interest or principal payments on our indebtedness when due, or repurchase our Convertible Notes for cash following a fundamental change, and our existing and future indebtedness may limit our ability to repurchase the Convertible Notes.***

On June 30, 2020, we completed a public offering of $86.3 million aggregate principal amount of our 5.00% Convertible Senior Notes due 2025 (the "Convertible Notes"), including $11.3 million pursuant to the underwriters' option to purchase additional notes which was exercised in July 2020. A total principal amount of $39.1 million of Convertible Notes converted into equity in the second half of 2020. As of September 30, 2022, the outstanding balance of Convertible Notes was $47.2 million. The Convertible Notes are governed by the terms of a base indenture for senior debt securities dated June 30, 2020 (the "Base Indenture"), as supplemented by the first supplemental indenture thereto dated June 30, 2020 and the second supplemental indenture thereto dated October 5, 2021 ("the Supplemental Indentures" and together with the Base Indenture, the "Indenture"), each between us and U.S. Bank National

Association, as trustee. Failure to satisfy our current and future debt obligations under the Indenture could result in an event of default and, as a result, all of the amounts outstanding could immediately become due and payable. In the event of an acceleration of amounts due under the Indenture as a result of an event of default, we may not have sufficient funds or may be unable to arrange for additional financing to repay our indebtedness.

Noteholders may require us to repurchase their Convertible Notes following a fundamental change at a cash repurchase price generally equal to the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest, if any. A fundamental change includes certain acquisition transactions and the failure of our common stock to be listed on the Nasdaq Global Select Market or certain similar national securities exchanges. We may not have enough available cash or be able to obtain financing at the time we are required to repurchase the Convertible Notes. In addition, applicable law, regulatory authorities and the agreements governing our existing and future indebtedness may restrict our ability to repurchase the Convertible Notes. Our failure to repurchase the Convertible Notes when required will constitute a default under the Indenture that governs the Convertible Notes. A default under the Indenture or the fundamental change itself could also lead to a default under agreements governing our other existing or future indebtedness, which may result in that other indebtedness becoming immediately payable in full. For instance, a fundamental change without lender consent would constitute an event of default under our Hayfin Loan Agreement. We may not have sufficient funds to satisfy all amounts due under the other indebtedness and the Convertible Notes.

In addition, we have $100.0 million outstanding under our Hayfin Loan Agreement as of September 30, 2022 and up to an additional $50 million in delayed draw term loans. All obligations under our Hayfin Loan Agreement are secured by substantially all of our property and assets, including our intellectual property assets, subject to certain limited exceptions. The term loans and the Convertible Notes may create additional financial risk for us, particularly if our business or prevailing financial market conditions are not conducive to paying off or refinancing our outstanding debt obligations at maturity. Failure to satisfy our current and future debt obligations under our Hayfin Loan Agreement could result in an event of default and, as a result, our lenders could accelerate all amounts due. Events of default also include our failure to comply with customary affirmative and negative covenants as well as a default under any indenture or other agreement governing convertible indebtedness permitted by the Hayfin Loan Agreement, including the Indenture. The Hayfin Loan Agreement contains customary representations and warranties, events of default and affirmative and negative covenants, including, among others, covenants that limit or restrict our ability to incur additional indebtedness, grant liens, merge or consolidate, make acquisitions, pay dividends or other distributions or repurchase equity, make investments, dispose of assets and enter into certain transactions with affiliates, in each case subject to certain exceptions. In the event of an acceleration of amounts due under our Hayfin Loan Agreement as a result of an event of default, we may not have sufficient funds or may be unable to arrange for additional financing to repay our indebtedness. In addition, our lenders could seek to enforce their security interests in any collateral securing such indebtedness.

***Our PPP Loan, which we repaid in full in June 2020, was subject to the terms and conditions applicable to loans administered by the SBA under the CARES Act, and we may be subject to an audit or enforcement action related to the PPP Loan.***

On April 21, 2020, we entered into the U.S. Small Business Administration (the "SBA") PPP Note (the "Note") with Silicon Valley Bank (the "PPP Lender") for a loan in the amount of $5.1 million (the "PPP Loan") enabled by the Coronavirus Aid, Relief and Economic Security Act of 2020 (the "CARES Act"). We received the full amount of the PPP Loan on April 22, 2020. On May 4, 2020, we repaid $0.9 million of the PPP Loan. In June 2020, we repaid the remaining amount outstanding under the PPP Loan in connection with the concurrent Convertible Notes and equity offerings.

We may be subject to CARES Act-specific lookbacks and audits until May of 2026 that may be conducted by other federal agencies, including several oversight bodies created under the CARES Act. These bodies have the ability to coordinate investigations and audits and refer matters to the Department of Justice for civil or criminal enforcement and other actions. Complying with such SBA audit could divert management resources and attention and require us to expend significant time and resources, which could have an adverse effect on our business, financial condition and results of operations.

***Greater than expected product returns may exceed our reserve for returns.***

We do not have extensive history of product returns and use various factors to estimate the provision for returns, including the launch date of products, third-party industry data for comparable products in the market and estimated channel inventory data. In a reporting period, we may decide to constrain revenue for product returns based on information from various sources, including channel inventory levels, inventory dating, prescription data, the expiration dates of product, price changes of competitive products and introductions of generic products. While we believe that our returns reserve is sufficient to avoid a significant reversal of revenue in future periods, any significant increase in returns that exceeds our reserves could adversely affect our revenue and operating results.

**Risks Related to the Commercialization and Marketing of our Products and Product Candidates**

Risks Related to Commercialization and Marketing

***Our business depends entirely on the commercial success of our products and product candidates. Even if approved, our product candidates may not be accepted in the marketplace and our business may be materially harmed.***

To date, we have expended significant time, resources and effort on the development of our product candidates, and a substantial portion of our resources recently has been and will continue to be focused on launching, marketing and commercializing our approved products, Gvoke, Keveyis and Recorlev, in the United States. Our business and future success are substantially dependent on our ability to generate and increase product revenue in the near term. Our estimates of the potential market opportunity for Gvoke, Keveyis, Recorlev and our product candidates include several key assumptions of the current market size and current pricing for commercially available products and are based on industry and market data obtained from industry publications, studies conducted by us, our industry knowledge, third-party research reports and other surveys. While we believe that our internal assumptions are reasonable, if any of these assumptions proves to be inaccurate, the actual market for our product and product candidates could be smaller than our estimates of our potential market opportunity. Our product candidates are in various stages of development and subject to the risks of failure inherent in developing drug products. Any delay or setback in the regulatory approval, product launch, commercialization or distribution of any of our product candidates will adversely affect our business. There is no guarantee that the infrastructure, systems, processes, policies, relationships and materials we have built for the commercialization of Gvoke, Keveyis and Recorlev will be sufficient for us to achieve success at the levels we expect. Further, our products may contain undetected manufacturing defects, including mislabeling, which might require product replacement, re-labeling or product recalls, which could further harm our business. For more information, see the section entitled, "*Business — Coverage and Reimbursement"* in our most recent Annual Report on Form 10-K.

Even if all regulatory approvals are obtained, the commercial success of our products and product candidates will depend on gaining market acceptance among physicians, patients, patient advocacy groups, healthcare payors and the medical community. The degree of market acceptance of our products and product candidates will depend on many factors, including:

- the scope of regulatory approvals, including limitations or warnings contained in a product's regulatory-approved labeling;
- our ability to produce, through a validated process, sufficiently large quantities of our products to permit successful commercialization;
- our ability to establish and maintain commercial manufacturing arrangements with third-party manufacturers;
- our ability to build and maintain sales, distribution and marketing capabilities sufficient to launch commercial sales of our products;
- the acceptance in the medical community of the potential advantages of the products, including with respect to our efforts to increase adoption of our products by patients and healthcare providers;
- the incidence, prevalence and severity of adverse side effects of our products;
- the willingness of physicians to prescribe our products and of the target patient population to try these therapies;
- the price and cost-effectiveness of our products;
- the availability of sufficient third-party coverage and reimbursement, including the extent to which each product is approved for use at, or included on formularies of, hospitals and managed care organizations;
- any negative publicity related to our or our competitors' products or other formulations of products that we administer, including as a result of any related adverse side effects;
- alternative treatment methods and potentially competitive products;
- the potential advantages of our products over existing and future treatment methods; and
- the strength of our sales, marketing and distribution support.

Additionally, if, after marketing approval of any of our products or product candidates, we or others later identify undesirable or unacceptable side effects caused by such products, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approvals of such product, require us to take our approved product off the market or ask us to voluntarily remove the product from the market;
- regulatory authorities may require the addition of labeling statements, specific warnings, a contraindication or field alerts to physicians and pharmacies;
- regulatory authorities may impose conditions under a risk evaluation and mitigation strategy ("REMS") including distribution of a medication guide to patients outlining the risks of such side effects or imposing distribution or use restrictions;
- we may be required to change the way a product is administered, conduct additional clinical trials or change the labeling of the product;
- we may be subject to limitations on how we may promote the product;
- sales of the product may decrease significantly;
- we may be subject to litigation or products liability claims; and
- our reputation may suffer.

If our product candidates are approved but do not achieve an adequate level of acceptance by physicians, patients and third-party payors, we may never generate significant revenue from these products, and our business, financial condition and results of operations may be materially harmed. Even if our products achieve market acceptance, we may not be able to maintain that market acceptance over time if new therapeutics are introduced that are more favorably received than our products or that render our products obsolete, or if significant adverse events occur. If our products do not achieve and maintain market acceptance, we will not be able to generate sufficient revenue from product sales to attain profitability.

***If we are unable to establish or do not maintain sufficient marketing, sales and distribution capabilities or enter into agreements with third parties to market, sell and distribute our products on terms acceptable to us, we may not be able to generate product revenue and our business, results of operations, and financial condition will be materially adversely affected.***

We have developed our commercial infrastructure for the sales, marketing and distribution of Gvoke, Keveyis, and Recorlev. In order to successfully commercialize our product candidates, we will need to maintain and may need to expand our marketing, sales, distribution, managerial and other non-technical capabilities and/or make arrangements with third parties to perform some or all of these services. We have established and continue to expand our sales force to market our products in the United States. There are significant expenses and risks involved with maintaining our own sales and marketing capabilities, including our ability to hire, retain and appropriately incentivize qualified individuals, generate sufficient sales leads, obtain access to an adequate number of physicians and persuade them to prescribe our products and any product candidates that receive regulatory approval, provide adequate training to sales and marketing personnel, and effectively manage a geographically dispersed sales and marketing team. Any failure or delay in our ability to maintain or expand, if needed, our internal sales, marketing and distribution capabilities would adversely impact the commercialization of Gvoke, Keveyis and Recorlev and the launch and commercialization of our product candidates, if approved.

We cannot be sure that we will be able to recruit, hire and retain a sufficient number of sales representatives or that they will be effective at promoting our products. In addition, we will need to commit significant additional management and other resources to establish and grow our sales organization. We may not be able to achieve the necessary development and growth in a cost-effective manner or realize a positive return on our investment. We will also have to compete with other companies to recruit, hire, train and retain sales and marketing personnel.

In the event that we are unable to effectively deploy our sales organization or distribution strategy on a timely and efficient basis, if at all, the commercialization of our product candidates could be delayed which would negatively impact our ability to generate product revenue. For example, as a result of the COVID-19 pandemic, from time to time we have had to limit in-person interactions and engage with many healthcare professionals remotely, which may be less effective.

We intend to leverage the sales and marketing capabilities that we have established for Gvoke to commercialize additional product candidates for the management of other hypoglycemic conditions, if approved by the FDA, in the United States. If we are unable to do so for any reason, we would need to expend additional resources to establish commercialization capabilities for those product candidates, if approved.

In addition, we intend to establish collaborations to commercialize our product candidates outside the United States, if approved by the relevant regulatory authorities. Therefore, our future success will depend, in part, on our ability to enter into and maintain collaborative relationships for such efforts, the collaborator’s strategic interest in the product and such collaborator’s ability to successfully market and sell the product. We may not be able to establish or maintain such collaborative arrangements, or if we are able to do so, such collaborators may not have effective sales forces. To the extent that we depend on third parties for marketing and distribution, any revenues we receive will depend upon the efforts of such third parties, and such efforts may not be successful.

Risks Related to Third-Parties Actions and Market Acceptance

***Our reliance on third-party suppliers, including single-source suppliers, and a limited number of options for alternate sources for Gvoke, Keveyis, and Recorlev or our product candidates could harm our ability to develop our product candidates or to continue to commercialize Gvoke, Keveyis, Recorlev or any product candidates that are approved.***

We do not currently own or operate any manufacturing facilities for the production of Gvoke, Keveyis or Recorlev for commercial supply or our product candidates for use in clinical trials. We rely on third-party suppliers to manufacture and supply our products and our product candidates. For Gvoke, we currently rely on a number of single-source suppliers, such as Bachem Americas, Inc. ("Bachem") for active pharmaceutical ingredient ("API"), Pyramid Laboratories Inc. ("Pyramid") for drug product and SHL Pharma, LLC ("SHL Pharma") for auto-injector and final product assembly, and we have entered into several supply agreements including with Bachem, Pyramid and SHL Pharma. Taro Pharmaceuticals U.S.A., Inc. ("Taro") produces all of our requirements for Keveyis pursuant to a supply agreement. If the agreement were to be terminated by Taro prior to the next renewal, we will need to find a new third party to manufacture Keveyis or manufacture the product ourselves. Similarly for Recorlev, we rely on a number of single-source suppliers, such as Regis Technologies, Inc. for API and Xcelience, LLC ("Lonza") for finished drug product. We rely on other third parties to manufacture our product candidates for use in clinical trials. If any of these vendors is unable or unwilling to meet our future requirements, we may not be able to manufacture and/or supply our products in a timely manner. Our current arrangements with these manufacturers are terminable by such manufacturers, subject to certain notice provisions. In addition, Taro maintains certain reversion rights in the purchased assets, including the regulatory approval for Keveyis, enabling Taro to terminate its agreement with us should we be materially in non-compliance with any reversion condition such as breaching certain of the assignment restrictions or failing to meet our marketing commitments for Keveyis after receiving notice thereof and failing to cure such material non-compliance.

Our third-party suppliers may not be able to produce sufficient inventory to meet commercial demand in a timely manner, or at all, and we are experiencing significantly longer lead times for certain components and materials used in the production of our products and product candidates. Our third-party suppliers may not be required to provide us with any guaranteed minimum production levels or have dedicated capacity for our products. As a result, we may not obtain sufficient quantities of products, components or other key materials in the future, which could have a material adverse effect on our business as a whole. For example, the COVID-19 pandemic and the resulting impacts to global supply chains could continue to impact our and our suppliers' ability to procure sufficient supplies for the manufacture of our commercial products or our product candidates. Any disruption to the facilities or operations of our third-party suppliers resulting from weather-related events, epidemics, including the global health concerns such as the COVID-19 pandemic, fire, acts of terrorism, political instability or any other cause could materially impair our ability to manufacture our products and to distribute our products to customers. For example, we have a global supply chain and manufacture some components of our products outside the United States, including without limitation, Taiwan. Any interruption or other delay in the production or delivery of our supplies could reduce sales of our products and increase our costs and any negative impact of such matters on our third-party suppliers and manufacturers may also have an adverse impact on our results of operations or financial condition.

Gvoke and some of our product candidates are drug-device combination products that are regulated under the drug regulations of the Federal Food, Drug, and Cosmetic Act (the "FDCA") based on their primary mode of action as a drug. Third-party manufacturers may not be able to comply with the current Good Manufacturing Practice ("CGMP") regulatory requirements applicable to drug-device combination products, including applicable provisions of the FDA's drug CGMP regulations, device CGMP requirements embodied in the Quality System Regulations ("QSRs") or similar regulatory requirements outside the United States. Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including clinical holds, fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of our products and product candidates, re-labeling or re-packaging of our products, operating restrictions and criminal prosecutions, any of which could significantly affect the supply of our products and product candidates. The facilities used by our contract manufacturers to manufacture our products and product candidates must be approved by the FDA pursuant to inspections conducted by the FDA. The FDA and other foreign regulatory authorities require manufacturers to register manufacturing facilities. We do not control the manufacturing process of, and are completely dependent on, our contract manufacturing partners for compliance with CGMPs and QSRs. Contract manufacturers may face manufacturing or quality control problems causing drug substance or device component production and shipment delays or a situation where the contractor may not be able to maintain compliance with the applicable CGMP or QSR requirements. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications, CGMP and/or QSRs and the strict regulatory requirements of the FDA or others, they will not be able to secure and/or maintain regulatory approval for their manufacturing facilities. In addition, we have no control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or such foreign regulatory authorities do not approve these facilities for the manufacture of our products or product candidates or if they withdraw any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to market our products or develop, obtain regulatory approval for or market our product candidates, if approved.

There are a limited number of third-party suppliers that are compliant with CGMP and/or QSRs, as required by the FDA, the EU, and other regulatory authorities, and that also have the necessary expertise and capacity to manufacture our materials and products. As a result, it may be difficult for us to locate third-party suppliers for our anticipated future needs, and our anticipated growth could strain the ability of our current third-party suppliers to deliver products, raw materials and components to us. If we are unable to arrange for third-party suppliers for our materials and products, or to do so on commercially reasonable terms, we may not be able to complete development of or market our products.

The introduction of new CGMP or QSR regulations or product specific requirements by a regulatory body may require that we source alternative materials, modify existing manufacturing processes or implement design changes to our products that are subject to prior approval by the FDA or other regulatory authorities. We may also be required to reassess a third-party supplier's compliance with all applicable new regulations and guidelines, which could further impede our ability to manufacture and supply products in a timely manner. As a result, we could incur increased production costs, experience supply interruptions, suffer damage to our reputation and experience an adverse effect on our business and financial results.

In addition, our reliance on third-party suppliers involves a number of additional risks, including, among other things:

- our suppliers may fail to comply with regulatory requirements or make errors in manufacturing raw materials, components or products that could negatively affect the efficacy or safety of our products or cause delays in shipments of our products;
- we may be subject to price fluctuations due to terms within long-term supply arrangements with suppliers or lack of long-term supply arrangements for key materials and products;
- given the long lead times to change suppliers, existing suppliers may utilize that as leverage in negotiations with us in a manner that is adverse to our business;
- our suppliers may lose access to critical services or sustain damage to a facility, including losses due to natural disasters, geo-political events, or epidemics that may result in a sustained interruption in the manufacture and supply of our products;
- fluctuations in demand for our products or a supplier's demand from other customers may affect their ability or willingness to deliver materials or products in a timely manner or may lead to long-term capacity constraints at the supplier;
- we may not be able to find new or alternative sources or reconfigure our products and manufacturing processes in a timely manner if necessary raw materials or components become unavailable;
- our suppliers may encounter financial or other hardships unrelated to our demand for materials, products and services, which could inhibit their ability to fulfill our orders and meet our requirements; and
- the possibility of breach or termination of a manufacturing agreement or purchase order by the third party.

In addition, we could be forced to secure new materials or develop alternative third-party suppliers, which can be difficult given our product complexity, long development lead-times and global regulatory review processes.

If any CMO with whom we contract fails to perform its obligations, we may be forced to enter into an agreement with a different CMO, which we may not be able to do on reasonable terms, if at all. In either scenario, our clinical trials or commercial distribution could be delayed significantly as we establish alternative supply sources. In some cases, the technical skills required to manufacture our products or product candidates may be unique or proprietary to the original CMO and we may have difficulty, or there may be contractual restrictions prohibiting us from, transferring such skills to a back-up or alternate supplier, or we may be unable to transfer such skills at all. In addition, if we are required to change CMOs for any reason, we will be required to verify that the new CMO maintains facilities and procedures that comply with quality standards and with all applicable regulations. We will also need to verify, such as through a manufacturing comparability study, that any new manufacturing process will produce our product according to the specifications previously submitted to or approved by the FDA or another regulatory authority. The delays associated with the verification of a new CMO could negatively affect our ability to develop product candidates or commercialize our products in a timely manner or within budget. Furthermore, a CMO may possess technology related to the manufacture of our product candidate that such CMO owns independently. This would increase our reliance on such CMO or require us to obtain a license from such CMO in order to have another CMO manufacture our products or product candidates. In addition, in the case of the CMOs that supply our products or product candidates, changes in manufacturers often involve changes in manufacturing procedures and processes, which could require that we conduct bridging studies between our prior clinical supply used in our clinical trials and that of any new manufacturer. We may be unsuccessful in demonstrating the comparability of clinical supplies which could require the conduct of additional clinical trials. Additionally, under the CARES Act, we must have in place a risk management plan that identifies and evaluates the risks to the supply of approved drugs for certain serious diseases or conditions for each establishment where the drug or API is manufactured. The risk management plan will be subject to FDA review during an inspection. If we experience shortages in the supply of our marketed products, our results could be materially impacted.

***Reimbursement decisions by third-party payors and consolidation within the healthcare industry and among competitors more generally may have an adverse effect on pricing and market acceptance. If there is not sufficient reimbursement for our products, it is less likely that they will be widely used and pricing pressure may impact our ability to sell our products at prices necessary to support our current business strategies.***

Our future revenues and profitability will be adversely affected if U.S. and foreign governmental, private third-party insurers and payors and other third-party payors, including Medicare and Medicaid, do not agree to defray or reimburse the cost of our products on behalf of patients. If these entities do not provide coverage and reimbursement with respect to our products or provide an insufficient level of coverage and reimbursement, our products may be too costly for some patients to afford and physicians may not prescribe them. In addition, limitations on the amount of reimbursement for our products may also reduce our profitability. In the United States and some foreign jurisdictions, there have been, and we expect there will continue to be, actions and proposals to control and reduce healthcare costs. There have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval for our product candidates, restrict or regulate post-approval activities and affect our ability to profitably sell any of our products or product candidates for which we obtain marketing approval. As the healthcare industry consolidates, competition to provide products and services to industry participants has become more intense and may intensify as the potential purchasers of our products or third-party payors use their purchasing power to exert competitive pricing pressure and other terms favorable to them. We expect that market demand, government regulation, third-party coverage and reimbursement policies and societal pressures will continue to change the healthcare industry worldwide, resulting in further business consolidations and alliances among our potential purchasers. If competitive forces drive down the prices we are able to charge for our products, our profit margins will shrink, which will adversely affect our ability to invest in and grow our business. For more information, see the sections entitled, "*Business — Coverage and Reimbursement"* and *"Business — Healthcare Reform"* in our most recent Annual Report on Form 10-K.

Government and other third-party payors are also challenging the prices charged for healthcare products and increasingly limiting, and attempting to limit, both coverage and level of reimbursement for prescription drugs.

There is also significant uncertainty related to the insurance coverage and reimbursement of newly approved products, and coverage may be more limited than the purposes for which the medicine is approved by the FDA or comparable foreign regulatory authorities. In the United States, the principal decisions about reimbursement for new medicines are typically made by the Centers for Medicare & Medicaid Services, or CMS, an agency within the U.S. Department of Health and Human Services. CMS decides whether and to what extent a new medicine will be covered and reimbursed under Medicare, and private payors tend to follow CMS to a substantial degree. Factors payors consider in determining reimbursement are based on whether the product is (i) a covered benefit under its health plan; (ii) safe, effective and medically necessary; (iii) appropriate for the specific patient; (iv) cost-effective; and (v) neither experimental nor investigational.

New requirements by third-party payors include: (i) net prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs or private payors and by any future relaxation of laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the United States; (ii) third-party payors are increasingly requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. We cannot be sure that reimbursement will be available for any product candidate that we commercialize and, if reimbursement is available, the level of reimbursement; and (iii) many pharmaceutical manufacturers must calculate and report certain price metrics to the government, such as average manufacturer price, or AMP, and Best Price. Penalties may apply when such metrics are not submitted accurately and timely. Further, these prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs.

The United States and several other jurisdictions are considering, or have already enacted, a number of legislative and regulatory proposals to change the healthcare system in ways that could negatively affect our ability to sell our products profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access to healthcare. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. We expect to experience pricing pressures in connection with the sale of our products that we develop due to the trend toward managed healthcare, the increasing influence of health maintenance organizations and additional legislative proposals.

At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical 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, designed to encourage importation from other countries and bulk purchasing.

Adoption of general controls and measures, coupled with the tightening of restrictive policies in jurisdictions with existing controls and measures, could limit payments for pharmaceutical drugs. While we cannot predict what impact on federal reimbursement policies this legislation will have in general or on our business specifically, the ACA may result in downward pressure on pharmaceutical reimbursement, which could negatively affect market acceptance of our products and our product candidates.

Some patients may require health insurance coverage to afford our products or product candidates, and if we are unable to obtain adequate coverage and reimbursement by third-party payors, our ability to successfully commercialize our products or product

candidates may be adversely impacted. Any limitation on the use of our products or any decrease in the price of our products will have a material adverse effect on our ability to achieve profitability.

***The success of Gvoke, Keveyis, Recorlev and our other product candidates will be dependent on its proper use by patients, healthcare practitioners and caregivers.***

While we have designed our products to be operable by patients, caregivers and healthcare practitioners, we cannot control the successful use of the product by patients, caregivers and healthcare practitioners. Even though our products were used correctly by individuals in our human factors studies for Gvoke, there is no guarantee that these results will be replicated by users in the future. If we are not successful in promoting the proper use of our products by patients, healthcare practitioners and caregivers, we may not be able to achieve market acceptance or effectively commercialize our products. In addition, even in the event of proper use of our products such as Gvoke, individual devices may fail. Increasing the scale of production inherently creates increased risk of manufacturing errors, and we may not be able to adequately inspect every tablet or device that is produced, and it is possible that individual product may fail to perform as designed. Manufacturing errors could negatively impact market acceptance of any of our products, result in negative press coverage, or increase the risk that we may be sued.

**Risks Related to our Dependence on Third Parties**

***We depend on third parties to conduct the clinical trials for our product candidates, and any failure of those parties to fulfill their obligations could harm our development and commercialization plans.***

We depend on independent clinical investigators, CROs, academic institutions and other third-party service providers to conduct clinical trials with and for our product candidates. Although we rely heavily on these parties for successful execution of our clinical trials, we are ultimately responsible for the results of their activities and many aspects of their activities are beyond our control. For example, we are responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocols for the trial, but the independent clinical investigators may prioritize other projects over ours or may fail to timely communicate issues regarding our products to us. Third parties may not complete activities on schedule or may not conduct our clinical trials in accordance with regulatory requirements or our stated protocols. Further, conducting clinical trials in foreign countries, as we have done and may do for certain of our product candidates, presents additional risks that may delay completion of our clinical trials. These risks include the failure of enrolled patients in foreign countries to adhere to clinical protocol as a result of differences in healthcare services or cultural customs, managing additional administrative burdens associated with foreign regulatory schemes, as well as political and economic risks relevant to such foreign countries. The delay or early termination of any of our clinical trial arrangements, the failure of third parties to comply with the regulations and requirements governing clinical trials, or our reliance on results of trials that we have not directly conducted or monitored could hinder or delay the development, approval and commercialization of our product candidates and would adversely affect our business, results of operations and financial condition.

We maintain compliance programs related to our clinical trials through our clinical operations and development personnel. Our clinical trial vendors are required to monitor and report to us issues with the conduct of our clinical trials, and we monitor our clinical trial vendors through our clinical, regulatory and quality assurance staff and other service providers. However, we cannot assure you that our clinical trial vendors or personnel will timely and fully discover and report any fraud or abuse or other issues that may occur in connection with our clinical trials to us. Such fraud or abuse or other issues, if they occur and are not successfully remediated, could have a material adverse effect on our research, development, and commercialization activities and results.

**Risks Related to the Product Development and Regulatory Approval of Our Product Candidates**

Risks Related to Regulatory Approval

***We cannot be certain that our product candidates will receive marketing approval. Without marketing approval, we will not be able to commercialize our product candidates.***

We have devoted significant financial resources and business efforts to the development of our product candidates. We cannot be certain that any of our product candidates will receive marketing approval.

The development of a product candidate and issues relating to its approval and marketing are subject to extensive regulation by the FDA in the United States and by comparable regulatory authorities in other countries. We are not permitted to market our product candidates in the United States until we receive approval of a New Drug Application ("NDA") or Biologics License Application ("BLA") from the FDA. The time required to obtain approval by the FDA and comparable foreign authorities is unpredictable but typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, approval policies, regulations, or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate’s clinical development and may vary among jurisdictions.

NDAs and BLAs must include extensive preclinical and clinical data and supporting information to establish the product candidate’s safety and effectiveness for each desired indication. NDAs and BLAs must also include significant information regarding the chemistry, manufacturing and controls for the product. Obtaining approval of an NDA or BLA is a lengthy, expensive and uncertain process, and we may not be successful in obtaining approval. Any delay or setback in the regulatory approval or commercialization of any of our product candidates will adversely affect our business.

The FDA has substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons. For example, the FDA:

- could determine that we cannot rely on the Section 505(b)(2) regulatory pathway or other pathways we have selected, as applicable, for our product candidates;
- could determine that the information provided by us was inadequate, contained clinical deficiencies or otherwise failed to demonstrate the safety and effectiveness of our product candidates for any indication;
- may not find the data from bioequivalence studies and/or clinical trials sufficient to support the submission of an NDA or to obtain marketing approval in the United States, including any findings that the clinical and other benefits of our product candidates outweigh their safety risks;
- may disagree with our trial design or our interpretation of data from preclinical studies, bioequivalence studies and/or clinical trials, or may change the requirements for approval even after it has reviewed and commented on the design for our trials;
- may determine that we have identified the wrong listed drug or drugs or that approval of our Section 505(b)(2) application for any of our product candidates is blocked by patent or non-patent exclusivity of the listed drug or drugs or of other previously approved drugs with the same conditions of approval as any of our product candidates (as applicable);
- may identify deficiencies in the manufacturing processes or facilities of third-party manufacturers with which we enter into agreements for the manufacturing of our product candidates;
- may audit some or all of our clinical research and human factors study sites to determine the integrity of our data and may reject any or all of such data;
- may approve our product candidates for fewer or more limited indications than we request, or may grant approval contingent on the performance of costly post-approval clinical trials;
- may change its approval policies or adopt new regulations; or
- may not approve the labeling claims that we believe are necessary or desirable for the successful commercialization of our product candidates.

Even if a product is approved, the FDA may limit the indications for which the product may be marketed, require extensive warnings on the product labeling or require expensive and time-consuming clinical trials and/or reporting as conditions of approval. Regulators of other countries and jurisdictions have their own procedures for approval of product candidates with which we must comply prior to marketing in those countries or jurisdictions.

Obtaining regulatory approval for marketing of a product candidate in one country does not ensure that we will be able to obtain regulatory approval in any other country. In addition, delays in approvals or rejections of marketing applications in the United States or other countries may be based upon many factors, including regulatory requests for additional analyses, reports, data, preclinical studies and clinical trials, regulatory questions regarding different interpretations of data and results, changes in regulatory policy during the period of product development and the emergence of new information regarding our product candidates or other products. Also, regulatory approval for any of our product candidates may be withdrawn.

***Clinical failure may occur at any stage of clinical development, and the results of our clinical trials may not support our proposed indications for our product candidates. If our clinical trials fail to demonstrate efficacy and safety to the satisfaction of the FDA or other regulatory authorities, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development of such product candidate.***

We cannot be certain that existing clinical trial results will be sufficient to support regulatory approval of our product candidates. Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and we cannot be sure that the results of later clinical trials will replicate the results of prior clinical trials and preclinical testing. Moreover, success in clinical trials in a particular indication does not ensure that a product candidate will be successful in other indications. A number of companies in the pharmaceutical industry have suffered significant setbacks in clinical trials, even after promising results in earlier preclinical studies or clinical trials or successful later-stage trials in other related indications. These setbacks have been caused by, among other things, preclinical findings made while clinical trials were underway and safety or efficacy observations made in clinical trials, including previously unreported adverse events. The results of preclinical and early clinical trials of our product candidates may not be predictive of the results of later-stage clinical trials. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical and initial clinical trials. A failure of a clinical trial to meet its predetermined endpoints would likely cause us to abandon a product candidate and may delay development of any of our product candidates. Any delay in, or termination of, our clinical trials will delay the submission of the applicable NDA or BLA to the FDA, the Marketing Authorization Application ("MAA") to the European Medicines Agency ("EMA") or other similar applications with other relevant foreign regulatory authorities and, ultimately, our ability to commercialize our product candidates and generate revenue.

***We intend to utilize the 505(b)(2) pathway for the regulatory approval of certain of our product candidates. If the FDA does not conclude that such product candidates meet the requirements of Section 505(b)(2), final marketing approval of our product***

***candidates by the FDA or other regulatory authorities may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.***

We are pursuing a regulatory pathway pursuant to Section 505(b)(2) of the FDCA for the approval of certain of our product candidates, which allows us to rely on submissions of existing clinical data for the drug. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments, and permits the submission of an NDA where at least some of the information required for approval comes from preclinical studies or clinical trials not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and efficacy for an approved product. The FDA requires submission of information needed to support any changes to a previously approved drug, such as published data or new studies conducted by the applicant or clinical trials demonstrating safety and efficacy. The FDA could require additional information to sufficiently demonstrate safety and efficacy to support approval.

If the FDA determines that our product candidates do not meet the requirements of Section 505(b)(2), we may need to conduct additional clinical trials, provide additional data and information, and meet additional standards for regulatory approval. In March 2010, former President Obama signed into law legislation creating an abbreviated pathway for approval under the Public Health Service Act, or PHS Act, of biological products that are similar to other biological products that are approved under the PHS Act. The legislation also expanded the definition of biological product to include proteins such as insulin. The law contains transitional provisions governing protein products such as insulin, that, under certain circumstances, might permit companies to seek approval for their insulin products as biologics under the PHS Act. Specifically, on March 23, 2020, a small subset of "biological products" approved under the Federal Food, Drug, and Cosmetic Act, such as insulin, which historically were approved as drugs, transitioned to being regulated as biological products. Being regulated as biological products enables transition products to serve as the reference product for biosimilar or interchangeable products approved through the abbreviated licensure pathway. The transition is a regulatory action in which the approved drug application for a transition biological product will be "deemed" to be a biologics license application. Thus our XeriSol pramlintide-insulin co-formulation which would have previously been reviewed through a 505(b)(2) NDA was instead required to be approved under the PHS Act. If our other product candidates do not meet the requirements of Section 505(b)(2) or are otherwise ineligible or become ineligible for approval via the Section 505(b)(2) pathway, the time and financial resources required to obtain FDA approval for these product candidates, and the complications and risks associated with these product candidates, would likely substantially increase. Moreover, an inability to pursue the Section 505(b)(2) regulatory pathway would likely result in new competitive products reaching the market more quickly than our product candidates, which would likely materially adversely impact our competitive position and prospects. Even if we are allowed to pursue the Section 505(b)(2) regulatory pathway, our product candidates may not receive the requisite approvals for commercialization.

Some pharmaceutical companies and other actors have objected to the FDA's interpretation of Section 505(b)(2) to allow reliance on the FDA's prior findings of safety and effectiveness. If the FDA changes its interpretation of Section 505(b)(2), or if the FDA's interpretation is successfully challenged in court, this could delay or even prevent the FDA from approving any Section 505(b)(2) application that we submit. Moreover, the FDA has adopted an interpretation of the three-year exclusivity provisions whereby a 505(b)(2) application can be blocked by exclusivity even if it does not rely on the previously approved drug that has exclusivity (or any safety or effectiveness information regarding that drug). Under the FDA's interpretation, the approval of one or more of our product candidates may be blocked by exclusivity awarded to a previously-approved drug product that shares certain innovative features with our product candidates, even if our 505(b)(2) application does not identify the previously-approved drug product as a listed drug or rely upon any of its safety or efficacy data. Any failure to obtain regulatory approval of our product candidates would significantly limit our ability to generate revenues, and any failure to obtain such approval for all of the indications and labeling claims we deem desirable could reduce our potential revenues.

***Additional time may be required to obtain regulatory approval for certain of our product candidates because they are combination products.***

Certain of our product candidates are drug and device combination products that require coordination within the FDA and similar foreign regulatory agencies for review of their device and drug components. Medical products containing a combination of new drugs, biological products or medical devices may be regulated as "combination products" in the United States and Europe. A combination product generally is defined as a product comprised of components from two or more regulatory categories (e.g., drug/device, device/biologic, drug/biologic). Each component of a combination product is subject to the requirements established by the FDA for that type of component, whether a new drug, biologic or device. In order to facilitate pre-market review of combination products, the FDA designates one of its centers to have primary jurisdiction for the pre-market review and regulation of the overall product based upon a determination by the FDA of the primary mode of action of the combination product. Where approval of the drug and device is sought under a single application, there could be delays in the approval process due to the increased complexity of the review process and the lack of a well-established review process and criteria. The EMA has a parallel review process in place for combination products, the potential effects of which in terms of approval and timing could independently affect our ability to market our combination products in Europe.

***Gvoke, Keveyis, Recorlev and our product candidates may have undesirable side effects which may delay or prevent marketing approval, or, if approval is received, require them to include safety warnings, require them to be taken off the market or otherwise limit their sales.***

Undesirable side effects that may be caused by our product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA or other comparable foreign authorities. The range and potential severity of possible side effects from systemic therapies are significant. The results of future clinical trials may show that our product candidates cause undesirable or unacceptable side effects, which could interrupt, delay or halt clinical trials, and result in delay of, or failure to obtain, marketing approval from the FDA and other regulatory authorities, or result in marketing approval from the FDA and other regulatory authorities with restrictive label warnings. Recent developments in the pharmaceutical industry have prompted heightened government focus on safety reporting during both pre- and post-approval time periods and pharmacovigilance. Global health authorities may impose regulatory requirements to monitor safety that may burden our ability to commercialize our drug products.

To date, patients treated with our ready-to-use glucagon have experienced drug-related side effects typically observed with glucagon products, including nausea, vomiting and headaches. In our clinical trials of Recorlev, the most common adverse reactions (incidence > 20%) were nausea/vomiting, hypokalemia, hemorrhage/contusion, systemic hypertension, headache, hepatic injury, abnormal uterine bleeding, erythema, fatigue, abdominal pain/dyspepsia, arthritis, upper respiratory infection, myalgia, arrhythmia, back pain, insomnia/sleep disturbances, and peripheral edema. In the Keveyis clinical trial, the most common adverse reactions (incidence > 10%) were paresthesia, cognitive disorder, dysgeusia, and confusional state. These adverse events can be dose-dependent and may increase in frequency and severity if we increase the dose to increase efficacy. It is possible that there may be side effects associated with our product candidates' use. In such an event, our trials could be suspended or terminated and the FDA or comparable foreign regulatory authorities could order us to cease further development of or deny approval of our product candidates for any or all targeted indications. Drug-related side effects of our product candidates could affect patient recruitment or the ability of enrolled patients to complete the trial or could also adversely affect physician or patient acceptance thereof. Any of these occurrences may harm our business, financial condition and prospects.

Even if our product candidates receive marketing approval, if we or others later identify undesirable or unacceptable side effects caused by such products:

- regulatory authorities may require the addition of labeling statements, including "black box" warnings, contraindications or dissemination of field alerts to physicians and pharmacies;
- we may be required to change instructions regarding the way the product is administered, conduct additional clinical trials or change the labeling of the product;
- we may be subject to limitations on how we may promote the product;
- sales of the product may decrease significantly;
- regulatory authorities may require us to take our approved product off the market;
- we may be subject to litigation or products liability claims; and
- our reputation may suffer.

Any of these events could also prevent us from achieving or maintaining market acceptance of the affected product or could substantially increase commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues from the sale of our products.

***We have received orphan drug designation for Keveyis, Recorlev and certain of our product candidates with respect to certain indications and may pursue such designation for others, but we may be unable to obtain such designation or to maintain the benefits associated with orphan drug status, including market exclusivity, even if that designation is granted.***

We have received orphan drug designation from the FDA for four indications for our product candidates, which are our ready-to-use glucagon for PBH and Congenital Hyperinsulinism ("CHI") and our ready-to-use diazepam for acute repetitive seizures and Dravet syndrome. We have also received orphan drug designation from the EMA for our ready-to-use glucagon for CHI and Noninsulinoma Pancreatogenous Hypoglycaemia Syndrome ("NIPHS") which includes patients with PBH. We may pursue such designation for others in specific orphan indications in which there is an unmet medical need. We relied on orphan drug exclusivity in the marketing and sales of Keveyis until it expired on August 7, 2022 and intend to rely on orphan drug exclusivity and, if granted, new chemical entity ("NCE") exclusivity in the marketing and sale of Recorlev. Under the Orphan Drug Act of 1983, the FDA may designate a product candidate as an orphan drug if it is intended to treat a rare disease or condition, which is generally defined as having a patient population of fewer than 200,000 individuals 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. 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. After the FDA grants orphan drug designation, the generic identity of the drug and its potential orphan use are disclosed publicly by the FDA. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process. Although we may seek orphan drug designation for certain additional indications, we may never receive such designation. Moreover, obtaining orphan drug designation for one indication does not mean we will be able to obtain such designation for another indication.

If a product that has orphan drug designation subsequently receives the first FDA approval for a particular active ingredient for the disease for which it has such designation, the product is entitled to orphan drug exclusivity. Orphan drug exclusivity means that the FDA may not approve any other applications, including an NDA, to market the same drug for the same indication for seven years, except in limited circumstances such as if the FDA finds that the holder of the orphan drug exclusivity has not shown that it can assure the availability of sufficient quantities of the orphan drug to meet the needs of patients with the disease or condition for which the drug was designated. Similarly, the FDA can subsequently approve a drug with the same active moiety for the same condition during the exclusivity period if the FDA concludes that the later drug is clinically superior, meaning the later drug is safer, more effective or makes a major contribution to patient care. In assessing whether a drug provides a “major contribution to patient care” over and above the currently approved drugs, which is evaluated by the FDA on a case-by-case basis, there is no one objective standard and the FDA may, in appropriate circumstances, consider such factors as convenience of treatment location, duration of treatment, patient comfort, reduced treatment burden, advances in ease and comfort of drug administration, longer periods between doses, and potential for self-administration. However, such a demonstration to overcome the seven-year market exclusivity may be difficult to establish with limited precedents and there can be no assurance that we will be successful in these efforts if and where we pursue them. Even with respect to the indications for which we have received orphan designation, we may not be the first to obtain marketing approval for any particular orphan indication due to the uncertainties associated with developing pharmaceutical products, and thus approval of our product candidates could be blocked for seven years if another company previously obtained approval and orphan drug exclusivity for the same drug and same condition. If we do obtain exclusive marketing rights in the United States, they may be limited if we seek approval for an indication broader than the orphan designated indication and may be lost if the FDA later determines that the request for designation was materially defective or if we are unable to assure sufficient quantities of the product to meet the needs of the relevant patients. Further, exclusivity may not effectively protect the product from competition because different drugs with different active moieties can be approved for the same condition, the same drugs can be approved for different indications and might then be used off-label in our approved indication, and different drugs for the same condition may already be approved and commercially available.

In Europe, the period of orphan drug exclusivity is ten years, although it may be reduced to six years if, at the end of the fifth year, it is established that the criteria for orphan drug designation are no longer met, in other words, when it is shown on the basis of available evidence that the product is sufficiently profitable not to justify maintenance of market exclusivity. We have received orphan drug designation from the EMA for our ready-to-use glucagon for the treatment of CHI and NIPHS, which includes patients with PBH.

***Even with the FDA approval of Gvoke, Keveyis and Recorlev in the United States and the EMA and MHRA approval of Ogluo in the European Union ("EU") and the United Kingdom ("UK"), we may not be able to obtain or maintain foreign regulatory approvals to market our products in other countries.***

We do not have any products other than Gvoke, Keveyis and Recorlev approved for sale in the United States, nor any products or product candidates other than Ogluo approved for sale in any international markets, and we do not have experience in obtaining regulatory approval in international markets outside of the EU and the UK. In order to market products in any particular jurisdiction, we must establish and comply with numerous and varying regulatory requirements on a country-by-country basis regarding safety and efficacy. Approval by the FDA in the United States does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval or certification by one foreign regulatory authority does not ensure approval or certification by regulatory authorities in other foreign countries or by the FDA. International jurisdictions require separate regulatory approvals and compliance with numerous and varying regulatory requirements. The approval procedures vary among countries and may involve requirements for additional testing, and the time required to obtain approval may differ from country to country and from that required to obtain clearance or approval in the United States.

In addition, some countries only approve or certify a product for a certain period of time, and we are required to re-approve or re-certify our products in a timely manner prior to the expiration of our prior approval or certification. We may not obtain foreign regulatory approvals on a timely basis, if at all. We may not be able to file for regulatory approvals or certifications and may not receive necessary approvals to commercialize our products in any market. If we fail to receive necessary approvals or certifications to commercialize our products in foreign jurisdictions on a timely basis, or at all, or if we fail to have our products re-approved or re-certified, our business, results of operations and financial condition could be adversely affected. The foreign regulatory approval or certification process may include all of the risks associated with obtaining FDA clearance or approval. In addition, the clinical standards of care may differ significantly such that clinical trials conducted in one country may not be accepted by healthcare providers, third-party payors or regulatory authorities in other countries, and regulatory approval in one country does not guarantee regulatory approval in any other country. If we fail to comply with regulatory requirements in international markets or to obtain and maintain required approvals, or if regulatory approvals in international markets are delayed, our target market will be reduced and our ability to realize the full market potential of any drug we develop will be unrealized.

***Recently enacted and future legislation may increase the difficulty and cost for us to obtain marketing approval of and commercialize our products and product candidates and affect the prices we may obtain.***

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 profitably sell any products or product candidates for which we obtain marketing approval. For more information, see the section entitled, "*Business — Healthcare Reform"* in our most recent Annual Report on Form 10-K.

Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives.

The cost of prescription pharmaceuticals in the United States has also been the subject of considerable debate, and members of Congress have indicated that they will address such costs through new legislative measures. To date, there have been several recent U.S. congressional inquiries and proposed state and federal legislation designed to, among other things, improve transparency in drug pricing, review the relationship between pricing and manufacturer patient programs, reduce the costs of drugs under Medicare, and reform government program reimbursement methodologies for drug products. There has recently been intense publicity regarding the pricing of pharmaceutical products generally, including publicity and pressure resulting from the prices charged for new products as well as price increases for older products that the government and public deem excessive. We may experience downward pricing pressure on the price of our products due to social or political pressure to lower the cost of drugs, which could reduce our revenue and future profitability. Many companies in our industry have received governmental requests for documents and information relating to drug pricing and patient support programs. We could incur significant expense and experience reputational harm as a result of these or other similar future inquiries, as well as reduced market acceptance and demand for our products, which could harm our ability to market our products in the future. These factors could also result in changes in our product pricing and distribution strategies, reduced demand for our products and/or reduced reimbursement of products, including by federal health care programs such as Medicare and Medicaid and state health care programs.

On August 16, 2022 the Inflation Reduction Act of 2022 was passed, which among other things, allows for CMS to negotiate prices for certain single-source drugs and biologics reimbursed under Medicare Part B and Part D, beginning with ten high-cost drugs paid for by Medicare Part D starting in 2026, followed by 15 Part D drugs in 2027, 15 Part B or Part D drugs in 2028, and 20 Part B or Part D drugs in 2029 and beyond. The legislation subjects drug manufacturers to civil monetary penalties and a potential excise tax for failing to comply with the legislation by offering a price that is not equal to or less than the negotiated “maximum fair price” under the law or for taking price increases that exceed inflation. The legislation also requires manufacturers to pay rebates for drugs in Medicare Part D whose price increases exceed inflation. Further, the legislation caps Medicare beneficiaries’ annual out-of-pocket drug expenses at $2,000. The effect of Inflation Reduction Act of 2022 on our business and the healthcare industry in general is not yet known.

The pricing of prescription pharmaceuticals is also subject to governmental control outside the United States. In these other countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost effectiveness of our product candidates to other available therapies. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our ability to generate revenues and become profitable could be impaired.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for approved products. In addition, there have been several recent Congressional inquiries and proposed bills designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, reduce the cost of drugs under Medicare and reform government program reimbursement methodologies for drugs. 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 marketing approvals of our products and product candidates, if any, may be. In addition, increased scrutiny by the U.S. Congress of the FDA’s approval process may significantly delay or prevent marketing

approval of those product candidates for which we seek marketing approval, as well as subject us to more stringent labeling and post-marketing testing and other requirements.

Risks Related to Product Development

***Our failure to successfully identify, develop and market additional product candidates, or acquire additional product candidates or enter into collaborations or other commercial agreements could impair our ability to grow.***

As part of our growth strategy, we intend to identify, develop and market additional product candidates leveraging our formulation technology platforms, and evaluate other commercial relationships through collaborations or other strategic agreements. We are exploring various therapeutic opportunities for our pipeline programs. We may spend several years completing our development of any particular current or future internal product candidates, and failure can occur at any stage. The product candidates to which we allocate our resources may not end up being successful. Gvoke, which delivers ready-to-use glucagon via a pre-filled syringe or auto-injector, was approved by the FDA in 2019 for the treatment of severe hypoglycemia in pediatric (aged two years and above) and adult patients with diabetes. While we have identified several additional potential applications of our ready-to-use glucagon, there is no guarantee that we will be able to utilize our formulation technology platforms to obtain approval of additional product candidates.

In the future, we may be dependent upon pharmaceutical companies, academic scientists and other researchers to sell or license product candidates, approved products or the underlying technology to us. The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. In addition, we expect to seek one or more collaborators for the development and commercialization of one or more of our products or product candidates, particularly with respect to our pipeline product candidates or foreign geographies. We face significant competition in seeking appropriate collaborators. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies or enter into collaborations or other strategic arrangements and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management’s time and attention to develop acquired products or technologies;
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- increased amortization expenses;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to motivate or retain key employees of any acquired businesses.

Further, any product candidate that we identify internally or acquire would require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and other regulatory authorities.

**Risks Related to our Industry and Ongoing Legal and Regulatory Requirements**

Risks Related to Ongoing Regulatory Obligations

***Even after approval of our products and product candidates, we may still face future development and regulatory difficulties. If we fail to comply with continuing U.S. and non-U.S. regulations or new adverse safety data arise, we could lose our marketing approvals and our business would be seriously harmed.***

Our approved products and product candidates, if approved, will also be subject to ongoing regulatory requirements for manufacturing, distribution, sale, labeling, packaging, storage, advertising, promotion, record-keeping and submission of safety and other post-market information. Approved products, third-party suppliers and their facilities are required to comply with extensive FDA requirements and requirements of other similar agencies even after approval, including ensuring that quality control and manufacturing procedures conform to CGMPs and applicable QSRs and applicable product tracking and tracing requirements. As such, we and our third-party suppliers are subject to continual review and periodic inspections, both announced and unannounced, to assess compliance with CGMPs and QSRs. Accordingly, we and our third-party suppliers must continue to expend time, money and effort in all areas of regulatory compliance, including manufacturing, production and quality control. We will also be required to report certain adverse reactions and production problems, if any, to the FDA and other similar agencies and to comply with certain requirements concerning advertising and promotion for our products. 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 label. Accordingly, we may not promote our approved products for indications or uses for which they are not approved.

If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, or disagrees with the promotion, marketing or labeling of a product, it may impose restrictions on that product or us, including requiring withdrawal of the product from the market. These unknown problems could be discovered as a result of any post-marketing follow-up studies, routine safety surveillance or other reporting required as a condition to approval.

Regulatory agencies may also impose requirements for costly post-marketing studies or clinical trials and surveillance to monitor the safety or efficacy of a product. The FDA and other agencies, including the Department of Justice ("DOJ"), closely regulate and monitor the post-approval marketing and promotion of products to ensure that they are manufactured, marketed and distributed only for the approved indications and in accordance with the provisions of the approved labeling. The FDA imposes stringent restrictions on manufacturers' communications regarding off-label use, and if we, or any future collaborators, do not market any of our products for which we, or they, receive marketing approval for only their approved indications, we, or they, may be subject to warnings or enforcement action for off-label marketing, government investigations, or litigation. Violation of the FDCA and other statutes, including the False Claims Act, relating to the promotion and advertising of prescription drugs may lead to investigations or allegations of violations of federal and state healthcare fraud and abuse laws and state consumer protection laws. On August 14, 2020, we received an untitled letter from FDA's Office of Prescription Drug Promotion regarding a promotional television advertisement for Gvoke PFS. The letter raised concerns that the advertisement did not include sufficient risk information, made misleading claims as to the product's ease of use, and omitted information about the seriousness of the condition for which Gvoke PFS is indicated and the circumstances when it is appropriate to administer Gvoke PFS. The television advertisement cited in the untitled letter was discontinued in March of 2020. We submitted a response to the FDA regarding our plan to revise the advertisement at issue. The FDA completed evaluation of our response and confirmed that we have addressed all the violations contained in the untitled letter.

If our products or product candidates fail to comply with applicable regulatory requirements, or if a problem with one of our products or third-party suppliers is discovered, a regulatory agency may:

- restrict the marketing or manufacturing of such products;
- restrict or require modification of or revision to the labeling of a product;
- issue warning letters or untitled letters which may require corrective action;
- mandate modifications to promotional materials or require us to provide corrective information to healthcare practitioners;
- require us to enter into a consent decree or permanent injunction, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- impose other administrative or judicial civil or criminal penalties including fines, imprisonment and disgorgement of profits;
- suspend or withdraw regulatory approval;
- refuse to approve pending applications or supplements to approved applications filed by us;
- close the facilities of our third-party suppliers;
- suspend ongoing clinical trials;
- impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or recommend or require a product recall.

The FDA's and foreign regulatory agencies' policies are subject to change, and additional federal, state, local or non-U.S. governmental regulations may be enacted that could affect our ability to maintain compliance. We cannot predict the likelihood, nature or extent of adverse governmental regulation that may arise from future legislation or administrative action, either in the United States or abroad.

***Our relationships with customers and payors is subject to applicable anti-kickback, fraud and abuse, transparency, privacy, and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens and diminished profits and future earnings.***

Healthcare providers, physicians and third-party payors will play a primary role in the recommendation and prescription of any products for which we obtain marketing approval. Our arrangements with investigators, healthcare practitioners, consultants, third-party payors and customers, if any, will subject us to broadly applicable fraud and abuse and other healthcare laws and regulations. These laws and regulations may constrain the business or financial arrangements and relationships through which we conduct our operations, including how we research, market, sell and distribute any products for which we obtain marketing approval. For more information, see the section entitled, "*Business — Other Healthcare Laws and Compliance Requirements"* in our most recent Annual Report on Form 10-K.

Efforts to ensure that our business arrangements with third parties, and our business generally, comply with applicable healthcare laws and regulations involve substantial costs. It is possible that governmental authorities will conclude that our business practices, including our arrangements with physicians and other healthcare providers, some of whom may receive stock options as compensation for services provided, may not comply with current or future statutes, regulations, agency guidance or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, imprisonment, exclusion of products from government funded healthcare programs, such as Medicare and Medicaid, disgorgement, contractual damages, diminished profits and future earnings, reputational harm and the curtailment or restructuring of our operations, as well as 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, any of which could adversely affect our ability to operate our business and our financial results. Defending against any such actions can be costly and time consuming and may require significant financial and personnel resources. Therefore, even if we are successful in defending against any such actions that may be brought against us, our business may be impaired. Further, if any of the physicians or other healthcare providers or entities with whom we expect to do business is found to be not in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs.

Third party patient assistance programs that receive financial support from companies have become the subject of enhanced government and regulatory scrutiny. Government enforcement agencies have shown increased interest in pharmaceutical companies' product and patient assistance programs, including reimbursement support services, and a number of investigations into these programs have resulted in significant civil and criminal settlements. The U.S. government has established guidelines that suggest that it is lawful for pharmaceutical manufacturers to make donations to charitable organizations who provide copay assistance to Medicare patients, provided that such organizations, among other things, are bona fide charities, are entirely independent of and not controlled by the manufacturer, provide aid to applicants on a first-come basis according to consistent financial criteria and do not link aid to use of a donor's product. However, donations to patient assistance programs have received some negative publicity and have been the subject of multiple government enforcement actions, related to allegations regarding their use to promote branded pharmaceutical products over other less costly alternatives. Specifically, in recent years, there have been multiple settlements resulting out of government claims challenging the legality of patient assistance programs under a variety of federal and state laws. It is possible that we may make grants to independent charitable foundations that help financially needy patients with their premium, copay, and co-insurance obligations. If we choose to do so, and if we or our vendors or donation recipients are deemed to fail to comply with relevant laws, regulations or evolving government guidance in the operation of these programs, we could be subject to damages, fines, penalties, or other criminal, civil, or administrative sanctions or enforcement actions. 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. Regardless of whether we have complied with the law, a government investigation could impact our business practices, harm our reputation, divert the attention of management, increase our expenses, and reduce the availability of foundation support for our patients who need assistance. Further, it is possible that changes in insurer policies regarding copay coupons and/or the introduction and enactment of new legislation or regulatory action could restrict or otherwise negatively affect these patient support programs, which could result in fewer patients using affected products, and therefore could have a material adverse effect on our sales, business, and financial condition. Although a number of these and other proposed measures may require authorization through additional legislation to become effective, and the current U.S. presidential administration may reverse or otherwise change these measures, both the current U.S. presidential administration and Congress have indicated that they will continue to seek new legislative measures to control drug costs. We cannot predict how the implementation of and any further changes to this rule will affect our business.

***Laws and regulations governing any international operations we may have in the future may preclude us from developing, manufacturing and selling certain product candidates outside the United States and require us to develop and implement costly compliance programs.***

We currently have operations in the United States and in Ireland, and we maintain relationships with CMOs in certain parts of Europe, Asia and the United States for the manufacture of our products and product candidates. The Foreign Corrupt Practices Act ("FCPA")

prohibits any U.S. individual or business from paying, offering, authorizing payment or offering of anything of value, directly or indirectly, to any foreign official, political party or candidate for the purpose of influencing any act or decision of the foreign entity in order to assist the individual or business in obtaining or retaining business. The FCPA also obligates companies whose securities are listed in the United States to comply with certain accounting provisions requiring the company to maintain books and records that accurately and fairly reflect all transactions of the corporation, including international subsidiaries, and to devise and maintain an adequate system of internal accounting controls for international operations. The anti-bribery provisions of the FCPA are enforced primarily by the DOJ. The Securities and Exchange Commission ("SEC") is involved with enforcement of the books and records provisions of the FCPA and may suspend or bar issuers from having its securities traded on U.S. exchanges for violations of the FCPA's accounting provisions.

Various laws, regulations and executive orders also restrict the use and dissemination outside the United States, or the sharing with certain non-U.S. nationals, of information classified for national security purposes, as well as certain products and technical data relating to those products. As we expand our presence outside the United States, we are required to dedicate additional resources to comply with laws and regulations in each new jurisdiction in which we are operating or plan to operate, and these laws may preclude us from developing, manufacturing, or selling certain drugs and product candidates outside the United States, which could limit our growth potential and increase our development costs.

The creation and implementation of international business practices compliance programs, particularly FCPA compliance, are costly and such programs are difficult to enforce, especially in countries in which corruption is a recognized problem and where reliance on third parties is required. In addition, the FCPA presents particular challenges in the pharmaceutical industry because, in many countries, hospitals are operated by the government, and doctors and other hospital employees are considered foreign officials. Certain payments to hospitals in connection with clinical trials and other work have been deemed to be improper payments to government officials and have led to FCPA enforcement actions. Indictment alone under the FCPA can lead to suspension of the right to do business with the U.S. government until the pending claims are resolved. Conviction of a violation of the FCPA can result in long-term disqualification as a government contractor.

Accordingly, our failure to comply with the FCPA or other export control, anti-corruption, anti-money laundering and anti-terrorism laws or regulations and other similar laws governing international business practices may result in substantial penalties, including suspension or debarment from government contracting. The termination of a government contract or relationship as a result of our failure to satisfy any of our obligations under such laws would have a negative impact on our operations and harm our reputation and ability to procure government contracts. We cannot assure you that our compliance policies and procedures are or will be sufficient or that our directors, officers, employees, representatives, consultants and agents have not engaged and will not engage in conduct for which we may be held responsible, nor can we assure you that our business partners have not engaged and will not engage in conduct that could materially affect their ability to perform their contractual obligations to us or even result in our being held liable for such conduct.

***Governments outside the United States tend to impose strict price controls, which may adversely affect our revenues, if any.***

In some foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing vary widely from country to country. For example, the EU provides options for its Member States to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. In addition, there can be considerable pressure by governments and other stakeholders on prices and reimbursement levels, including as part of cost containment measures. Political, economic and regulatory developments may further complicate pricing negotiations, and pricing negotiations may continue after coverage and reimbursement have been obtained. Reference pricing used by various countries and parallel distribution or arbitrage between low-priced and high-priced countries can further reduce prices. To obtain reimbursement or pricing approval in some countries, we, or any future collaborators, may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidates to other available therapies, which is time consuming and costly. A Member State may approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. There can be no assurance that any country that has price controls or reimbursement limitations for pharmaceutical products will allow favorable reimbursement and pricing arrangements for any of our product candidates. Historically, products launched in the EU do not follow price structures of the U.S. and generally prices tend to be significantly lower. If reimbursement of our product candidates is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed.

Risks Related to Industry Competition

***We operate in a competitive business environment and, if we are unable to compete successfully against our existing or potential competitors, our sales and operating results may be negatively affected and we may not successfully commercialize our products or product candidates, even if approved.***

The pharmaceutical and biotechnology industries are characterized by intense competition and significant and rapid technological change as researchers learn more about diseases and develop new technologies and treatments. Any product candidates that we successfully develop and commercialize will compete with existing drugs and new drugs that may become available in the future. While we believe that our product and product candidate platform, development expertise and scientific knowledge provide us with

competitive advantages, we face potential competition from many different sources, including major pharmaceutical, specialty pharmaceutical and biotechnology companies, academic institutions, governmental agencies and public and private research institutions. Many of our current and potential competitors are major pharmaceutical companies that have substantially greater financial, technical and marketing resources than we do, and they may succeed in developing products that would render our products obsolete or noncompetitive. Our ability to compete successfully will depend on our ability to develop future products that reach the market in a timely manner, are well adopted by patients and healthcare providers and receive adequate coverage and reimbursement from third-party payors. Because of the size of the potential market, we anticipate that companies will dedicate significant resources to developing products competitive to our product candidates.

For example, Gvoke has numerous competitors in the severe hypoglycemia market, which currently include Eli Lilly's Baqsimi®, an intranasal glucagon dry powder, Eli Lilly's GEK, Novo Nordisk's GlucaGen HypoKit and Fresenius Kabi's glucagon emergency kit for low blood sugar. Amphastar's ANDA for generic Glucagon for Injection Emergency Kit was approved by the FDA on December 29, 2020 for the treatment of severe hypoglycemia. Zealand Pharma received approval by the FDA of its dasiglucagon auto-injector Zegalogue® in March 2021 and recently entered into a global license and development agreement to commercialize Zegalogue with Novo Nordisk. At any time, these or other industry participants may develop alternative treatments, products or procedures for the treatment of severe hypoglycemia that compete directly or indirectly with Gvoke. Competitors may also develop and patent processes or products earlier than we can or obtain regulatory clearance or approvals for competing products more rapidly than we can, which could impair our ability to develop and commercialize similar processes or products. If alternative treatments are, or are perceived to be, superior to our products, sales of our products or product candidates, if approved, could be negatively affected and our results of operations could suffer.

The widespread acceptance of currently available therapies with which our products and product candidates compete or will compete may limit market acceptance of Gvoke or our product candidates even if approved and commercialized. For example, traditional glucagon kits currently available for hypoglycemia are widely accepted in the medical community and have a long history of use. These treatments compete with Gvoke and may limit the potential for Gvoke to receive widespread acceptance.

In addition, Keveyis is an oral carbonic anhydrase inhibitor, that was approved in the United States to treat hyperkalemic, hypokalemic and related variants of PPP. Acetazolamide, another oral carbonic anhydrase inhibitor, is used frequently off-label for the prophylactic and sometimes acute treatment of PPP. Potassium supplements are indicated for use in hypokalemic periodic paralysis in the United States and are frequently used either chronically or for emergency treatment of episodes in that form of PPP. Several other types of drugs have been reported to have benefits for chronic or acute use in one or more than one PPP variant, including potassium-sparing diuretics, beta receptor agonists, mexelitine and other sodium channel blockers, and others. We are not aware of drugs currently in development for prophylactic chronic treatment of PPP. In addition, due to the end of orphan drug exclusivity, new generic competition may compete with Keveyis and sales of Keveyis could be negatively affected and our results of operations could suffer.

We are currently aware of various companies that are marketing existing drugs that may compete with Recorlev such as Corcept Therapeutics and Recordati. The treatment of endogenous Cushing's syndrome patients who fail or are ineligible for surgery in the United States and Europe are: Korlym (mifepristone) marketed by Corcept Therapeutics in the United States; Signifor LAR (pasireotide) and Isturisa (osilodrostat), both marketed by Recordati in the United States and EU; and ketoconazole, metyrapone and mitotane marketed by HRA in the EU. Corcept is developing relacorilant, a second-generation glucocorticoid receptor modulator; currently in Phase 3. Ketoconazole is used off-label for treatment of Cushing's syndrome in the United States. Regulatory approval of ketoconazole for the treatment of endogenous Cushing's syndrome in the United States, which is not currently being sought by any sponsor to our knowledge, could significantly increase competition for Recorlev due to the similar mechanisms of action between the drug products.

***If the FDA or other applicable regulatory authorities approve generic products that compete with any of our products or product candidates, the sales of our products and product candidates, if approved, could be adversely affected.***

Once an NDA, including a Section 505(b)(2) application, is approved, the product covered becomes a "listed drug" which can be cited by potential competitors in support of approval of an abbreviated new drug application ("ANDA"). FDA regulations and other applicable regulations and policies provide incentives to manufacturers to create modified versions of a drug to facilitate the approval of an ANDA or other application for similar substitutes. If these manufacturers demonstrate that their product has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use, or labeling, as our products or product candidates, they might only be required to conduct a relatively inexpensive study to show that their generic product is absorbed in the body at the same rate and to the same extent as, or is bioequivalent to, our products or product candidates. In some cases, even this limited bioequivalence testing can be waived by the FDA. Laws have also been enacted to facilitate the development of generic drugs and biologics based off recently approved NDAs and BLAs. The Creating and Restoring Equal Access to Equivalent Samples Act ("CREATES Act") was enacted in 2019 requiring sponsors of approved NDAs and BLAs to provide sufficient quantities of product samples on commercially reasonable, market-based terms to entities developing generic drugs and biosimilar biological products. The law establishes a private right of action allowing developers to sue application holders that refuse to sell them product samples needed to support their applications. If we are required to provide product samples or allocate additional resources to responding to such requests or any legal challenges under this law, our business could be adversely impacted. Competition from generic equivalents to our products or product candidates could substantially limit our ability to generate revenues and therefore to obtain a return on the investments we have made in our products or product candidates. For example, Amphastar's ANDA for generic Glucagon for Injection Emergency Kit was approved by the FDA on December 29, 2020 for the treatment of severe hypoglycemia. We relied on orphan drug

exclusivity in the marketing and sales of Keveyis through expiration of orphan drug exclusivity in August 2022 and intend to rely on orphan drug exclusivity and if available, NCE exclusivity in the marketing and sale of Recorlev. While we applied for NCE exclusivity for Recorlev under section 505(u) of the FDCA, the FDA may determine that the Recorlev application does not meet the eligibility criteria under 505(u) for NCE exclusivity.

**Risks Related to Our Intellectual Property**

Risks Related to Protecting Our Intellectual Property

***Our success depends on our ability to protect our intellectual property and proprietary technology, as well as the ability of our collaborators to protect their intellectual property and proprietary technology.***

Our success depends in large part on our ability to obtain and maintain patent protection and trade secret protection in the United States and other countries with respect to the use, formulation and structure of our proprietary product candidates, the methods used to manufacture them, the related therapeutic targets and associated methods of treatment as well as on successfully defending these patents against potential third-party challenges. Our ability to protect our products and product candidates from unauthorized making, using, selling, offering to sell or importing by third parties is dependent on the extent to which we have rights under valid and enforceable patents that cover these activities. If we do not adequately protect our intellectual property rights, competitors may be able to erode or negate any competitive advantage we may have, which could harm our business and ability to achieve profitability. To protect our proprietary position, we file patent applications in the United States and abroad related to our novel product candidates that are important to our business; we may in the future also license or purchase patents or applications owned by others. The patent application and approval process is expensive and time consuming. We may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Moreover, obtaining and maintaining patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

If the scope of the patent protection we or our potential licensors obtain is not sufficiently broad, we may not be able to prevent others from developing and commercializing technology and products similar or identical to ours. The degree of patent protection we require to successfully compete in the marketplace may be unavailable or severely limited in some cases and may not adequately protect our rights or permit us to gain or keep any competitive advantage. We cannot provide any assurances that any of our patents have, or that any of our pending patent applications that mature into issued patents will include, claims with a scope sufficient to protect our current and future product candidates or otherwise provide any competitive advantage. In addition, to the extent that we license intellectual property in the future, we cannot assure you that those licenses will remain in force. In addition, the laws of foreign countries may not protect our rights to the same extent as the laws of the United States. Furthermore, patents have a limited lifespan. In the United States, the natural expiration of a patent is generally twenty years after it is filed. Various extensions may be available; however, the life of a patent and the protection it affords are limited. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized.

Even if they are unchallenged, our patents and pending patent applications, if issued, may not provide us with any meaningful protection or prevent competitors from designing around our patent claims to circumvent our patents by developing similar or alternative technologies or therapeutics in a non-infringing manner. For example, a third party may develop a competitive therapy that provides benefits similar to one or more of our products or product candidates but that uses a formulation and/or a device that falls outside the scope of our patent protection. If the patent protection provided by the patents and patent applications we hold or pursue with respect to our products or product candidates is not sufficiently broad to exclude such competition, our ability to successfully commercialize our products or product candidates could be negatively affected, which would harm our business. Although we currently own all of our patents and our patent applications, similar risks would apply to any patents or patent applications that we may in-license in the future.

We, or any future partners, collaborators, or licensees, may fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection on them. Therefore, we may miss potential opportunities to strengthen our patent position.

It is possible that defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example with respect to proper priority claims, inventorship, claim scope, or requests for patent term adjustments. If we or our partners, collaborators, licensees or licensors fail to establish, maintain or protect such patents and other intellectual property rights, such rights may be reduced or eliminated. If our partners, collaborators, licensees or licensors are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form, preparation, prosecution, or enforcement of our patents or patent applications, such patents may be invalid and/or unenforceable, and such applications may never result in valid, enforceable patents. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain. No consistent policy regarding the breadth of claims allowed in biotechnology and pharmaceutical patents has emerged to date in the United States or in many foreign jurisdictions. In addition, the determination of patent rights with respect to pharmaceutical compounds commonly involves complex legal and factual questions, which has in recent years been the subject of much litigation. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain.

Moreover, because the issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, our patents or pending patent applications may be challenged in the courts or patent offices in the United States and abroad. There is no assurance that all of the potentially relevant prior art relating to our patents and patent applications has been found. If such prior art exists, it may be used to invalidate a patent or may prevent a patent from issuing from a pending patent application. For example, such patent filings may be subject to a third-party pre-issuance submission of prior art to the USPTO and/or to other patent offices around the world. Alternately or additionally, we may become involved in post-grant review procedures, oppositions, derivations proceedings, reexaminations, inter partes review or interference proceedings, in the United States or elsewhere, challenging patents or patent applications in which we have rights, including patents on which we rely to protect our business. An adverse determination in any such challenges may result in loss of exclusivity or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to exclude others from using or commercializing similar or identical technology and products, or may limit the duration of the patent protection of our technology and products.

Pending and future patent applications may not result in patents being issued which protect our business, in whole or in part, or which effectively prevent others from commercializing competitive products. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. In addition, the laws of foreign countries may not protect our rights to the same extent or in the same manner as the laws of the United States. For example, patent laws in various jurisdictions, including significant commercial markets such as Europe, restrict the patentability of methods of treatment of the human body more than United States law does.

The patent application process is subject to numerous risks and uncertainties, and there can be no assurance that we or any future development partners will be successful in protecting our product candidates by obtaining, maintaining and defending patents. These risks and uncertainties include the following:

- the USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case;
- patent applications may not result in any patents being issued;
- patents that may be issued may be challenged, invalidated, modified, revoked, circumvented, found to be unenforceable or otherwise may not provide any competitive advantage;
- our competitors, many of whom have substantially greater resources and many of whom have made significant investments in competing technologies, may seek or may have already obtained patents that will limit, interfere with or eliminate our ability to make, use, and sell our potential product candidates;
- there may be significant pressure on the U.S. government and international governmental bodies to limit the scope of patent protection both inside and outside the United States for disease treatments that prove successful, as a matter of public policy regarding worldwide health concerns; and
- countries other than the United States may have patent laws less favorable to patentees than those upheld by U.S. courts, allowing foreign competitors a better opportunity to create, develop and market competing product candidates in such countries.

Issued patents that we have or may in the future obtain or license may not provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our or our future licensors' patents by developing similar or alternative technologies or products in a non-infringing manner. Our competitors may also seek approval to market their own products similar to or otherwise competitive with our products. Alternatively, our competitors may seek to market generic versions of any approved products by submitting ANDAs to the FDA in which they claim that patents owned or in the future licensed by us are invalid, unenforceable or not infringed. In these circumstances, we may need to defend or assert our patents, or both, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court or other agency with jurisdiction may find our patents invalid or unenforceable, or that our competitors are competing in a non-infringing manner. Thus, even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives.

We have entered into a license agreement with a third party (and may, in the future, enter into additional such license agreements with other third parties) pursuant to which they have the right, but not the obligation, in certain circumstances to control enforcement of our licensed patents or defense of any claims asserting the invalidity of these patents. Even if we are permitted to pursue such enforcement or defense, we will require the cooperation of those licensors and cannot guarantee that we would receive it and on what terms. We cannot be certain that those licensors will allocate sufficient resources or prioritize their or our enforcement of such patents or defense of such claims to protect our interests in the licensed patents. If we cannot obtain patent protection or enforce existing or future patents against third parties, our competitive position and our financial condition could suffer.

In addition, we rely on the protection of our trade secrets and proprietary know-how. Although we take steps to protect our trade secrets and unpatented know-how, including entering into confidentiality agreements with third parties and confidential information and inventions agreements with employees, consultants and advisors, we cannot provide any assurances that all such agreements have been duly executed, and third parties may still obtain this information or may come upon this or similar information independently.

Additionally, if the steps taken to maintain our trade secrets are deemed inadequate, we may have insufficient recourse against third parties for misappropriating our trade secrets. If any of these events occurs or if we otherwise lose protection for our trade secrets or proprietary know-how, our business may be harmed.

***Our reliance on third parties requires us to share our trade secrets, which increases the possibility that a competitor will discover them or that our trade secrets will be misappropriated or disclosed.***

Because we rely on third parties to develop and manufacture our product candidates, we must, at times, share trade secrets with them. We seek to protect our proprietary technology in part by entering into confidentiality agreements and, if applicable, material transfer agreements, collaborative research agreements, consulting agreements or other similar agreements with our collaborators, advisors, employees, and consultants prior to beginning research or disclosing proprietary information. These agreements typically limit the rights of the third parties to use or disclose our confidential information, such as trade secrets. Despite the contractual provisions employed when working with third parties, the need to share trade secrets and other confidential information increases the risk that such trade secrets become known by our competitors, are inadvertently incorporated into the technology of others, or are disclosed or used in violation of these agreements. Given that our proprietary position is based, in part, on our know-how and trade secrets, a competitor's discovery of our trade secrets or other unauthorized use or disclosure would impair our competitive position and may harm our business.

The patent positions of pharmaceutical, biotechnology and other life sciences companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Further, the determination that a patent application or patent claim meets all of the requirements for patentability is a subjective determination based on the application of law and jurisprudence. The ultimate determination by the USPTO or by a court or other trier of fact in the United States, or corresponding foreign national patent offices or courts, on whether a claim meets all requirements of patentability cannot be assured. We have not conducted searches for third-party publications, patents and other information that may affect the patentability of claims in our various patent applications and patents, so we cannot be certain that all relevant information has been identified. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patent applications and patents, in any future licensed patents or patent applications or in third-party patents.

We cannot provide assurances that any claim(s) in any of our patent applications will be found to be patentable, including over our own prior art patents, or that any such patent applications will issue as patents. Neither can we make assurances as to the scope of any claims that may issue from our pending and future patent applications nor to the outcome of any proceedings instituted by any potential third parties that could challenge the patentability, validity or enforceability of our patents and patent applications in the United States or foreign jurisdictions. Any such challenge, if successful, could limit patent protection for our products and product candidates and/or materially harm our business.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- we may not be able to generate sufficient data to support full patent applications that protect the entire breadth of developments in one or more of our programs;
- it is possible that one or more of our pending patent applications will not become an issued patent or, if issued, that the patent(s) will not: (a) be sufficient to protect our technology, (b) provide us with a basis for commercially viable products and/or (c) provide us with any competitive advantages;
- if our pending applications issue as patents, they may be challenged by third parties as not infringed, invalid or unenforceable under U.S. or foreign laws; or
- if issued, the patents under which we hold rights may not be valid or enforceable.

In addition, to the extent that we are unable to obtain and maintain patent protection for one of our products or product candidates or in the event that such patent protection expires, it may no longer be cost-effective to extend our portfolio by pursuing additional development of a product or product candidate for follow-on indications.

We also may rely on trade secrets to protect our technologies or products, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. Our employees, consultants, contractors, outside scientific collaborators and other advisers may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third-party entity illegally obtained and is using any of our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

***Patent terms may be inadequate to protect our competitive position on our products for an adequate amount of time.***

Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. Where available, we will seek extensions of patent terms in the United States and, if available, in other countries where we are prosecuting patents. In the United States, the Drug Price Competition and Patent Term Restoration Act of 1984 permits a patent term extension of up to five years beyond the normal expiration of the patent, which is limited to the approved indication (or any additional indications approved during the period of

extension). However, the applicable authorities, including the FDA and the USPTO in the United States and any equivalent regulatory authority in other countries, may not agree with our assessment of whether such extensions are available and may refuse to grant extensions to our patents or may grant more limited extensions than we request. If this occurs, our competitors may be able to take advantage of our investment in development and clinical trials by referencing our clinical and preclinical data and launch their product earlier than might otherwise be the case.

***Our unpatented trade secrets, know-how, confidential and proprietary information, and technology may be inadequately protected.***

We rely in part on unpatented trade secrets, know-how and technology. This intellectual property is difficult to protect, especially in the pharmaceutical industry, where much of the information about a product must be submitted to regulatory authorities during the regulatory approval process. We seek to protect trade secrets, confidential information and proprietary information, in part, by entering into confidentiality and invention assignment agreements with employees, consultants, and others. These parties may breach or terminate these agreements, and we may not have adequate remedies for such breaches. Furthermore, these agreements may not provide meaningful protection for our trade secrets or other confidential or proprietary information or result in the effective assignment to us of intellectual property and may not provide an adequate remedy in the event of unauthorized use or disclosure of confidential information or other breaches of the agreements. Despite our efforts to protect our trade secrets and our other confidential and proprietary information, we or our collaboration partners, board members, employees, consultants, contractors, or scientific and other advisors may unintentionally or willfully disclose our proprietary information to competitors.

Thus, there is a risk that our trade secrets and other confidential and proprietary information could have been, or could, in the future, be shared by any of our former employees with, and be used to the benefit of, any company that competes with us.

If we fail to maintain trade secret protection or fail to protect the confidentiality of our other confidential and proprietary information, our competitive position may be adversely affected. Competitors may also independently discover our trade secrets. Enforcement of claims that a third party has illegally obtained and is using trade secrets is expensive, time consuming and uncertain. If our competitors independently develop equivalent knowledge, methods and know-how, we would not be able to assert our trade secret protections against them, which could have a material adverse effect on our business.

***If our trademarks and trade names are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected.***

Our trademarks or trade names may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks. We rely on both registration and common law protection for our trademarks. We may not be able to protect our rights to these trademarks and trade names or may be forced to stop using these names, which we need for name recognition by potential partners or customers in our markets of interest. During the trademark registration process, we may receive Office Actions from the USPTO objecting to the registration of our trademark. Although we would be given an opportunity to respond to those objections, we may be unable to overcome such objections. In addition, in the USPTO and in comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and/or to seek the cancellation of registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. If we are unable to establish name recognition based on our trademarks and trade names, we may not be able to compete effectively and our business may be adversely affected.

Risks Related to Intellectual Property Litigation

***The pharmaceutical industry is characterized by frequent patent litigation, and we could become subject to litigation that could be costly, result in the diversion of management's time and efforts, require us to pay damages or prevent us from marketing our existing or future products.***

Our commercial success depends in part on our ability to develop, manufacture, market and sell our products that have been approved for sale, and to use our proprietary technology without alleged or actual infringement, misappropriation or other violation of the patents and proprietary rights of third parties. There have been many lawsuits and other proceedings involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions and reexamination proceedings before the USPTO, and corresponding foreign patent offices. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we will market products and are developing product candidates. Some claimants, who may include our competitors in both the United States and abroad, may have substantially greater resources than we do and may be able to sustain the costs of complex intellectual property litigation to a greater degree and for longer periods of time than we could. In addition, patent holding companies that focus solely on extracting royalties and settlements by enforcing patent rights may target us. As the biotechnology and pharmaceutical industries expand and more patents are issued, the risk increases that our products and product candidates may be subject to claims of infringement of the intellectual property rights of third parties.

We cannot be sure that we know of each and every patent and pending application in the United States and abroad that is relevant or necessary to the commercialization of Gvoke, Keveyis, Recorlev, or our product candidates. Generally, we do not conduct independent reviews of patents issued to third parties. The large number of patents, the rapid rate of new patent issuances, the complexities of the technology involved, and uncertainty of litigation increase the risk of business assets and management's attention being diverted to patent litigation. Because patent applications can take up to 18 months after filing to become public, and many years to issue, there may be currently pending patent applications that may later result in issued patents upon which our products or product

candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of any of our products or product candidates, any compositions formed during the manufacturing process or any final product itself, the holders of any such patents may be able to block our ability to commercialize such product or product candidate unless we obtained a license under the applicable patents, or until such patents expire or are finally determined to be invalid or unenforceable. Similarly, if any third-party patents were held by a court of competent jurisdiction to cover aspects of our compositions, formulations, or methods of treatment, prevention or use, the holders of any such patents may be able to block our ability to develop and commercialize the applicable product or product candidate unless we obtained a license or until such patent expires or is finally determined to be invalid or unenforceable. In either case, such a license may not be available on commercially reasonable terms, or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us.

We may become involved in lawsuits to protect or enforce our patents or other intellectual property, which could be expensive, time consuming and unsuccessful. Competitors may infringe our patents, trademarks, copyrights or other intellectual property. To counter infringement or unauthorized use, we may be required to file infringement lawsuits, which can be expensive and time consuming and divert the time and attention of our management and scientific personnel. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents, in addition to counterclaims asserting that our patents are invalid or unenforceable, or both. In any patent infringement proceeding, there is a risk that a court will decide that a patent of ours is invalid or unenforceable, in whole or in part, and that we do not have the right to exclude the other party from making, using or selling the invention at issue. There is also a risk that, even if the validity of such patents is upheld, the court will construe the patent’s claims narrowly or decide that we do not have the right to exclude the other party from making, using or selling the invention at issue on the grounds that our patent claims do not cover the invention or the other party's manufacture, use or sale of it. An adverse outcome in a litigation or proceeding involving one or more of our patents could limit our ability to assert those patents against those parties or other competitors and may curtail or preclude our ability to exclude third parties from making and selling similar or competitive products. Similarly, if we assert trademark infringement claims, a court may determine that the marks we have asserted are unenforceable, that the alleged infringing mark does not infringe our trademark rights, or that the party against whom we have asserted trademark infringement has superior rights to the marks in question. In this last instance, we could ultimately be forced to cease use of such trademarks.

***Others may challenge inventorship or claim an ownership interest in our intellectual property, which could expose it to litigation and have a significant adverse effect on its prospects.***

A third party or former employee or collaborator may claim an ownership interest in one or more of our patents or other proprietary or intellectual property rights. A third party could bring legal actions against us and seek monetary damages and/or enjoin clinical testing, manufacturing and marketing of the affected product or products. A third party could assert a claim or an interest in any of such patents or intellectual property. If we become involved in any litigation, it could consume a substantial portion of our resources and cause a significant diversion of effort by our technical and management personnel.

If any of these actions are successful, in addition to any potential liability for damages, we could be required to obtain a license to continue to manufacture or market the affected product, in which case we may be required to pay substantial royalties or grant cross-licenses to our patents. We cannot, however, assure you that any such license will be available on acceptable terms, if at all. Furthermore, any potential intellectual property litigation also could force us to do one or more of the following:

- stop selling products or using technology that contains the allegedly infringing intellectual property;
- lose the opportunity to license our technology to others or to collect royalty payments based upon successful protection and assertion of our intellectual property rights against others;
- incur significant legal expenses;
- pay substantial damages to the party whose intellectual property rights we may be found to be infringing;
- redesign those products that contain the allegedly infringing intellectual property, which could be costly, disruptive and/or infeasible; or
- attempt to obtain a license to the relevant intellectual property from third parties, which may not be available on reasonable terms or at all.

The outcome of intellectual property litigation is subject to uncertainties that cannot be adequately quantified in advance, including the demeanor and credibility of witnesses and the identity of any adverse party. This is especially true in intellectual property cases that may turn on the testimony of experts as to technical facts upon which experts may reasonably disagree. Any litigation or claim against us, even those without merit, may cause us to incur substantial costs and could place a significant strain on our financial resources, divert the attention of management from our core business, and harm our reputation.

***We may be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors.***

We may also be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors. Many of our employees were previously employed at other pharmaceutical companies, including our competitors or potential competitors, in some cases until recently. We may be subject to claims that we or our employees have inadvertently or otherwise used or disclosed trade

secrets or other proprietary information of these former employers or competitors. In addition, we have been and may in the future be subject to claims that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction to management. If our defense to those claims fails, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Any litigation or the threat thereof may adversely affect our ability to hire employees. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products and product candidates, which could have an adverse effect on our business, results of operations and financial condition.

***An NDA submitted under Section 505(b)(2) subjects us to the risk that we may be subject to a patent infringement lawsuit that would delay or prevent the review or approval of our product candidates.***

We expect to submit NDAs under Section 505(b)(2) of the FDCA for most of our product candidates. Section 505(b)(2) permits the submission of an NDA where at least some of the information required for approval comes from preclinical studies and/or clinical trials that were not conducted by, or for, the applicant and for which the applicant has not obtained a right of reference. An NDA under Section 505(b)(2) would enable us to reference published literature and/or the FDA's previous findings of safety and effectiveness for a previously approved drug. For NDAs submitted under Section 505(b)(2), the patent certification and related provisions of the Hatch-Waxman Act apply.

Accordingly, if we rely for approval on the safety or effectiveness information for a previously approved drug, referred to as a listed drug, we will be required to include patent certifications in our 505(b)(2) application regarding any patents covering the listed drug. If there are patents listed in the FDA publication Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book, for the listed drug, and we seek to obtain approval prior to the expiration of one or more of those patents, we will be required to submit a Paragraph IV certification indicating our belief that the relevant patents are invalid or unenforceable or will not be infringed by the manufacture, use or sale of the product that is the subject of our 505(b)(2) application. Otherwise, our 505(b)(2) application cannot be approved by the FDA until the expiration of any patents listed in the Orange Book for the listed drug. While we did not submit any Paragraph IV certifications in connection with our 505(b)(2) NDA for Gvoke, and do not expect to submit any Paragraph IV certifications for our other current product candidates, there can be no assurance that we will not be required to submit a Paragraph IV certification in respect of any future product candidates for which we seek approval under Section 505(b)(2).

However, an NDA submitted under Section 505(b)(2) subjects us to the risk that we may be subject to a patent infringement lawsuit that would delay or prevent the review or approval of our product candidates.

If we submit any Paragraph IV certification that may be required, we will be required to provide notice of that certification to the NDA holder and patent owner shortly after our 505(b)(2) application is accepted for filing. Under the Hatch-Waxman Act, the patent owner may file a patent infringement lawsuit after receiving such notice. If a patent infringement lawsuit is filed within 45 days of the patent owner's or NDA holder's receipt of notice (whichever is later), a one-time, automatic stay of the FDA's ability to approve the 505(b)(2) NDA is triggered, which typically extends for 30 months unless patent litigation is resolved in favor of the Paragraph IV filer or the patent expires before that time. Accordingly, we may invest a significant amount of time and expense in the development of one or more product candidates only to be subject to significant delay and patent litigation before such product candidates may be commercialized, if at all.

In addition, a 505(b)(2) application will not be approved until any non-patent exclusivity listed in the Orange Book for the listed drug, or for any other drug with the same protected conditions of approval as our product, has expired. The FDA also may require us to perform one or more additional clinical trials or measurements to support the change from the listed drug, which could be time consuming and could substantially delay our achievement of regulatory approval. The FDA also may reject any future 505(b)(2) submissions and require us to submit traditional NDAs under Section 505(b)(1), which would require extensive data to establish safety and effectiveness of the product for the proposed use and could cause delay and additional costs. In addition, the FDA could reject any future 505(b)(2) application and require us to submit an ANDA if, before the submission of our 505(b)(2) application, the FDA approves an application for a product that is pharmaceutically equivalent to ours. These factors, among others, may limit our ability to commercialize our product candidates successfully.

***We may not be able to enforce our intellectual property rights throughout the world.***

We may not be able to enforce our intellectual property rights throughout the world. Filing, prosecuting, enforcing and defending patents on our products and product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. The requirements for patentability may differ in certain countries, particularly in developing countries; thus, even in countries where we do pursue patent protection, there can be no assurance that any patents will issue with claims that cover our products and product candidates.

Moreover, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in foreign intellectual property laws. Additionally, laws of some countries outside the United States and Europe do not afford intellectual property protection to the same extent as the laws of the United States and Europe. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. The legal systems of some countries, including India, China and other developing countries, do not favor the enforcement of patents and other intellectual property rights. This could make it difficult for us to stop the infringement of our patents or the misappropriation of our other intellectual property

rights. For example, many foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties. Consequently, we may not be able to prevent third parties from practicing our inventions in certain countries outside the United States and Europe. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop and market their own products and, further, may export otherwise infringing products to territories where we have patent protection, if our ability to enforce our patents to stop infringing activities is inadequate. These products may compete with our products, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Agreements through which we may license patent rights may not give us sufficient rights to permit us to pursue enforcement of those licensed patents or defense of any claims asserting the invalidity of these patents or the ability to control enforcement or defense of such patent rights in all relevant jurisdictions as requirements may vary.

Proceedings to enforce our patent rights in foreign jurisdictions, whether or not successful, could result in substantial costs and divert our efforts and resources from other aspects of our business. Moreover, such proceedings could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Furthermore, while we intend to protect our intellectual property rights in major markets for our products, we cannot ensure that we will be able to initiate or maintain similar efforts in all jurisdictions in which we may wish to market our products. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate.

Even if we establish infringement, the court may decide not to grant an injunction against further infringing activity and instead award only monetary damages, which may or may not be an adequate remedy. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could adversely affect the price of shares of our common stock. Moreover, there can be no assurance that we will have sufficient financial or other resources to file and pursue such infringement claims, which typically last for years before they are concluded. Even if we ultimately prevail in such claims, the monetary cost of such litigation and the diversion of the attention of our management and scientific personnel could outweigh any benefit we receive as a result of the proceedings.

**Risk Related to Intellectual Property Laws**

***Changes to the patent law in the United States and other jurisdictions could diminish the value of our patents in general, thereby impairing our ability to protect our products.***

As is the case with other biopharmaceutical companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the biopharmaceutical industry involve both technological and legal complexity and are therefore costly, time consuming and inherently uncertain. Changes in patent statutes, regulations promulgated under them, and court holdings interpreting the statutes and regulations could make it more difficult to obtain patent protection for our inventions and increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could harm our business, results of operations and financial condition. Depending on future actions by the U.S. Congress, the U.S. courts, the USPTO and the relevant law-making bodies in other countries, the laws and regulations governing patents could change in unpredictable ways that could weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

Further, for a patent with an effective filing date of March 16, 2013 or later, a petition for post-grant review can be filed by a third party in a nine-month window from issuance of the patent. Alternatively, a petition for inter partes review can be filed after the nine-month period for filing a post-grant review petition has expired. Post-grant review proceedings can be brought on any ground of invalidity, whereas inter partes review proceedings can only raise an invalidity challenge based on published prior art and patents. In these adversarial actions, the USPTO reviews patent claims without the presumption of validity afforded to U.S. patents in lawsuits in U.S. federal courts and uses a lower burden of proof than used in litigation in U.S. federal courts. Therefore, it is generally considered easier and less costly for a competitor or third party to have a U.S. patent invalidated in a USPTO post-grant review or inter partes review proceeding than in a litigation in a U.S. federal court. If any of our patents are challenged by a third party in such a USPTO proceeding, there is no guarantee that we will be successful in defending the patent, which could result in a loss of the challenged patent right to us.

**Risks Related to Employee Matters, Managing Growth and Ongoing Operations**

Risks Related to Potentially Under-resourced Regulatory Authorities

***Disruptions at the FDA, the SEC and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.***

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

Disruptions at the FDA and other agencies may also slow the time necessary for new drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years the U.S. government has shut down several times and certain regulatory agencies, such as the FDA and the SEC, have had to furlough critical FDA, SEC and other government employees and stop critical activities. Since March 2020 when foreign and domestic inspections of facilities were largely placed on hold due to the COVID-19 pandemic, the FDA has been working to resume pre-pandemic levels of inspection activities, including routine surveillance, bioresearch monitoring and pre-approval inspections. Should the FDA determine that an inspection is necessary for approval and an inspection cannot be completed during the review cycle due to restrictions on travel, and the FDA does not determine a remote interactive evaluation to be adequate, the agency has stated that it generally intends to issue, depending on the circumstances, a complete response letter or defer action on the application until an inspection can be completed. During the COVID-19 public health emergency, a number of companies announced receipt of complete response letters due to the FDA's inability to complete required inspections for their applications. During the COVID-19 public health emergency, the FDA has worked to ensure timely reviews of applications for medical products in line with its user fee performance goals and conduct mission critical domestic and foreign inspections to ensure compliance of manufacturing facilities with FDA quality standards. However, the FDA may not be able to continue its current pace and approval timelines could be extended, including where a pre-approval inspection or an inspection of clinical sites is required and due to the ongoing COVID-19 pandemic and travel restrictions FDA is unable to complete such required inspections during the review period. Regulatory authorities outside the U.S. may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic and may experience delays in their regulatory activities. If a prolonged government shutdown occurs, or if global health concerns continue to prevent the FDA or other regulatory authorities from conducting their regular inspections, reviews, or other regulatory activities, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. Further, in our operations as a public company, future government shutdowns could impact our ability to access the public markets and obtain necessary capital in order to properly capitalize and continue our operations.

Risk Related to Employment Matters

***Our business could suffer if we lose the services of key members of our senior management or if we are not able to attract and retain other key employees and consultants.***

We are dependent upon the continued services of key members of our executive management and a limited number of key advisors and personnel. In particular, we are highly dependent on the skills and leadership of our executive management team, including Paul Edick, our Chief Executive Officer, Steven Pieper, our Chief Financial Officer, Steven Prestrelski, our Chief Scientific Officer and Co-Founder, John Shannon, our President and Chief Operating Officer, Ken Johnson, our Senior Vice President, Global Development and Medical Affairs, and Beth Hecht, our Chief Legal Officer and Corporate Secretary. The loss of any one of these individuals could disrupt our operations or our strategic plans. Our industry has experienced a high rate of turnover of management personnel in recent years. Any of our personnel may terminate their employment at will. If we lose one or more of our executive officers or other key employees, our ability to implement our business strategy successfully could be seriously harmed. Furthermore, replacing executive officers or other key employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to develop, gain marketing approval of and commercialize products successfully.

Additionally, our future success will depend on, among other things, our ability to continue to hire and retain the necessary qualified scientific, technical and managerial personnel, for whom we compete with numerous other companies, academic institutions and organizations. Competition to hire from this limited pool is intense, and we may be unable to hire, train, retain or motivate these additional key employees on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. We also experience competition for the hiring of scientific and clinical personnel from universities and research institutions.

We rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by other entities and may have commitments under consulting or advisory contracts with those entities that may limit their availability to us. If we are unable to

continue to attract and retain highly qualified personnel, our ability to commercialize our products and to develop and commercialize our product candidates will be limited.

**Risks Related to Our Common Stock**

Risks Related to Investment in Securities

***Our stock price has been and will likely continue to be volatile, and you may not be able to resell shares of our common stock at or above the price you paid.***

The trading price of our common stock historically has been highly volatile and could continue to be subject to large fluctuations in response to the risk factors discussed in this section, and others beyond our control, including:

- our ability to successfully commercialize Gvoke, Keveyis and Recorlev;
- regulatory actions with respect to our products and product candidates;
- regulatory actions with respect to our competitors' products and product candidates;
- the success of existing or new competitive products or technologies;
- results of clinical trials of product candidates of our competitors;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, collaborations or capital commitments;
- the timing and results of clinical trials of our pipeline product candidates;
- commencement or termination of collaborations for our development programs;
- the results of our efforts to develop additional product candidates or products;
- the level of expenses related to any of our product candidates or clinical development programs;
- failure or discontinuation of any of our development programs;
- the pricing and reimbursement of Gvoke, Keveyis, Recorlev or any of our product candidates that may be approved;
- regulatory or legal developments in the United States and other countries;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- the recruitment or departure of key personnel;
- actual or anticipated changes in estimates as to financial results or development timelines;
- announcement or expectation of additional financing efforts;
- sales of our common stock our insiders or other stockholders;
- variations in our financial results or those of companies that are perceived to be similar to us;
- changes in estimates or recommendations by securities analysts, if any, that cover our stock;
- changes in the structure of healthcare payment systems;
- market conditions in the pharmaceutical and biotechnology sectors;
- general economic, industry and market conditions, including impacts from inflation; and
- global health concerns, such as the COVID-19 pandemic.

In recent years, the stock markets, and particularly the stock of smaller pharmaceutical and biotechnology companies, at times have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of affected companies. Broad market and industry factors may significantly affect the market price of our common stock unrelated to our actual operating performance. Since shares of our common stock were sold in our IPO in June 2018 at a price of $15.00 per share, our stock price has fluctuated significantly.

In addition, in the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price. Securities litigation brought against us in connection with volatility in our stock price, regardless of the merit or ultimate results of such litigation, could result in substantial costs, which would hurt our financial condition and operating results and divert management's attention and resources from our business. On November 7, 2022, the closing price of a share of our common stock was $1.53 per share.

***The conversion of any of the Convertible Notes or other convertible securities into shares of common stock could have a material dilutive effect that could cause our share price to decline.***

We have a number of convertible securities outstanding, including CVRs, Convertible Notes and warrants, and the conversion of such securities into shares of our common stock could have a material dilutive effect that could cause our share price to decline.

The Convertible Notes are convertible into shares of common stock at any time at the option of the holder subject to certain conditions. We have reserved a sufficient number of shares of common stock for issuance upon conversion of the Convertible Notes, CVRs and warrants. During the second half of 2020, $39.1 million in principal amount of Convertible Notes were converted into

13,171,791 shares of our common stock. As of September 30, 2022, the outstanding balance of Convertible Notes was $47.2 million. If any more or all of the Convertible Notes are converted into shares of common stock, our existing shareholders will experience immediate dilution of voting rights and the price of shares of our common stock may decline. Furthermore, the perception that such dilution could occur may cause the market price of our common stock to decline. At any time before the close of business on the second scheduled trading day immediately before the maturity date, holders of Convertible Notes may convert their Convertible Notes at their option into shares of our common stock, together, if applicable, with cash in lieu of any fractional share, at the then-applicable conversion rate. The conversion rate for the Convertible Notes will initially be 326.7974 shares of our common stock per $1,000 principal amount of Convertible Notes, which represents an initial conversion price of approximately $3.06 per share of common stock, and is subject to adjustment under the terms of the Convertible Notes. In the event of certain circumstances, we will increase the conversion rate, provided that the conversion rate will not exceed 367.6470 shares of our common stock per $1,000 principal amount of Convertible Notes. Because the conversion rates of the Convertible Notes adjust upward upon the occurrence of certain events, our existing shareholders may experience more dilution if any or all of the Convertible Notes are converted into shares of common stock after the adjusted conversion rate became effective.

Each CVR is worth up to $1.00, payable to CVR holders if future performance milestones are achieved, and settleable in cash, common stock, or a combination of cash and common stock, at our sole election. If the performance milestones are met and we elect to pay the CVR consideration in common stock, it could have a dilutive effect to our earnings per share and cause our share price to decline.

Upon completion of the Acquisition, each outstanding and unexercised Strongbridge warrant (except private placement warrants) was assumed by the Company such that, upon exercise, the applicable holders will have the right to have delivered to them the reference property (as such term is defined in the Strongbridge assumed warrants). We also assumed the outstanding and unexercised Strongbridge private placement warrants and they expired in June 2022. The conversion of these assumed Strongbridge warrants (except private placement warrants) into shares of our common stock could have a dilutive effect that could cause our share price to decline.

***We do not anticipate paying any cash dividends in the foreseeable future, and accordingly, our stockholders' ability to achieve a return on their investment will depend on appreciation in the price of our common stock.***

We do not anticipate declaring any cash dividends to holders of our common stock in the foreseeable future. In addition, under our Hayfin Loan Agreement, we are generally restricted from paying any dividends or making any distributions on account of our capital stock. Our ability to pay cash dividends also may be prohibited by future loan agreements. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends should not invest in our common stock.

Risks Related to Tax

***We might not be able to utilize a significant portion of our net operating loss carryforwards and research and development tax credit carryforwards.***

As of September 30, 2022, we had federal net operating loss carryforwards of $475.7 million and various state net operating loss carryforwards of $309.7 million. If not utilized, the federal net operating losses generated in taxable years beginning on or before December 31, 2017 will expire at various dates between 2025 and 2037, and these net operating loss carryforwards could expire unused and be unavailable to offset future income tax liabilities. Federal net operating losses generated in taxable years beginning after December 31, 2017 can be carried forward indefinitely; however, such net operating losses may only offset up to 80% of taxable income in taxable years beginning after September 30, 2022. As of September 30, 2022, we had $5.4 million and $2.5 million of federal and state income tax credits, respectively, to reduce future tax liabilities. If not utilized, the $5.4 million in federal income tax credits will begin to expire in 2025, and the $2.5 million of state research and development credits will begin to expire in 2022, and these tax credit carryforwards could expire unused and be unavailable to offset future income tax liabilities. In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended ("Code") and corresponding provisions of state law, if a corporation undergoes an "ownership change," which is 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 loss carryforwards and other pre-change tax attributes to offset its post-change income may be limited. Our existing net operating losses or credits may be subject to limitations arising from previous ownership changes, and if we undergo future ownership changes, many of which may be outside of our control, our ability to utilize our net operating losses or credits could be further limited by Sections 382 and 383 of the Code. Accordingly, we may not be able to utilize a material portion of our net operating losses or credits.

***Changes in tax law may adversely affect us or our investors.***

The rules dealing with U.S. federal, state and local income taxation are constantly under review by persons involved in the legislative process and by the Internal Revenue Service ("IRS") and the U.S. Treasury Department. Changes to tax laws (which changes may have retroactive application) could adversely affect us or holders of our common stock. In recent years, many such changes have been made, and changes are likely to continue to occur in the future. It cannot be predicted whether, when, in what form or with what effective dates tax laws, regulations and rulings may be enacted, promulgated or issued, which could result in an increase in our or our shareholders' tax liability or require changes in the manner in which we operate in order to minimize or mitigate any adverse effects of

changes in tax law.

Risks Related to our Indenture for our Convertible Notes, Charter and Bylaws

***Provisions in the Indenture for our Convertible Notes and corporate charter documents and under Delaware law may prevent or frustrate attempts by our stockholders to change our management or hinder efforts to acquire a controlling interest in us.***

Provisions in our corporate charter and our bylaws may discourage, delay or prevent a merger, acquisition or other change in control of us that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Among other things, these provisions:

- establish a classified board of directors such that all members of the board are not elected at one time; allow the authorized number of our directors to be changed only by resolution of our board of directors; and limit the manner in which stockholders can remove directors from the board;
- establish advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on at stockholder meetings;
- require that stockholder actions must be effected at a duly called stockholder meeting and prohibit actions by our stockholders by written consent;
- limit who may call a special meeting of stockholders;
- authorize our board of directors to issue preferred stock without stockholder approval, which could be used to institute a “poison pill” that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by our board of directors;
- require the approval of the holders of at least two-thirds of the votes that all our stockholders would be entitled to cast to amend or repeal certain provisions of our charter or bylaws; and
- provide that the Court of Chancery of the State of Delaware will be the exclusive forum for any state law derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty by one or more of our directors, officers or employees, any action asserting a claim against us pursuant to the Delaware General Corporation Law or our charter documents (including the interpretation, validity or enforceability thereof), or any action asserting a claim against us that is governed by the internal affairs doctrine, and that the federal district courts of the United States of America will be the sole and exclusive forum for claims arising under the Securities Act of 1933, as amended (the "Securities Act").

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the General Corporation Law of the State of Delaware, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. This could discourage, delay or prevent someone from acquiring us or merging with us, whether or not it is desired by, or beneficial to, our stockholders. This could also have the effect of discouraging others from making tender offers for our common stock, including transactions that may be in our stockholders’ best interests. These provisions may also prevent changes in our management or limit the price that investors are willing to pay for our stock.

In addition, certain provisions in the Indenture governing our Convertible Notes could make a third-party attempt to acquire us more difficult or expensive. For example, if a takeover constitutes a fundamental change, then noteholders will have the right to require us to repurchase their notes for cash. In addition, if a takeover constitutes a make-whole fundamental change, then we may be required to temporarily increase the conversion rate. In either case, and in other cases, our obligations under the notes and the indenture could increase the cost of acquiring us or otherwise discourage a third party from acquiring us or removing incumbent management, including in a transaction that noteholders or holders of our common stock may view as favorable.

***Our bylaws designate certain courts as the sole and exclusive forums for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees and may discourage such lawsuits with respect to such claims.***

Our amended and restated bylaws provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for any state law claim for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of, or a claim based on, a breach of or based on a fiduciary duty owed by any of our current or former directors, officers and employees to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, our certificate of incorporation or our bylaws, or (iv) any action asserting a claim that is governed by the internal affairs doctrine, in each case subject to the Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein (the “Delaware Forum Provision”). The Delaware Forum Provision will not apply to any causes of action arising under the Securities Act or the Securities Exchange Act of 1934, as amended. In addition, our amended

and restated bylaws further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act (the "Federal Forum Provision").

This forum selection provision may limit a shareholder's ability to bring a claim in a judicial forum that it finds favorable or cost-efficient for disputes with us or any of our directors, officers, employees or agents, which may discourage such lawsuits, or increase the costs to a shareholder of bringing such lawsuits, against us and such persons.

The enforceability of forum selection provisions in other companies' articles of incorporation, bylaws or similar governing documents has been challenged in legal proceedings, and it is possible that in connection with any action a court could find the forum selection provisions contained in our bylaws to be inapplicable or unenforceable in such action. If a court were to find these forum selection provisions inapplicable or unenforceable, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely impact our operating or financial condition or performance.

General Risk Factors

***If we experience significant disruptions in our information technology systems, our business may be adversely affected.***

We depend on our information technology systems for the efficient functioning of our business, including accounting, data storage, compliance, purchasing and inventory management. Our current systems are not fully redundant. We may experience difficulties in implementing some upgrades which would impact our business operations or experience difficulties in operating our business during the upgrade, either of which could disrupt our operations, including our ability to timely ship and track product orders, project inventory requirements, manage our supply chain and otherwise adequately service our customers. In the event we experience significant disruptions of our information technology systems, we may not be able to repair our systems in an efficient and timely manner. Accordingly, such events may disrupt or reduce the efficiency of our entire operation and have a material adverse effect on our results of operations and cash flows.

We are increasingly dependent on sophisticated information technology for our infrastructure. Our information systems require an ongoing commitment of significant resources to maintain, protect and enhance existing systems. Despite our implementation of security measures, our information systems are vulnerable to damages from computer viruses, natural disasters, unauthorized access, cyber attack, including ransomware, and other similar disruptions. Any system failure, accident or security breach could result in disruptions to our operations. For example, third parties may attempt to hack into systems and may obtain our proprietary information or other sensitive information, which could cause significant damage to our reputation, lead to claims against the Company and ultimately harm our business.

***If products liability lawsuits are brought against us, our business may be harmed, and we may be required to pay damages that exceed our insurance coverage.***

We may face liability claims related to the use or misuse of our products and product candidates. These claims may be expensive to defend and may result in large judgments against us. During the course of treatment, patients using our products and product candidates could suffer adverse medical effects for reasons that may or may not be related to our products and product candidates. Any of these events could result in a claim of liability. Any such claims against us, regardless of their merit, could result in significant costs to defend or awards against us that could materially harm our business, financial condition or results of operations. In addition, any such claims against us could result in a distraction to management, decreased demand for our products, an adverse effect on our public reputation, and/or difficulties in commercializing our products. To date, we have not received notice of any products liability claims against us. We maintain total products liability insurance coverage of $15.0 million.

Although we maintain products liability insurance for claims arising from the use of our products after FDA approval and for claims arising from the use of our product candidates in clinical trials prior to FDA approval at levels that we believe are appropriate, we may not be able to maintain our existing insurance coverage or obtain additional coverage on commercially reasonable terms for the use of our other products and product candidates in the future. Also, our insurance coverage and resources may not be sufficient to satisfy any liability resulting from products liability claims, which could materially harm our business, financial condition or results of operations. In addition, we have in the past and may in the future agree to indemnify the counterparties from losses arising from claims relating to the products, processes or services made, used, sold or performed.

Should our obligation under an indemnification provision exceed applicable insurance coverage or if we were denied insurance coverage, our business, financial condition and results of operations could be adversely affected. Similarly, if we are relying on a collaborator to indemnify us and the collaborator is denied insurance coverage or the indemnification obligation exceeds the applicable insurance coverage and the collaborator does not have other assets available to indemnify us, our business, financial condition and results of operations could be adversely affected.

Products liability claims could result in an FDA or other regulatory authority investigation of the safety or efficacy of our products, our manufacturing processes and facilities, our marketing programs, our internal safety reporting systems or our staff conduct. A regulatory authority investigation could also potentially lead to a recall of our products or more serious enforcement actions, limitations on the indications for which they may be used, or suspension or withdrawal of approval. Products liability claims could also result in investigation, prosecution or enforcement action by the DOJ or other federal or state government agencies.

***If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.***

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. In addition, any testing by us conducted in connection with Section 404 of the Sarbanes-Oxley Act, or any subsequent testing by our independent registered public accounting firm, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses or that may require prospective or retroactive changes to our financial statements or identify other areas for further attention or improvement. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our stock.

We are required to disclose changes made in our internal controls and procedures on a quarterly basis, and our management is required to assess the effectiveness of these controls annually. However, for as long as we are an “emerging growth company” under the Jumpstart Our Business Startups Act ("JOBS Act") enacted in April 2012, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act. We could be an “emerging growth company” for up to five years from the date of our IPO. An independent assessment of the effectiveness of our internal controls over financial reporting could detect problems that our management's assessment might not. Undetected material weaknesses in our internal controls over financial reporting could lead to financial statement restatements and require us to incur the expense of remediation.

***As a result of being a public company, we will continue to incur significant additional costs which may adversely affect our operating results and financial condition.***

We expect to continue to incur costs associated with corporate governance requirements, including requirements under the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, as well as rules implemented by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, the SEC and The Nasdaq Global Select Market. These rules and regulations have increased our accounting, legal and financial compliance costs and make some activities more time consuming and costly. In addition, we will continue to incur costs associated with our public company reporting requirements, and we expect those costs may increase in the future. For example, we have devoted and expect to continue to devote significant resources to complete the assessment and documentation of our internal controls over financial reporting under Section 404 of the Sarbanes-Oxley Act, including assessment of the design and effectiveness of our internal controls related to our information systems.

During the course of our ongoing review and testing of our internal controls, we may identify deficiencies and may incur significant costs to remediate such deficiencies, including material weaknesses, if any, that we identify through these efforts. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

New laws and regulations, as well as changes to existing laws and regulations affecting public companies, including the provisions of the Sarbanes-Oxley Act, the Dodd-Frank Act and rules adopted by the SEC and The Nasdaq Global Select Market, would likely result in increased costs to us as we respond to their requirements, which may adversely affect our operating results and financial condition.

***Securities analysts may publish inaccurate or unfavorable research or reports about our business or may publish no information at all, which could cause our stock price or trading volume to decline.***

The trading market for our common stock is influenced by the research and reports that industry or financial analysts publish about us and our business. We do not control these analysts. Analysts who publish information about our common stock may have relatively little experience covering our company, which could affect their ability to accurately forecast our results and could make it more likely that we fail to meet their estimates. If any of the analysts who cover us provide inaccurate or unfavorable research or issue an adverse opinion regarding our stock price, our stock price could decline. If one or more of these analysts cease coverage of our company or fail to publish reports covering us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

***We are an "emerging growth company" and a "smaller reporting company," and the reduced disclosure requirements applicable to “emerging growth companies” and "smaller reporting companies" may make our common stock less attractive to investors.***

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), and we have elected to take advantage of certain exemptions and relief from various reporting requirements that are applicable to other public companies that are not “emerging growth companies.” In particular, while we are an “emerging growth company,” (i) we will not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, (ii) we will be exempt from any rules that may be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotations or a supplement to the auditor’s report on financial statements, (iii) we will be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and (iv) we will not be required to hold nonbinding advisory votes on executive compensation or stockholder approval of any golden parachute payments not previously approved.

As a result, our public filings may not be comparable to companies that are not “emerging growth companies”. We may remain an “emerging growth company” until the fiscal year-end following the fifth anniversary of the completion of our IPO, though we may

cease to be an “emerging growth company” earlier under certain circumstances, including (i) if the market value of our common stock that is held by non-affiliates exceeds $700 million as of any June 30, in which case we would cease to be an “emerging growth company” as of the following January 1, (ii) the date on which we have issued more than $1.0 billion in non-convertible debt during the previous three years, or (iii) if our gross revenue exceeds $1.07 billion in any fiscal year.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This allows an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. In addition, we qualify as a “smaller reporting company,” which allows us to take advantage of many of the same exemptions from disclosure requirements, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. Even after we no longer qualify as an “emerging growth company,” we may still qualify as a “smaller reporting company” if the market value of our common stock that is held by non-affiliates is below $250 million (or $700 million if our annual revenue is less than $100 million) as of June 30 in any given year, which would allow us to continue to take advantage of these exemptions.

Investors may find our common stock less attractive if we rely on these exemptions and relief granted by the JOBS Act. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline and/or become more volatile.

***Our data collection and processing activities are governed by restrictive regulations governing the use, processing and, in certain jurisdictions, cross-border transfer of personal information.***

We may be subject to US federal and state, European, UK and other foreign data protection laws and regulations (i.e., laws and regulations that address privacy and data security). We have personnel located in Ireland and have conducted and may in the future conduct clinical trials in the EU and/or the UK subjecting us to additional privacy restrictions and data protection requirements. The collection and use of personal health data in the EU are governed by the provisions of the General Data Protection Regulation ("GDPR"), as well as other national data protection legislation in force in relevant Member States (including the UK GDPR and the Data Protection Act 2018 in the UK). These laws impose a broad range of strict requirements on companies subject to the GDPR, such as including requirements relating to having legal bases for processing personal data relating to identifiable individuals and transferring such information outside the European Economic Area, or EEA (or in the case of the UK GDPR, outside of the UK), providing details to those individuals regarding the processing of their personal data, implementing safeguards to keep personal data secure, having data processing agreements with third parties who process personal data, providing information to individuals regarding data processing activities, responding to individuals’ requests to exercise their rights in respect of their personal data, obtaining consent of the individuals to whom the personal data relates, reporting security and privacy breaches involving personal data to the competent national data protection authority and affected individuals, appointing data protection officers, conducting data protection impact assessments, and record-keeping. The GDPR may impose additional responsibility and liability in relation to personal data that we process and we may be required to put in place additional mechanisms ensuring compliance with the new data protection rules. This may be onerous and adversely affect our business, financial condition, results of operations and prospects. Although the UK is regarded as a third country under the EU’s GDPR, the European Commission has now issued a decision recognizing the UK as providing adequate protection under the EU GDPR and, therefore, transfers of personal data originating in the EU to the UK remain unrestricted. Like the EU GDPR, the UK GDPR restricts personal data transfers outside the UK to countries not regarded by the UK as providing adequate protection. The UK government has confirmed that personal data transfers from the UK to the EEA remain free flowing.

To enable the transfer of personal data outside of the EEA or the UK, adequate safeguards must be implemented in compliance with European and UK data protection laws. On June 4, 2021, the EC issued new forms of standard contractual clauses for data transfers from controllers or processors in the EU/EEA (or otherwise subject to the GDPR) to controllers or processors established outside the EU/EEA (and not subject to the GDPR). The new standard contractual clauses replace the standard contractual clauses that were adopted previously under the EU Data Protection Directive. The UK is not subject to the European Commission’s new standard contractual clauses but has published a draft version of a UK-specific transfer mechanism, which, once finalized, will enable transfers from the UK. Following a ruling from the Court of Justice of the EU, in Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems, Case C-311/18 ("Schrems II"), companies relying on standard contractual clauses to govern transfers of personal data to third countries (in particular the United States) will need to assess whether the data importer can ensure sufficient guarantees for safeguarding the personal data under GDPR. This assessment includes assessing whether third party vendors can also ensure these guarantees. We will be required to implement these new safeguards when conducting restricted data transfers under the EU and UK GDPR and doing so will require significant effort and cost.

If we are investigated by a European data protection authority, we may face fines and other penalties, including bans on processing and transferring personal data. EU data protection authorities have the power to impose administrative fines for violations of the GDPR of up to a maximum of €20 million or 4% of the data controller’s or data processor’s total worldwide global turnover for the preceding fiscal year, whichever is higher, and violations of the GDPR may also lead to damages claims by data controllers and data subjects. Such penalties are in addition to any civil litigation claims by data controllers, clients, and data subjects. As such, we will need to take steps to cause our processes to continue to be compliant with the applicable portions of the GDPR, but we cannot assure you that we will be able to implement changes in a timely manner or without significant disruption to our business, or that such steps will be effective, and we may face the risk of liability under the GDPR.

Similarly, non-compliance with the UK GDPR may result in monetary penalties of up to £17.5 million or 4% of worldwide revenue, whichever is higher.

Although the EU GDPR and the UK GDPR currently impose substantially similar obligations, it is possible that over time the UK GDPR could become less aligned with the EU GDPR. This lack of clarity on future UK laws and regulations and their interaction with EU laws and regulations could add legal risk, uncertainty, complexity and cost to our handling of EU personal information and our privacy and data security compliance programs and could require us to implement different compliance measures for the UK and the EU.

Many jurisdictions outside of Europe where we may do business or conduct trials in the future are also considering and/or have enacted comprehensive data protection legislation. In addition, we also continue to see jurisdictions imposing data localization laws. These and similar regulations may interfere with our intended business activities, inhibit our ability to expand into those markets, require modifications to our products or services or prohibit us from continuing to offer services or conduct trials in those markets without significant additional costs.

***Our employees, independent contractors, consultants, collaborators and CROs may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements, which could cause significant liability for us and harm to our reputation.***

We are exposed to the risk that our employees, independent contractors, consultants, collaborators and CROs may engage in fraud or other misconduct, including intentional failures to comply with FDA regulations or similar regulations of comparable non-U.S. regulatory authorities, to provide accurate information to the FDA or comparable non-U.S. regulatory authorities, to comply with manufacturing standards we have established, to comply with federal and state healthcare fraud and abuse laws and regulations and similar laws and regulations established and enforced by comparable non-U.S. regulatory authorities, to report financial information or data accurately or to disclose unauthorized activities to us. Such misconduct could also involve the improper use or misrepresentation of information obtained in the course of clinical trials, creating fraudulent data in our preclinical studies or clinical trials or illegal misappropriation of product materials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws, standards or regulations. Additionally, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines or other sanctions.

***Global economic uncertainty and weakening product demand caused by political instability, changes in trade agreements and conflicts, such as the conflict between Russia and Ukraine, could adversely affect our business and financial performance.***

Economic uncertainty in various global markets caused by political instability and conflict and economic challenges caused by the COVID-19 pandemic has resulted, and may continue to result, in weakened demand for our products. Political developments impacting government spending and international trade, including potential government shutdowns and trade disputes and tariffs, may negatively impact markets and cause weaker macro-economic conditions. The effects of these events may continue due to potential U.S. government shutdowns and the transition in administrations, and the United States' ongoing trade disputes with China and other countries. In addition, the current military conflict between Russia and Ukraine could disrupt or otherwise adversely impact our operations and related sanctions, export controls or other actions that may be initiated by nations including the U.S., the EU or Russia (e.g., potential cyberattacks, disruption of energy flows, etc.) could adversely affect our business and/or our supply chain or those of our third party service providers. The United States and other countries could impose wider sanctions and take other actions should the conflict further escalate. It is not possible to predict the broader consequences of this conflict, which could include further sanctions, embargoes, regional instability, prolonged periods of higher inflation, geopolitical shifts, and adverse effects on macroeconomic conditions, currency exchange rates, and financial markets, all of which could have a material adverse effect on our business, financial condition, and results of operations. The continuing effect of any or all of these events could adversely impact demand for our products, harm our operations and weaken our financial results.

***Our operations are subject to the effects of a rising rate of inflation.***

The United States has recently experienced historically high levels of inflation. If the inflation rate continues to increase, for example due to increases in the costs of labor and supplies, or remain at a historically high rate, it will affect our expenses, such as employee compensation, supply costs and research and development expenses. Additionally, the United States is experiencing an acute workforce shortage, which in turn, has created a very competitive wage environment that may increase our operating costs. To the extent inflation results in rising interest rates and has other adverse effects on the market, it may adversely affect our financial condition and results of operations.

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

**(a) Recent Sales of Unregistered Securities**

None.

**(b) Use of Proceeds from Initial Public Offering**

Not applicable.

**(c) Issuer Purchases of Equity Securities**

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

The exhibits filed as part of this Quarterly Report on Form 10-Q are set forth on the Index to Exhibits, which is incorporated herein by reference.

**XERIS BIOPHARMA HOLDINGS, INC.**

**FORM 10-Q**

**INDEX TO EXHIBITS**

| Exhibit No. | Description |
|---|---|
| 10.1* | Amended and Restated Lease dated September 29, 2022 between Xeris Pharmaceuticals, Inc. and Fulton Ogden Venture, LLC |
| 10.2 * | Amendment No. 1 to Credit Agreement and Guaranty dated September 29, 2022 among Xeris Pharmaceuticals, Inc., the Registrant, the lenders party thereto and Hayfin Services LLP, as administrative agent |
| 10.3 *† | Amendment No. 3 to Commercial Supply Agreement dated August 31, 2022 between Pyramid Laboratories Inc. and Xeris Pharmaceuticals, Inc. |
| 31.1* | Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended |
| 31.2* | Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended |
| 32.1*+ | Certification of Periodic Financial Report by the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 101.INS* | XBRL Instance Document |
| 101.SCH* | Inline XBRL Taxonomy Extension Schema Document |
| 101.CAL* | Inline XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.DEF* | Inline XBRL Taxonomy Extension Definition Linkbase Document |
| 101.LAB* | Inline XBRL Taxonomy Extension Label Linkbase Document |
| 101.PRE* | Inline XBRL Taxonomy Extension Presentation Linkbase Document |
| 104* | Cover Page Interactive Data File (embedded within the Inline XBRL document) |

* Filed herewith.

+ The certifications furnished in Exhibit 32.1 hereto are deemed to accompany this report and will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. Such certifications will not be deemed to be incorporated by reference into any filings under the Securities Act of 1933, as amended, or the Securities Act of 1934, as amended, except to the extent that the Registrant specifically incorporates it by reference.

† Portions of this exhibit have been omitted because they are both (i) not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed.

**SIGNATURES**

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

**Xeris Biopharma Holdings, Inc.**

Date: November 9, 2022

By /s/ Paul R. Edick

Paul R. Edick
Chief Executive Officer and Chairman
(Principal Executive Officer)

Date: November 9, 2022

By /s/ Steven M. Pieper

Steven M. Pieper
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

**Exhibit 10.1**

# AMENDED AND RESTATED LEASE

**LANDLORD:**

FULTON OGDEN VENTURE, LLC,
A Delaware limited liability company

**TENANT:**

XERIS PHARMACEUTICALS, INC.
a Delaware corporation

**Regarding the Premises Located at:**

West End on Fulton
1375 West Fulton Street
Chicago, Illinois

**TABLE OF CONTENTS**


| Section | | Page |
|---|---|---|
| 1. | BASIC LEASE TERMS. | 1 |
| 2. | DEMISE AND USE. | 5 |
| 3. | SECURITY DEPOSIT. | 8 |
| 4. | BASE RENT AND OPERATING EXPENSES (INCLUDING TAXES). | 9 |
| 5. | SERVICES. | 16 |
| 6. | COMPLIANCE. | 18 |
| 7. | PARKING. | 19 |
| 8. | HAZARDOUS SUBSTANCES. | 20 |
| 9. | INSURANCE. | 24 |
| 10. | INDEMNIFICATION. | 25 |
| 11. | DAMAGE OR CASUALTY | 27 |
| 12. | EMINENT DOMAIN | 29 |
| 13. | ASSIGNMENT AND SUBLETTING. | 29 |
| 14. | ALTERATIONS BY TENANT. | 32 |
| 15. | [INTENTIONALLY DELETED]. | 33 |
| 16. | MORTGAGEE PROVISIONS; ESTOPPEL; SUBORDINATION. | 33 |
| 17. | EXPIRATION OR TERMINATION OF LEASE AND SURRENDER OF POSSESSION. | 34 |
| 18. | DEFAULT | 36 |
| 19. | REMEDIES. | 37 |
| 20. | MISCELLANEOUS | 39 |

**EXHIBITS**:

**Rider**

| | |
|---|---|
| **Exhibit A** | Outline of Premises |
| **Exhibit B** | Rules and Regulations |
| **Exhibit C** | Work Letter – Landlord Work |
| **Exhibit D** | Confirmation of Lease Terms |
| **Exhibit E** | Form of SNDA |
| **Exhibit F** | Form of Estoppel Certificate |
| **Exhibit G** | Janitorial Specifications |
| **Exhibit H** | Sustainable Building Guidelines |
| **Exhibit I** | Reserved |
| **Exhibit J** | Signage |
| **Exhibit K** | Form of Letter of Credit |
| **Exhibit L** | Tenant's Hazardous Substances |
| **Exhibit M** | Definition of Fair Market Rent |

**AMENDED AND RESTATED LEASE**

THIS AMENDED AND RESTATED LEASE ("**Lease**") is dated and effective as of September __, 2022 ("**Effective Date**"), and is made by and between FULTON OGDEN VENTURE, LLC, a Delaware limited liability company ("**Landlord**"), and XERIS PHARMACEUTICALS, INC., a Delaware corporation ("**Tenant**").

Original Lease. Landlord and Tenant entered into that certain Lease Agreement for Suite 850 of the Building (defined below) and certain chemical storage space, which together comprise 10,918 rentable square feet in the Building on August 4, 2020 ("**Original Lease**"). Landlord completed all of the required alterations and improvements to the Original Premises (defined below) in accordance with the terms of the Original Lease, and Tenant took occupancy and possession of the Original Premises pursuant to the terms of the Original Lease. Landlord and Tenant further agree and acknowledge that as of the Effective Date, the Original Lease is valid and in full force and effect and that neither Landlord nor Tenant are in breach or default under any terms of the Original Lease. As further provided herein, as of the Effective Date, this Lease amends, restates, and replaces the Original Lease and its terms in their entirety.

LANDLORD AND TENANT HEREBY AGREE AS FOLLOWS:

## 1. BASIC LEASE TERMS.

| | | |
|---|---|---|
| 1.1 | Landlord's Address for Notice: | Fulton Ogden Venture, LLC<br>c/o Trammell Crow Chicago Development, Inc.<br>700 Commerce Drive, Suite 455<br>Oak Brook, Illinois 60523<br>Attn: Grady Hamilton and John Carlson<br>Telephone: (630) 368-0253<br>Email: Ghamilton@trammellcrow.com;<br>Jcarlson@trammellcrow.com |
| | With a copy to: | Dorsey & Whitney LLP<br>50 South Sixth Street, Suite 1500<br>Minneapolis, Minnesota 55402<br>Attn: Marcus Mollison<br>Phone: 612-492-6545<br>Email: mollison.marcus@dorsey.com |
| | Rent Payment Address: | Fulton Ogden Venture, LLC<br>c/o Trammell Crow Chicago Development, Inc.<br>700 Commerce Drive, Suite 455<br>Oak Brook, IL 60523<br>Attn: Property Management |
| 1.2 | Tenant's Address for Notice: | Xeris Pharmaceuticals, Inc.<br>1375 West Fulton Street, Suite 850<br>Chicago, IL 60607<br>Attn: Legal Department<br>Legal@xerispharma.com |
| | With a copy to: | Xeris Pharmaceuticals, Inc.<br>1375 West Fulton Street, Suite 850<br>Chicago, IL 60607<br>Attn: Steve Pieper, CFO<br>spieper@xerispharma.com |
| 1.3 | Tenant's Guarantor: | N/A |

1.4 Premises: Approximately 87,032 rentable square feet ("**RSF**"), comprised of (i) 10,722 RSF on the 8th floor of the Building as shown on the floor plans attached hereto as **Exhibit A** ("**Original Lab Premises**"); (ii) 196 rentable square feet of space on the ground floor for chemical and product storage, commonly known as Storage Space #108 (the "**Storage Space**"); (iii) approximately 24,282 RSF on the 8th floor of the Building, as shown on the floor plans attached hereto as **Exhibit A** ("**Lab Expansion Premises**"); and (iv) approximately 51,832 RSF on the 12th and 13th floors of the Building, as shown on the floor plans attached hereto as **Exhibit A** ("**Office Expansion Premises**"), all measured in the manner prescribed in Section 1.5 below.

The Original Lab Premises and the Storage Space shall collectively be referred to herein as the "**Original Premises**". The Lab Expansion Premises and the Office Expansion Premises may be referred to herein as the "**Expansion Premises**". Further, the Original Premises and the Expansion Premises shall be collectively referred to herein as the "**Premises**").

1.5 Building: That certain building located at 1375 West Fulton Street, Chicago, Illinois, containing approximately 301,259 RSF of office area and retail area.

Within sixty (60) days of the Expansion Commencement Date, the Premises and the Building shall be measured by Landlord's architect in accordance with a BOMA standard (ANSI Z65. l-2017, Method A, using load factors for a full floor or multi-tenant floor, as applicable) measurement convention, and such measurement shall be deemed conclusive unless disputed by Tenant within forty-five (45) days after Landlord's written notice to Tenant of such measurement, which shall include a copy of the report of such measurement by Landlord's architect ("**Measurement Notice**"). Tenant's architect shall have the right to verify such measurement within sixty (60) days after Tenant's receipt of the Measurement Notice. If based on such measurement, the rentable square footage of the Premises and/or the Building (including the Non-Retail Area and/or the Retail Area) differs from the rentable square footages set forth herein by more than one percent (1%), then Landlord and Tenant will enter into an amendment to this Lease, in the form of **Exhibit D** attached hereto, adjusting such rentable square footage and all terms of this Lease which are affected by such rentable square footage, including specifically Base Rent and Tenant's Proportionate Share hereunder, and such adjustment shall apply retroactively as of the Expansion Commencement Date.

Landlord and Tenant acknowledge and agree that the Original Premises have been measured in accordance with the above referenced measurement standard prior to the date hereof and are not subject to remeasurement.

1.6 Garage: That certain existing 110 – car structured parking garage associated with the Project, including 5 designated visitor parking stalls.

1.7 Land: That certain real property on which the Building and Garage are located.

1.8 Project: The project ("**Project**") is comprised of both the Building, along with all improvements and common areas and the parking garage ("**Garage**").

1.9 Lease Term or Term: With respect to the Original Premises, the period commencing with the Original Premises Commencement Date and expiring on the Expiration Date, and with respect to the Expansion Premises, the period commencing with the Expansion Commencement Date and expiring on the Expiration Date.

1.10 Commencement Dates: The Original Lease commenced on January 1, 2021 ("**Original Premises Commencement Date**"), and all references to the Commencement Date with respect to the Original Premises means January 1, 2021. The Commencement Date for the Expansion Premises shall mean the later to occur of (i) substantial completion of the Landlord Work (defined below) and (ii) April 1, 2023 ("**Expansion Commencement Date**"). In accordance with and subject to the terms and conditions contained in Section 2(C) below, Tenant shall have certain rights to (a) to enter the Expansion Premises (or portions thereof) immediately upon substantial completion of Landlord's construction of the Lab Expansion Premises and/or the Office Expansion Premises, as the case may be, for the purpose of installation of Tenant's fixtures, furnishings and equipment by Tenant and Tenant's employees, contractors, representatives, and agents ("**Pre-Completion Access**"); and (b) to occupy the Expansion Premises for the Permitted Use prior to the Expansion Commencement Date ("**Beneficial Occupancy**"), or applicable portions thereof, provided that Tenant does not interfere with any ongoing Landlord construction activities to achieve final completion of the work on the Expansion Premises.

1.11 Expiration Date: The earlier to occur of (a) last day of the One Hundred Fifty-Sixth (156th) full calendar month following the Expansion Commencement Date and (b) March 31, 2037.

1.12 Rent Commencement Date: Tenant shall continue to pay Rent to Landlord solely for the Original Premises until the Expansion Commencement Date occurs. Thereafter, Tenant shall begin paying Rent on the Premises immediately following the Abatement Periods, as provided in Section 1.13.

1.13 Base Rent: During the Term, Tenant shall pay the following amounts as Base Rent:

| Months | Annual Base Rent/RSF | Annual Base Rent | Monthly Installment | Monthly Installment Payable (Including Abatement) |
|---|---|---|---|---|
| Effective Date-12/31/22 | $ 61.50* | $ 671,457.00* | $ 55,954.75* | $ 55,954.75* |
| 1/1/23- Expansion Commencement Date | $ 63.04* | $ 688,270.72* | $ 57,355.89* | $ 57,355.89* |
| Expansion Commencement Date-Month 12 | $ 52.50** | $ 4,569,180.00** | $ 380,765.00** | $ 0.00** |
| Months 13-18 | $ 53.81*** | $ 4,683,191.92*** | $ 390,265.99*** | $ 157,842.67*** |
| Months 19-24 | $ 53.81 | $ 4,683,191.92 | $ 390,265.99 | $ 390,265.99 |
| Months 25-36 | $ 55.16 | $ 4,800,685.12 | $ 400,057.09 | $ 400,057.09 |
| Months 37-48 | $ 56.54 | $ 4,920,789.28 | $ 410,065.77 | $ 410,065.77 |
| Months 49-60 | $ 57.95 | $ 5,043,504.40 | $ 420,292.03 | $ 420,292.03 |
| Months 61-72 | $ 59.40 | $ 5,169,700.80 | $ 430,808.40 | $ 430,808.40 |
| Months 73-84 | $ 60.89 | $ 5,299,378.48 | $ 441,614.87 | $ 441,614.87 |
| Months 85-96 | $ 62.41 | $ 5,431,667.12 | $ 452,638.93 | $ 452,638.93 |
| Months 97-108 | $ 63.97 | $ 5,567,437.04 | $ 463,953.09 | $ 463,953.09 |
| Months 109-120 | $ 65.57 | $ 5,706,688.24 | $ 475,557.35 | $ 475,557.35 |
| Months 121-132 | $ 67.21 | $ 5,849,420.72 | $ 487,451.73 | $ 487,451.73 |
| Months 133-144 | $ 68.89 | $ 5,995,634.48 | $ 499,636.21 | $ 499,636.21 |
| Months 145-156 | $ 70.61 | $ 6,145,329.52 | $ 512,110.79 | $ 512,110.79 |

*Paying Original Premises Rent only per Original Lease
**Fully Abated Rent for Premises
***Partially Abated Rent for Office Expansion Premises only (Paying Rent for 35,200 RSF), which results in $202,423.32 being abated from each monthly installment of Base Rent.

1.14 Rent Abatement Periods: Landlord agrees to abate Tenant's payments of Base Rent, together with Tenant's payment of Tenant's Proportionate Share of Operating Expenses and Taxes (collectively the "**Abated Rent**) (a) for the Premises for a period of twelve (12) full calendar months, commencing on the Expansion Commencement Date and (b) with respect to the Office Expansion Premises only, for an additional six (6) month period commencing at the end of the immediately aforementioned 12-month abatement period (collectively, the "**Abatement Periods**"). Such Abated Rent, however, shall not apply to any other rents, charges, expenses or costs, such as Building parking, any Tenant's separately metered utilities, and any other operating costs to be paid directly by Tenant not included in Operating Expenses. Landlord and Tenant agree that the abatement of Rent contained in this Section is conditional and is made by Landlord in reliance upon Tenant not having assigned this Lease or sublet any portion of the Premises, other than to a Permitted Transferee, and upon no Event of Default existing during the Abatement Periods; provided,

however, if an Event of Default occurs during the Abatement Periods, Abated Rent shall cease, and the full amount of the then-current Rent shall become payable by Tenant, until such time as the Event of Default is cured. Following such cure, Abated Rent shall resume for the balance of the Abatement Periods, if any.

1.15 Extension Options: Provided (a) no Event of Default by Tenant exists at the time Tenant exercises an Extension Option, or (b) no Event of Default has occurred during the Term with respect to any monetary Event of Default, Tenant shall have options to extend the Term of the Lease (collectively the "**Extension Options**") for two (2) successive five (5) year periods (the "**Extension Term(s)**"), subject to the terms and conditions contained herein. The Extension Options shall apply to the entire Premises then under lease by Tenant and shall be governed by all of the terms and conditions of the Lease then in effect, except for Base Rent and market concessions for each Extension Term, which shall be equal to 100% of the then "Fair Market Rent" rate for new leases and lease renewal transactions, as further set forth in attached **Exhibit M**, with preference given to more recent leases in the event of discrepancies among such comparable rates. The Extension Options are personal to Tenant and Permitted Transferees and shall not be assignable or transferable without Landlord's prior written consent, which consent may be withheld at Landlord's sole and absolute discretion. In addition to the conditions contained above in this paragraph, each Extension Option shall be exercisable by Tenant, if at all, only by timely delivery to Landlord of written notice of election no fewer than twelve (12) months prior to the expiration of the then-current Term.

1.16 Tenant's Proportionate Share: The percentage resulting from dividing the rentable square footage of the Premises by the rentable square footage of the Building, which shall be (a) initially 3.62% for the Original Premises only and (b) from and after the Expansion Commencement Date, 28.89% for the entire Premises.

1.17 Lease Security: See Section 3 below.

1.18 Brokers: Landlord's Broker: CBRE, Inc.

Tenant's Broker: CBRE, Inc.

1.19 Parking Spaces: The Garage contains one hundred five (105) tenant parking spaces (the "**Parking Spaces**") and five (5) visitor parking spaces for guests or visitors to the Building (but not employees or contractors of Tenant); subject to Landlord's right to designate additional Parking Spaces as visitor spaces, so long as such right is not exercised in a manner that diminishes Tenant's rights under this Section 1.19 or Section 7 below. Subject to the terms and conditions of Section 7 below, Tenant and its employees shall have the right to use up to thirty (30) unreserved tenant Parking Spaces in the Garage (collectively, the "**Tenant Parking Stalls**") for the Lease Term, subject to (a) such Rules and Regulations (as defined herein) as Landlord may promulgate from time to time (it being understood that the current Rules and Regulations are attached hereto as **Exhibit B**) and (b) nonexclusive rights of ingress and egress of other tenants and their employees, agents and invitees. At the election of Landlord and upon written notice of such election to Tenant, Tenant shall enter into a separate commercially reasonable agreement with any applicable parking vendor designated by Landlord from time-to-time to manage the Garage which shall be consistent with the terms of the Lease relating to parking and the Garage.

1.20 Permitted Use: Subject to any applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county, and municipal authorities (collectively, "**Governmental Requirements**") as of right, general office, research, development and laboratory use and other ancillary uses related to the foregoing (all in proportions consistent with the design of the base building). The Permitted Uses shall not include a vivarium nor the manufacturing of biotechnology or pharmaceutical products for distribution purposes for commercial sales; provided, the foregoing shall not prevent Tenant from manufacturing of biotechnology or pharmaceutical products for clinical trials or other purposes outside of commercial distribution. As accessory or ancillary to the Permitted Uses, food service and health and fitness facilities for employees and visitors shall be permitted. Tenant shall not use the Premises, or any part thereof, or suffer or permit the use and/or occupancy of the Premises or any part thereof by Tenant and/or Tenant's agents, servants, employees, consultants, contractors, subcontractors, licensees and/or subtenants (collectively with Tenant, the "**Tenant Parties**") in a manner which, in the reasonable judgment of Landlord (taking into account the use of the Building as a combination laboratory, research and development and office and retail building and the Permitted Uses) shall (a) impair, interfere with or otherwise diminish the quality of any of the Building services or the proper and economic heating, cleaning, ventilating, air conditioning or other servicing of the Building or Premises, or the use or occupancy of any of the Common Areas; (b) create a nuisance or cause any injury

or damage to any occupants of the Premises or other tenants or occupants of the Building or their property; (c) cause harmful air emissions, laboratory odors or noises or any unusual or other objectionable odors, noises or emissions to emanate from the Premises; or (d) be inconsistent with the operation and/or maintenance of the Building as a first-class office building or a first-class combination office, research, development and laboratory and retail facility. Tenant shall not place a load upon any floor of the Premises exceeding 75 pounds per square foot of area, which is the load such floor was designed to carry and which is allowed by Governmental Requirements.

## 2. DEMISE AND USE; ALLOWANCES.

(A) Delivery Condition/"As-Is". Landlord hereby leases to Tenant and Tenant hereby accepts the Premises on the terms set forth herein.

(1) Landlord has completed all improvements to the Original Premises as required under the Original Lease, and Tenant has accepted the Original Premises.

(2) Landlord shall make all improvements to the Expansion Premises, as described in, and required under this Lease and will deliver a turnkey buildout of the Expansion Premises to Tenant, as described in **Exhibit C**, attached hereto and made a part hereof ("**Landlord Work**"). Landlord will cause its contractor to perform the Landlord Work in a good and workmanlike manner and in accordance with all applicable laws, codes, ordinances and regulations, and Landlord shall obtain a certificate of occupancy or its equivalent for the Expansion Premises from the applicable governmental authority as part of the Landlord Work, which shall be a requirement of substantial completion thereof. Landlord may not make any material changes or substitutions to the specifications contained in Exhibit C without Tenant's consent, which shall not be unreasonably withheld, except that any changes to any of the equipment or finishes, such as fabrics and colors, shall only be made in consultation with Tenant. Tenant may request in writing changes to the Landlord Work, subject to Landlord's reasonable approval (each, a "**Change Request**"). If Landlord deems a Change Request reasonable and appropriate, and Landlord approves such Change Request, increases in cost resulting from such Change Request shall be Tenant's sole responsibility. If the scope and cost of a Change Request is approved both by Landlord and Tenant, then the parties will execute a mutually agreeable change order for the Change Request, and, Tenant shall pay for the additional costs of such Change Request within ten (10) days of Landlord's demand therefor as a condition to Landlord's obligation to effectuate the Change Request into the Landlord Work. Further, all reasonable out-of-pocket costs paid by Landlord to third parties for reviewing any Change Requests will be reimbursed by Tenant.

(3) Landlord shall assign to Tenant the industry standard warranty that it will obtain from its contractor for a period of one (1) year from substantial completion of all Landlord Work and will use commercially reasonable efforts to cause any such warranty work to be completed within forty-five (45) days following Tenant's notice of defects in the Landlord Work provided during such one (1) year warranty period. Upon substantial completion of the Landlord Work, Landlord and Tenant shall jointly inspect the Expansion Premises to determine that the Landlord Work has been substantially completed as provided herein and will jointly develop a list of all known minor or insubstantial items remaining to be completed or corrected (the "**Punch List**"). Landlord and Tenant will cooperate in good faith in the preparation of the Punch List, and Landlord will cause its contractor to complete the items agreed upon in the Punch List within forty-five (45) days after their identification on the Punch List. Subject to completion of the Landlord Work, TENANT ACKNOWLEDGES THAT IT HAS INSPECTED AND ACCEPTS THE PREMISES IN ITS "AS-IS, WHERE IS" CONDITION.

(4) Within thirty (30) days following the Expansion Commencement Date, Landlord will pay Tenant the amount of $6,317,300.00, which is based on $100.00 per RSF on 63,173 RSF of the Premises, ("**Tenant Occupancy Allowance**") by delivering a check made out to Tenant or depositing such amount in Tenant's bank account pursuant to written instructions provided by Tenant, provided, however, Landlord shall not be required to pay the Tenant Occupancy Allowance to Tenant during any periods when there is an uncured Tenant Event of Default and shall only be obligated to make such payment if and when the Event of Default is cured. The Tenant Occupancy Allowance may be used by Tenant to reimburse itself for, or to pay for, all costs incurred by or to be incurred by Tenant related to Tenant's occupancy of the Premises, including, but not limited to, moving and relocation costs, Tenant's existing lease obligations outside of the Building,

audio/visual improvements to the Premises, additional investments and improvements to the Premises, equipment and furniture for the Premises, signage for the Premises, Tenant's attorneys' fees for Lease negotiation, and any other Lease–related costs determined by Tenant in its sole discretion; provided, that Tenant will not use the Tenant Occupancy Allowance to pay Rent due under this Lease.

(5) Further, in addition to the Landlord Work, Landlord will provide Tenant with an audio/visual equipment and furniture allowance in the amount of $150,000.00 ("**Tenant A/V Allowance**") to be utilized towards actual third party costs incurred by Tenant for such audio/visual equipment and/or furniture in the Premises and services related thereto, and Landlord shall pay Tenant the Tenant A/V Allowance within thirty (30) days of Tenant's written request therefor, together with reasonable evidence of the third party costs paid by Tenant for such audio/visual equipment and/or furniture in the Premises. Any amounts required for audio/visual equipment and services or furniture in excess of the Tenant A/V Allowance will be paid by Tenant.

(6) If Landlord shall fail to pay all or any portion of the Tenant Occupancy Allowance or the Tenant A/V Allowance to Tenant when any such payment is due and owing, Tenant shall give Landlord written notice of the failure and Landlord shall have thirty (30) days after receipt of the notice to cure its default. If Landlord does not cure its default within such thirty (30) day period, Tenant may, as its sole an exclusive remedy, elect to offset all such amounts due to Tenant, plus interest at 10% per year, against the next due installments of Rent until such delinquent amounts are paid by Landlord.

(B) Late Delivery. Subject to Force Majeure events (defined below) and delays caused by Tenant (of which Landlord had provided Tenant contemporaneous notice, a "**Tenant Delay**") which result in a delay of delivery of the Expansion Premises, if Landlord fails to deliver the Expansion Premises to Tenant on or before April 1, 2023 (the "**Expansion Premises Delivery Date**"), as provided in Section 2(C) below, a "**Delay**" will have occurred. Landlord will not be deemed to be in default hereunder because of a Delay, and Tenant's remedy in the event of a Delay shall be for additional abatement of Rent with respect to the portion of the Expansion Premises (i.e. the Lab Expansion Premises and/or the Office Expansion Premises) that is not timely delivered until such delivery occurs as follows: (i) no abatement for delays equal to or fewer than thirty (30) days from the Expansion Premises Delivery Date; (ii) 1 day of abatement for the applicable Expansion Space for each day of delay from 31 to 60 days of delay from the Expansion Premises Delivery Date; and (iii) 2 days of abatement for the applicable Expansion Space for each day of delay beyond sixty (60) days of delay from the Expansion Premises Delivery Date. Notwithstanding the foregoing, solely for purposes of this Section 2(B), any Landlord extension(s) of time with respect to the Expansion Premises Delivery Date resulting from any Force Majeure event(s) will be limited to a period of one hundred fifty (150) days.

(C) Pre-Completion Access; Beneficial Occupancy. Subject to the terms and conditions of this Lease, and provided Tenant does not interfere with any ongoing Landlord construction work on the Expansion Premises, commencing on the date that the Landlord Work with respect to the Lab Expansion Premises and/or the Office Expansion Premises, as the case may be, shall have been substantially completed until the Expansion Commencement Date, Tenant shall have the right (i) to exercise Pre-Completion Access at Tenant's sole risk and expense, at times reasonably approved by Landlord, for the purpose of installation of Tenant's fixtures, furnishings and equipment by Tenant and Tenant's employees, contractors, representatives, and agents; and (ii) to occupy the Expansion Premises for the Permitted Use as though the Expansion Commencement Date had occurred, provided that (a) a temporary or permanent certificate of occupancy shall have been issued for the Lab Expansion Premises and/or the Office Expansion Premises, as the case may be (and to the extent necessary); (b) Tenant shall not then be in default under any terms of this Lease; and (c) all of the terms and conditions of this Lease shall apply and be binding upon Tenant during Tenant's period of Beneficial Occupancy as if the Expansion Commencement Date had occurred, except for payment of Rent for the Expansion Premises. Tenant shall, prior to the first entry to the Expansion Premises pursuant to this Section 2(C), provide Landlord with certificates of insurance evidencing that the insurance required in Section 9 hereof is in full force and effect and covering any person or entity entering the Building. Landlord shall have no responsibility or liability for loss or damage to trade fixtures, furniture, equipment or any other of property or equipment brought upon the Premises by Tenant during the period of Beneficial Occupancy, except for any willful misconduct by Landlord, its agents or contractors. Tenant shall defend, indemnify and hold the Landlord and the Related Parties (hereinafter defined) harmless from and against any and all Claims (hereinafter defined) for injury to persons or property resulting from or relating to Tenant's Pre-Completion Access to and all use of the Expansion Premises prior to the Expansion Commencement Date. Tenant shall coordinate any access to the Expansion Premises

prior to the Expansion Commencement Date with Landlord's property or construction manager. Notwithstanding anything apparently to the contrary contained herein, Tenant shall be responsible to pay for any variable costs associated with its Pre-Completion Access and Beneficial Occupancy, including without limitation electricity, janitorial and cleaning services, and overtime HVAC services, whether billed directly to Tenant or billed to Landlord or Landlord's property manager.

(D) Permitted Use. Tenant covenants that the Premises will be used only for the Permitted Use and for no other use or purpose. Tenant further covenants that the Premises will not be used or occupied for any unlawful purposes and will not tend to create or continue a nuisance. Tenant further acknowledges that it has received no written or oral inducements from Landlord or any of Landlord's representatives concerning this Lease or that Tenant will be granted any exclusive rights. If by reason of the use of the Premises by any of the Tenant Parties or the failure of any Tenant Party to comply with the provisions of this Lease, the insurance rate applicable to any policy of insurance which Landlord maintains in connection with the Lease and landlords in Comparable Buildings (defined below) customarily maintain, shall at any time thereafter be higher than it otherwise would be, as a result of such use or failure by Tenant, Tenant shall reimburse Landlord upon written demand (which demand shall include such reasonable detail and documentation as Tenant may reasonably request) for that part of any insurance premiums which shall have been charged because of such use or failure within thirty (30) days after Tenant's receipt of an invoice therefor. Notwithstanding anything in this Lease to the contrary, under no circumstances may any portion of the Premises be used for any of the following purposes: governmental agencies; consulates, foreign government agencies, foreign government entities, or foreign consultants; healthcare or medical care providers; call centers; collection agencies; or high employee density uses (in excess of 1 person per 150 rentable square feet of space); or any uses prohibited by the protective covenants or any declarations, easements and/or protective covenants encumbering the Land or the Project in effect as of the Effective Date (each a "**Prohibited Use**").

(E) Permits. Tenant shall, at Tenant's sole cost and expense, apply for, seek and obtain all necessary state and local licenses, permits and approvals needed for the operation of Tenant's business and/or Tenant's Rooftop Equipment (defined in Rider Section 5 herein), including without limitation, any and all necessary permits and approvals directly or indirectly relating or incident to the conduct of its activities on the Premises, its scientific experimentation, transportation, storage, handling, use and disposal of any Hazardous Substances or laboratory specimens (collectively, the "**Required Permits**") on or before commencement of its business operations on the Premises, provided, however, Landlord shall obtain any required certificate of occupancy (or its equivalent) for the Expansion Premises as a part of Landlord Work. Tenant shall thereafter maintain all Required Permits. Tenant, at Tenant's expense, shall at all times comply with the terms and conditions of each such Required Permit. Landlord shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, in connection with its application for Required Permits. Within ten (10) days of a request by Landlord, Tenant shall furnish Landlord with copies of all Required Permits that Tenant has obtained.

(F) Chemical Safety Program.

(1) Tenant shall establish and maintain a chemical safety program administered by a licensed, qualified individual in accordance with applicable requirements of the Illinois Environmental Protection Agency ("**Illinois EPA**"), the City of Chicago Department of Water Management ("**DWM**") and any other applicable governmental authority. Tenant shall be solely responsible for all costs incurred in connection with such chemical safety program, and Tenant shall provide Landlord with such documentation as Landlord may reasonably request evidencing Tenant's compliance with (i) prudent good housekeeping and environmental practices, (ii) the requirements of the Illinois EPA, the DWM, and any other applicable governmental authority with respect to such chemical safety program and (iii) this Section 2(F).

(2) If Tenant desires to operate and have installed an acid neutralization system and tank serving the Premises (which may also serve other portions of the Building, collectively, the "**Acid Neutralization System**"), Tenant may make a request to Landlord for permission to install the Acid Neutralization System at Tenant's sole cost and expense. Upon such request, Landlord, in its sole and absolute discretion, may either deny or agree to cooperate with Tenant with respect to Tenant's efforts to install and obtain any permits required by Governmental Requirements (including without limitation any permit required by the Illinois EPA) with respect to the Acid Neutralization System. Tenant shall fully comply with the requirements of this Section 2(F) with respect to Tenant's use of any Acid Neutralization System. Tenant shall not introduce anything into the Acid Neutralization System, if

any, (i) in violation of the terms of any permit issued by the Illinois EPA or other applicable governmental authority concerning the Acid Neutralization System (the "**Water Authority Permit**"), (ii) in violation of Governmental Requirements, or (iii) that would interfere with the proper functioning of any Acid Neutralization System.

(3) Notwithstanding any other provision of this Lease, Tenant shall not use the Premises, or any part thereof, or suffer or permit the use of the Premises or any part thereof by any of the Tenant Parties, as a vivarium.

## 3. LETTER OF CREDIT.

In accordance with the terms of the Original Lease, Tenant delivered to Landlord a letter of credit in the amount of $408,262.50 ("**Original Letter of Credit**").

In addition to the Original Letter of Credit, within ten (10) business days following the Effective Date, as additional security for Tenant's faithful performance of Tenant's obligation hereunder, Tenant shall deliver to Landlord a clean, irrevocable letter of credit established in Landlord's (and its successors' and assigns') favor in the amount of Two Million Eight Hundred Thirty-Nine Thousand Five Hundred Forty Five and no/100 Dollars ($2,839,545.00) in the form depicted in **Exhibit K** or otherwise reasonably acceptable to Landlord issued by a Qualified Issuer (as hereinafter defined) (the "**Supplemental Letter of Credit**"). As an alternative, the parties agree that the Supplemental Letter of Credit may be in the form of an amendment to the Original Letter of Credit increasing the total amount of such letter of credit to Three Million Two Hundred Forty-Seven Thousand Eight Hundred Seven and 50/100 Dollars ($3,247,807.50). The Original Letter of Credit and the Supplemental Letter of Credit may be referred to herein individually as a "**Letter of Credit**" or collectively as the "**Letters of Credit**". The Letters of Credit shall specifically provide for partial draws and shall by its terms be transferable by the beneficiary thereunder at the Tenant's sole cost and expense. If Tenant fails to make any payment of Base Rent, additional rent, taxes, utility charges or other amounts due under the terms of this Lease, or otherwise defaults hereunder, beyond any applicable notice and cure period, Landlord, at Landlord's option, may make a demand for payment under either or both of the Letters of Credit in an amount equal to the amounts then due and owing to Landlord under this Lease. In the event that Landlord draws upon the Letter(s) of Credit, Tenant shall present to Landlord a replacement Letter(s) of Credit in the full Letter(s) of Credit Amount satisfying all of the terms and conditions of this paragraph within ten (10) business days after receipt of notice from Landlord of such draw and Landlord shall simultaneously deliver any cash proceeds held by Landlord. Tenant's failure to do so within such 10-business day period will constitute a default hereunder (Tenant hereby waiving any additional notice and grace or cure period), and upon such default Landlord shall be entitled to immediately exercise all rights and remedies available to it hereunder, at law or in equity. The Letters of Credit shall contain a so-called "evergreen" clause providing that the Letters of Credit shall not be cancelled unless the issuing bank delivers thirty (30) days' prior written notice to Landlord. In the event that a Letter of Credit has an expiry or expiration date earlier than the Expiration Date of this Lease, and Tenant has not presented to Landlord a replacement Letter of Credit which complies with the terms and conditions of this Section on or before twenty (20) days prior to the expiry or expiration date of the Letter of Credit then held by Landlord, then Landlord, shall have the right at any time prior to such expiration or expiry date to draw upon the Letter(s) of Credit then held by Landlord and any such amount paid to Landlord by the issuer of the Letter(s) of Credit shall be held by Landlord as security for the performance of Tenant's obligations hereunder. During such time that Landlord is holding cash in the full amount of the Letter of Credit required hereunder, then Tenant will not be required to replace the Letter of Credit but this will not prevent Landlord from requiring that Tenant deliver a replacement letter of credit reasonably acceptable to Landlord in exchange for the cash then-being held by Landlord. Any interest earned on such amounts shall be the property of Landlord. Landlord's election to draw under the Letter of Credit and to hold the proceeds of the drawing under the Letter of Credit shall not relieve Tenant from its obligation to present to Landlord a replacement Letter of Credit which complies with the terms and conditions of this Lease within thirty (30) days following Landlord's request. Tenant acknowledges that any proceeds of a draw made under the Letters of Credit and thereafter held by Landlord shall be used by Landlord to cure or satisfy any obligation of Tenant hereunder as if such proceeds were instead proceeds of a draw made under a Letter(s) of Credit that remained outstanding and in full force and effect at the time such amounts are applied by Landlord to cure or satisfy any such obligation of Tenant. Tenant hereby affirmatively disclaims any interest Tenant has, may have, claims to have, or may claim to have in any proceeds drawn by Landlord under the Letters of Credit and held in accordance with the terms hereof except as specifically provided herein for return of such proceeds upon delivery of a replacement Letter of Credit as provided herein. Landlord and Tenant expressly acknowledge and agree that at the end of the term of this Lease (whether by expiration or earlier termination hereof), and if Tenant is not then

in default under this Lease, Landlord shall return to the Letters of Credit to the issuer of the Letters of Credit or its successor (or as such issuer may direct in writing) and if Landlord is then holding any cash proceeds from a draw on a Letter of Credit that were not applied, such funds shall be returned to Tenant. As used herein, a "**Qualified Issuer**" shall mean a federally insured banking or lending institution having assets of at least $250 million whose long term debt is graded "investment grade" and which is not under any government supervision. At any time during the Term, Tenant may substitute for a Letter of Credit then being held by Landlord, a substitute letter of credit issued by a different Qualified Issuer and otherwise conforming to the requirements of this Section (which will be the Letter of Credit for all purposes hereunder), in which event Landlord shall surrender the Letter of Credit it is then holding. If appropriate, Landlord shall cooperate with Tenant to effect a simultaneous exchange of the Letter of Credit for such substitute letter of credit.

Notwithstanding anything apparently to the contrary herein, upon Tenant providing reasonably satisfactory evidence to Landlord that Tenant's business has achieved "gross profitability" in accordance with GAAP for two consecutive fiscal years, as evidenced by Tenant's audited financial statements (and excluding from the determination of gross profitability any corporate acquisitions made by Tenant during such two year period), then, commencing after the first five (5) years following the Expansion Commencement Date, Tenant may thereafter on or after April 1st of each calendar year reduce the total amount of the Letter(s) of Credit by an amount of $405,975.94, provided that in each instance, (i) Tenant is able to demonstrate gross profitability for the immediately preceding fiscal year and (ii) no Event of Default exists on such reduction date. If Tenant is unable to satisfy either of the requirements (i) or (ii) in the immediately preceding sentence, no reduction of the Letter of Credit will be permitted for such year(s), but in such case, future annual reductions will be permitted to the extent Tenant is able to satisfy both requirements. Landlord agrees to promptly assist Tenant with any requirements of the Qualified Issuers in order to amend and/or reduce the Letter(s) of Credit in accordance herewith.

## 4. BASE RENT AND OPERATING EXPENSES (INCLUDING TAXES).

(A) Rent. Commencing on the Rent Commencement Date, monthly installments of Base Rent and of Tenant's Proportionate Share of Operating Expenses and Taxes, as well as all other amounts due hereunder (collectively, "**Rent**") are due on the first day of each month in advance, or on such other date or at such other time as is specified in this Lease, without demand and without deduction, abatement, or setoff during the Lease Term, except as expressly set forth in this Lease. Rent for any period during the Lease Term hereof which is less than one month shall be a pro-rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing.

(B) Operating Expense Inclusions. "**Operating Expenses**" shall mean and include, subject to the exclusions described in Section 4(C) or in any other provision of this Lease, all out-of-pocket amounts, expenses and costs (other than Taxes and exclusions therefrom) that Landlord incurs or pays, as determined for each calendar year on an accrual basis, because of or in connection with: the security, insurance, control, operation, administration (including, without limitation, concierge services), management, repair, replacement or maintenance of the Building and Project (including, without limitation, all of the Project amenities); wages and salaries of all on-site employees engaged in the operation, maintenance or security of the Project (together with Landlord's reasonable allocation of expenses of off-site employees who perform a portion of their services in connection with the operation, maintenance or security of the Project including accounting personnel); the cost of Permissible Capital Improvements (as defined below) as reasonably amortized on a fully amortizing, beginning-of-the-month, level payment basis by Landlord over the useful life (as reasonably determined by Landlord in accordance with generally accepted accounting principles consistently applied for accounting and not tax purposes) of the applicable Permissible Capital Improvement, but without any interest on the unamortized amount of the cost thereof, provided, however, in no event shall the annual amortized amount of the cost of any Permissible Capital Improvement described in clause (ii)(x) of the definition of "Permissible Capital Improvements" exceed Landlord's reasonable calculation of annual savings in Operating Expenses to be achieved by the applicable improvement or item; costs of utilities, other than the cost of any metered or submetered utilities paid separately by other tenants; the costs of all machinery, equipment, landscaping, fixtures and other facilities, including personal property and all costs associated with maintaining any certification(s) achieved by the Building and Project, as may now or hereafter exist in or on the Building or Project; and fees, charges and other costs and expenses, including, without limitation, management fees, administrative costs and expenses (including, without limitation, for management, accounting and reporting applications (such as, by way of example only and not limitation, software and other applications) used in

connection with the management or operation of the Project), consulting fees, legal fees, accounting and audit fees to the extent attributable to the accounting and auditing of Operating Expenses (specifically excluding audit fees (a) of Landlord's business unrelated to the accounting or auditing of Operating Expenses, or (b) that are required under any loans or other financings directly or indirectly secured by the Project), reporting fees and administrative fees, of all persons engaged by Landlord or otherwise incurred in good faith by Landlord in connection with the management, operation, administration, ownership, maintenance and repair of the Project. When, in the reasonable determination of Landlord, any service, including, but not limited to, HVAC, electrical, janitorial and property management service, is provided disproportionately either to the Premises or to any other premises within the Building, then Operating Expenses per square foot payable hereunder may be increased or reduced, as the case may be, by Landlord's reasonable determination of the increased or reduced cost per square foot of such disproportionate service. Tenant shall also pay the cost of any above-standard services (including, without limitation, above-standard utility charges) and the cost of any separately metered utilities. Landlord shall equitably allocate (in its reasonable judgment and in a manner consistent with similar allocations at Comparable Buildings) and consistently applied Operating Expenses between the Office Area and the Retail Area. As used herein, (i) the term "**Comparable Buildings**" means other Class A office buildings and Class A office and laboratory buildings of similar quality to the Project located in the Fulton Market submarket of Chicago, Illinois (not owned by Landlord or its affiliates), and (ii) the term "**Permissible Capital Improvements**" means any capital improvement, which improvement or item either (x) was made for purposes of reducing Operating Expenses or (y) was required to comply with any Governmental Requirements enacted after the date hereof. Notwithstanding anything in this Lease to the contrary, whenever the practices or standards at Comparable Buildings are applied or otherwise referenced in this Lease, such practices or standards shall be deemed to relate to those practices or standards that predominate in the Comparable Buildings.

(C) Exclusions from Operating Expenses. The following items will be excluded from any payment of Operating Expenses:

i Costs for capital improvements or other capital expenditures made to the Project and/or the Land other than Permissible Capital Improvements to the extent permitted under Section 4(B) above.

ii Alterations attributable solely to tenants of the Project and/or the Land (including Tenant) and costs of constructing leasehold improvements to rentable areas of the Project, whether for Tenant or any other tenant.

iii Interest and any increase in the rate of interest payable by Landlord with respect to any debts secured by a deed of trust or mortgage on the Project and/or the Land and amortization or other payments or charges on loans to Landlord (including, without limitation, points, finder's fees, legal fees, commissions, loan fees, participation payments, or other expenses incurred in connection with borrowed funds), whether loans that are unsecured or are secured by a deed of trust, mortgage, or otherwise on the Project and/or the Land or any equipment or other personal property used in connection with the Project.

iv Depreciation of the Project or any other improvements on the Land under or pertaining to the Project or any equipment or other personal property used in connection with the Project.

v Any amortization expense except for costs of Permissible Capital Improvements to the extent includable in Operating Expenses under Section 4(B) above.

vi Legal, auditing, consulting and professional fees paid or incurred in connection with negotiations for leases, financings, refinancings, sales, acquisitions, obtaining of permits or approvals (other than those permits or approvals that are necessary for the Project or Building as a whole and are not specific to any tenant of the Project or the specific use of a tenant or any specialty service within the Project), zoning proceedings or actions, environmental permits or actions, lawsuits, further development or redevelopment of the Land or any other portion of the Project or any extraordinary transactions, occurrences or events.

vii Taxes and all costs expressly excluded from the definition of Taxes.

viii The cost incurred in performing work or furnishing services for one or more individual tenants which work or services are in excess of work and services required to be provided to (or are otherwise not provided to) Tenant under the Lease.

ix [Intentionally Omitted]

x Expenses incurred in leasing (including without limitation, existing leases of existing tenants) or procuring new tenants or subtenants including advertising and leasing fees, commissions or brokerage commissions of any kind, including without limitation, signing bonuses, moving expenses, assumption of rent under existing leases and other concessions or inducements, marketing expenses and expenses for preparation of leases or renovating space for existing or new tenants or subtenants and build out allowances.

xi [Intentionally Omitted]

xii The annual fee for any property management services for the Project to the extent it exceeds three percent (3%) of gross receipts for the Project. For purposes of this Section 4(C)(xii), gross receipts means regular payments made under leases, licenses and/or occupancy agreements for the Project and, for the avoidance of doubt, specifically excludes non-recurring or extraordinary receipts or revenues (e.g., proceeds from any capital events, including, without limitation, dispositions, financings or re-financings of the Land, Project or any portions thereof).

xiii Wages, costs and salaries associated with home office, off-site employees and personnel who do not perform any services in connection with the operation, maintenance or security of the Project. With respect to those home office, off-site employees and personnel who do perform any services in connection with the operation, maintenance or security of the Project, when reasonably allocating the expenses of such employees and personnel in accordance with Section 4(B) above, Landlord shall exclude any such expenses that are allocated to the Project, to the extent such expenses are in excess of reasonable market rates and as compared to Comparable Building.

xiv [Intentionally Omitted]

xv The cost of constructing, installing, repairing, operating and maintaining any specialty service within the Project, such as, but not limited to, an observatory, broadcasting facility, luncheon club, cafeteria, retail store, sundry shop, newsstand, concession, or day care center, but excluding the normal costs attributable to providing Building services to such specialty service areas, to the extent such normal costs exceed any revenue or income Landlord receives from such specialty services. For purposes of this Lease, a "specialty service" is any service or facility within the Project, the use and benefit of which are not solely limited to employees and other business invitees of tenants of the Building. Notwithstanding anything herein to the contrary, none of the following shall be excluded from Operating Expenses: (i) the costs and expenses of maintaining, repairing, operating or making replacements to any amenity spaces operated for the sole benefit of employees and other business invitees of tenants of the Building (including, without limitation, costs of leasing equipment), so long as, in each case, all fees and income derived from such amenity spaces are applied to offset such costs and expenses (excluding any catering revenue generated by any retail or restaurant operator in the Project), and (ii) the costs of maintaining, repairing, operating (including costs of any clerks, attendants or any other persons operating such facility or area) or making replacements to any concierge facility or area.

xvi Costs that Landlord incurs in operating an ancillary service in the Project in respect of which users pay a separate charge (such as a shoe shine stand, a newsstand, or a stationery store), including any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord.

xvii The costs of correcting any structural and latent defects in the initial design or construction of the Project or other improvements (except that the costs of normal repair, maintenance and replacements of components shall be included in Operating Expenses unless otherwise excluded from Operating Expenses), or defects in workmanship or materials used in the initial construction of the Project.

xviii [Intentionally Omitted]

xix Insurance premiums to the extent any tenant causes Landlord's existing insurance premiums to increase or requires Landlord to purchase additional insurance.

xx Title insurance, key man and other life insurance, disability insurance and health, accident and sickness insurance, except only for the premiums for group or other plans providing reasonable benefits to persons

of the grade of building manager and below engaged on a substantially full-time basis in operating and managing the Project and other insurance coverages not related to the Project or the operation, management or maintenance of the Project.

xxi Any advertising, promotional or marketing expenses for the Project (other than as expressly permitted below).

xxii Any cost representing an amount paid to any entity related to Landlord which is in excess of the amount of the market rate for such service.

xxiii Costs incurred due to violation by Landlord or any tenant of the Project of the terms of any lease or condition, covenant or restriction affecting the Land and/or the Project, or any laws, rules regulations or ordinances applicable to the Land, and/or the Project.

xxiv Costs of repairs, replacements or other work occasioned by the exercise by governmental authorities of the right of eminent domain or any other taking, any costs due to casualty (whether insured or not) and any expenses for repair or replacements covered by warranties, guarantees or indemnitees (whether or not actually received).

xxv Any costs of defending or pursuing any claims involving the title of the Project and/or the Land (whether insured or not).

xxvi Services, costs, items and benefits for which Tenant or any other tenant or occupant of the Project or third person (including insurers) specifically reimburses Landlord or for which Tenant or any other tenant or occupant of the Project pays third persons.

xxvii Penalties, fines and interest for late payment of, including, without limitation, taxes, insurance, equipment leases and other past due amounts under any other contracts to which Landlord is a party or which Landlord is otherwise obligated to pay.

xxviii Contributions to Operating Expense reserves.

xxix Dues to professional and lobbying associations or trade associations (other than BOMA or any similar organization) and contributions to charitable or political organizations.

xxx Costs incurred in removing the property of former tenants or other occupants of the Project.

xxxi Costs incurred in connection with the acquisition or sale of air rights, easements or similar interests in real property.

xxxii Costs associated with Landlord's relocation, or attempted relocation, of any tenant in the Project.

xxxiii Expenses that Landlord incurs in buying or selling the Project and/or the Land.

xxxiv Salaries or other compensation paid to executive employees above the grade of building manager (including, without limitation, profit sharing, bonuses and 401(k) savings plans), but Operating Expenses may include compensation (including, without limitation, profit sharing, bonuses and 401(k) savings plans) paid to the building engineer to the extent required under any union or collective bargaining agreement.

xxxv Costs of directly or indirectly selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Project and/or the Land.

xxxvi The cost of any disputes including, without limitation, legal or arbitration fees, between Landlord, any employee or agency of Landlord, any tenants or subtenants of the Project, or any mortgagees or ground lessors of Landlord or any parties involved in the design or construction of the Project.

xxxvii Without limitation of any provisions above, the cost of any judgment, settlement, payment or arbitration award arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitration pertaining to Landlord's contractual breach, negligence, willful misconduct, or other fault, and all expenses, including attorneys' fees, incurred in connection therewith.

xxxviii Amounts payable by Landlord for withdrawal liability or unfunded pension liability to a multi-employer pension plan (under Title IV of the Employee Retirement Income Security Act of 1974, as amended).

xxxix Costs incurred by Landlord which result from a breach by Landlord of this Lease or any other lease at the Project.

xl Costs arising from the negligence or fault of other tenants or occupants at the Project or the Land to the extent that Landlord has actually recovered all or a portion thereof from a third party; provided, however, to the extent such costs are for repairs or replacements and are covered by an indemnity, such costs, regardless of whether actually received, are to be excluded herein.

xli Costs that Landlord incurs to correct a representation made by Landlord in this Lease.

xlii Any gifts furnished to any entity whatsoever including, but not limited to, Tenant, other tenants, employees, vendors, contractors, prospective tenants and agents.

xliii Any expenses incurred by Landlord for use of any public portions of the Project and/or the Land including, but not limited to, shows, promotions, kiosks, and advertising, beyond the normal expenses attributable to providing building services, such as lighting and HVAC to such public portions of the Building.

xliv The cost of providing after hours HVAC to other tenants of the Project.

xlv Any cost of acquiring, installing, moving, insuring, maintaining or restoring objects of art, but costs related to ordinary maintenance, security and insurance may be included in Operating Expenses.

xlvi Costs of leasing, acquiring, operating and maintaining motor vehicles (except that the costs of operating the shuttle bus service provided in this Lease and costs incurred by Landlord, if any, in maintaining and repairing vehicles related to such shuttle bus service shall be included in Operating Expenses).

xlvii The costs of any electric current or other utilities for the Project beyond those specified for common areas of the Building, but this clause shall not include: (x) the cost of electricity used to operate the central components of the Building's HVAC systems in order to furnish HVAC during regular business hours or ventilating at any other time, (y) costs of any utilities or services supplied to the common areas (other than as excluded from Operating Expenses herein), or (z) the cost of utilities used to operate the Building fire and life safety systems. For clarity, Operating Expenses shall not include (1) the cost of utility installation for tenants, separate metering or sub-metering for tenants and/or tap-in charges for adding tenants, or the cost of any utilities for which Tenant or any other tenant directly contracts with a third party therefor or in respect of which Tenant or any other tenant or other occupant is separately metered or sub-metered and pays Landlord or a third party directly, or (2) the cost of any electricity, water, gas, sewer or similar utility services used by any tenant or other occupant of the Project in its premises if such utility or other service is separately metered, sub-metered, or otherwise charged directly to Tenant or to the Premises.

xlviii Costs of structural repairs and replacements and any other repairs and replacements of a capital nature to the Project (including contributions to capital reserves) other than capital improvements permitted under Section 4(B) above.

xlix Costs of repairs, replacements, alterations or improvements necessary to make the Project or Land (including, without limitation, any building equipment or machinery) comply with applicable past, present or future laws, such as, without limitation, sprinkler installation or requirements under the Americans with Disabilities Act and any penalties or damages incurred due to noncompliance, other than Permitted Capital Improvements expressly permitted under Section 4(B) above.

l All expenses directly resulting from the negligence or willful misconduct of Landlord or any Affiliate of Landlord or any of their respective agents, servants or other employees or damages or other costs for or in connection with bodily injury or personal injury resulting from any tortious conduct of Landlord or its agents, including without limitation, the amount of any judgments rendered against Landlord in excess of the amount of any applicable liability policies and costs of repairs, replacements, alterations and/or improvements.

li Costs of testing (except for routine water tests), containing, removing or abating or any costs otherwise caused by or related to any hazardous, toxic or biologically undesirable wastes, materials, conditions and/or substances, including, without limitation, asbestos and asbestos containing materials, and mold, in, upon or beneath the Project and/or the Land (e.g., any Hazardous Substances in the soil or ground water), except to the extent that such costs are incurred in connection with the remediation of Hazardous Substances required to be performed by Landlord as a result of an environmental law (or amendment thereto) first enacted after the Effective Date (it being understood, however, that any such costs that are excluded under this Section 4(C)(li) shall, to the extent the same relate to any capital improvements or other capital items, be subject to the limitations applicable to inclusion of the costs of Permissible Capital Improvements in Operating Expenses set forth in this Lease.

lii Costs of constructing additions to the Project or new buildings on the Land, or otherwise further developing or redeveloping the Land or any portion of the Project.

liii Landlord's general corporate overhead and general and administrative expenses, including costs that Landlord incurs in organizing or maintaining in good standing the entity that constitutes Landlord, or in authorizing Landlord to do business in the jurisdiction where the Building is located, or administration expenses, deed recordation expenses, legal and accounting fees (other than with respect to Building operations), office costs, human resource management costs and information technology costs. For the avoidance of doubt, audit costs and the costs of preparing financial statements of Landlord (as opposed to records and statements for the Building) shall be excluded from Operating Expenses.

liv The cost of any events or promotions not intended solely for tenants of the Building unless consented to by an authorized representative of Tenant in writing, but Landlord may include in Operating Expenses the cost of customary events that are intended solely for tenants of the Building and not others that are not tenants in the Building.

lv Any "above-standard" cleaning including, but not limited to, construction clean-up or special cleanings associated with parties/events and specific tenant requirements in excess of service provided to Tenant including trash collection, removal, hauling and dumping.

lvi Costs or expenses for work or services that are to be performed at "Landlord's cost" or "Landlord's expense" (or any terms of similar import) pursuant to this Lease (except to the extent otherwise expressly set forth herein).

lvii Any other costs or expenses that are expressly excluded from operating expenses under any "net" lease entered into by Landlord with a third party tenant for office space in the Building.

lviii Any other costs or expenses that are expressly excluded from Operating Expenses under this Lease.

lix All other items which under generally accepted accounting principles as consistently applied in the real estate industry for first-class office buildings are properly classified as capital expenditures except, other than capital improvements permitted under Section 4(B) above.

All Operating Expenses for the Project and the Land shall be reduced by the amount (net of collection costs) of any insurance reimbursement, discount or allowance actually received by Landlord (or which Landlord is eligible to receive) in connection with such costs or which Landlord would have received had Landlord maintained the insurance required hereunder.

(D) Taxes. As used herein, the term "**Taxes**" shall include, without limitation: any and all real estate taxes; assessments (whether they be general or special); community improvement district charges (to the extent paid by Landlord and exclusively related to the Project); governmental charges that accrue against the Building, the Project and/or premises therein, (whether federal, state, county, or municipal, and whether imposed by taxing or management districts or authorities presently existing or hereafter created); sewer rents; transit and transit district taxes; public improvement district and business improvement district levies; and any other federal, state or local governmental charge, general, special, ordinary or extraordinary, now or hereinafter levied or assessed against the Building, the Project and/or premises therein. Except to the extent specifically identified above, Taxes exclude any local, state, or federal income or inheritance taxes. Landlord shall pay all Taxes payable during the Lease Term before the same are delinquent. Notwithstanding anything herein to the contrary, in the event that the present method of taxation changes so that in lieu of or in addition to the whole or any part of Taxes, there is levied on Landlord a capital tax directly on the rents or revenues received therefrom or a franchise tax, margin tax, assess or charge based, in whole or in part, upon such rents or revenues for the Project, then all such taxes, assessments or charges or the part thereof so based, shall be deemed to be included within the term "Taxes" for purposes hereof. Taxes shall also include the cost of consultants retained in an effort to lower taxes and all costs incurred in disputing any taxes or in seeking a lower tax valuation for the Project. With respect to property taxes, Tenant waives all rights to protest or appeal the appraised value of the Premises, as well as the Project, and all rights to receive the notices of reappraisement. From time to time during any calendar year, Landlord may estimate or reestimate Taxes to be due by Tenant for that calendar year and deliver a copy of the estimate or re-estimate to Tenant. Thereafter, monthly installments of Tenant's Proportionate Share of Taxes paid by Tenant shall be appropriately adjusted in accordance with the revised estimations. For purposes of determining Taxes in any calendar year, Taxes shall mean the Taxes paid in such calendar year.

(E) Payment. Commencing on the Rent Commencement Date, Tenant shall pay its Proportionate Share of the cost of all Operating Expenses and Taxes, payable in advance in monthly installments on the first day of each month in such amount as is reasonably estimated by Landlord from time-to-time (but not re-estimated on more than one (1) occasion during any calendar quarter). Within sixty (60) days after the first day of each calendar year, Landlord shall furnish to Tenant an estimate of Tenant's Proportionate Share of reimbursable Operating Expenses and Taxes for the ensuing calendar year. Landlord will furnish an annual statement of the actual cost with respect to the reimbursable Operating Expenses and Taxes ("**Final Statement**") no later than one hundred twenty (120) days following the calendar year-end including the year following the year in which this Lease terminates. In the event that Landlord is, for any reason, unable to furnish the Final Statement for the prior year within the time specified above, Landlord will furnish such Final Statement as soon thereafter as practicable, with the same force and effect as the Final Statement would have had if Landlord delivered within the time specified above; provided, however, if Landlord has not delivered any Final Statement within one year following the calendar year-end covered by the applicable Final Statement, then Landlord shall be deemed to have waived its right to receive any shortfall from Tenant for such calendar year. Tenant will pay any deficiency to Landlord as shown by such Final Statement within thirty (30) days after receipt of statement. If the total amount paid by Tenant during any calendar year exceeds the actual amount of its share of the reimbursable Operating Expenses or Taxes due for such calendar year, the excess will be refunded by Landlord within thirty (30) days of the date of the applicable Final Statement.

(F) Gross Up. With respect to any calendar year or partial calendar year during the term of this Lease in which the Building is less than ninety-five percent (95%) occupied, the Operating Expenses that vary directly with occupancy for such period shall, for the purposes hereof, be increased to the amount which would have been incurred had the Building been ninety-five percent (95%) occupied.

(G) Review of Books and Records. Tenant shall have the right to conduct a Tenant's Review, as hereinafter defined, at Tenant's sole cost and expense (including, without limitation, photocopy and delivery charges), in accordance with this Section. "**Tenant's Review**" shall mean a review of Landlord's books and records relating to (and only relating to) Operating Expenses payable by Tenant hereunder for the most recently completed calendar year (as reflected on Landlord's Final Statement) by Tenant's employees or a licensed Certified Public Accountant ("**CPA**") selected by Tenant. Tenant must elect to perform a Tenant's Review by written notice of such election received by Landlord within ninety (90) days following Tenant's receipt of Landlord's Final Statement for the most recently completed calendar year, and Tenant must perform a Tenant's Review within sixty (60) days of such election. In the event that Tenant fails to make such election in the required time and manner required, or fails to perform such Tenant's Review to completion within the period required, then Landlord's calculation of Operating Expenses and Taxes for such most recently completed calendar year shall be final and binding on Tenant. Tenant hereby acknowledges and

agrees that even if it has elected to conduct a Tenant's Review, Tenant shall nonetheless pay all Operating Expense payments to Landlord as and when due as set forth in the Final Statement, subject to readjustment. Tenant further acknowledges that Landlord's books and records relating to the Building are confidential and may only be reviewed at a location reasonably designated by Landlord (provided Tenant's employees and/or CPA performing the Tenant's Review may copy Landlord's books and records so long as Tenant's reviewers have delivered the confidentiality agreement required below); but Landlord will make such records available within the metropolitan area in which the Premises is located. Tenant shall provide to Landlord a copy of Tenant's Review within thirty (30) days after the date of such review is completed. If Tenant's Review reflects a reimbursement owing to Tenant by Landlord, and if Landlord disagrees with Tenant's Review, then Tenant and Landlord shall jointly appoint an auditor to conduct a review ("**Independent Review**"), which Independent Review shall be deemed binding and conclusive on both Landlord and Tenant. The Independent Review shall be conducted by a CPA who has not been retained by either Landlord or Tenant (or their affiliates) during the preceding five years. If the Independent Review results in a reimbursement owing to Tenant equal to five (5%) percent or more of the amounts stated as Tenant's liability for Operating Expenses as reflected in the Final Statement, the costs of Tenant's Review and the Independent Review shall be paid by Landlord, but otherwise Tenant shall pay the costs of Tenant's Review and the Independent Review. Under no circumstances shall Tenant conduct a review of Landlord's books and records whereby the auditor operates on a contingency fee or similar payment arrangement. Prior to conducting any such review Tenant's reviewer must sign a commercially reasonable non-disclosure, non-solicitation, and confidentiality agreement provided by Landlord.

## 5. SERVICES.

(A) Generally. Provided that this Lease or Tenant's right to possession of the Premises has not been terminated, and subject to Section 5(B) below, during the Term Landlord shall furnish to the Premises the following services and utilities: (i) water (tempered and cold) provided for general use of tenants of the Building in accordance with Comparable Buildings; (ii) heated and refrigerated air conditioning as appropriate, during normal working hours (hereinafter defined) and at such other times as Landlord normally furnishes these services to all tenants of the Building (which shall, in any event, be comparable to the times such services are furnished at the Comparable Buildings), and at temperatures and in amounts in accordance with base building specifications and Comparable Buildings; (iii) janitorial services to the office portions of the Premises on business days (i.e., not including weekends or Holidays) in accordance with the specifications set forth on **Exhibit G** (Tenant will be solely responsible to pay directly for the janitorial services required for all lab areas on the Premises, and such lab janitorial costs will not be included in Operating Expenses) and such window washing as may from time to time in Landlord's judgment be reasonably required to be comparable with window washing at Comparable Buildings; (iv) passenger and freight elevators for ingress and egress to the floors on which the Premises are located, in common with other tenants, provided that Landlord may reasonably limit the number of elevators to be in operation at times other than during normal working hours, with the freight elevator service to be provided by at least one (1) automatic, unmanned oversized passenger elevator serving each floor of the Building; (v) replacement of Building-standard light bulbs and fluorescent tubes (but not incandescent light bulbs, nonstandard fixtures, or other lamps of tenants); (vi) normal electrical current in accordance with base building specifications and Comparable Buildings; (vii) access to the Premises on a 24/7 basis 365 days a year subject to the terms and conditions of this Lease; (viii) a Building security system; and (ix) shared use of the Building's loading docks. In the event Tenant requests and Landlord provides any of the foregoing HVAC services to Tenant at times outside normal working hours (i.e., any time other than 7:00 a.m. to 6:00 p.m. Monday through Friday or 8:00 a.m. to 1:00 p.m. on Saturday, specifically excluding Holidays), then Landlord shall have the right to bill Tenant and Tenant agrees to pay for such additional services. Floor by floor HVAC service shall be provided upon request at times outside normal working hours at the After Hours Rate (defined below). The initial charge for after-hours HVAC is a flat rate of $100.00 per hour per floor ("**After Hours Rate**"). The After Hours Rate is subject to increase as necessitated by increases in the cost of providing the additional HVAC, but any such increase shall be comparable with the rates for after-hours HVAC charged to tenants at Comparable Buildings. Landlord shall not provide HVAC service to any other tenant of the Building outside of normal working hours unless such after-hours HVAC service is specifically requested by the applicable tenant or is required to be provided in order to service another tenant's premises as a result of the configuration of the applicable HVAC system (i.e., a single HVAC unit serves multiple premises and one of the tenants served by such unit requests after-hours HVAC service) and, further, Landlord shall charge any other tenant requesting after-hours HVAC service a rate comparable to the After Hours Rate and shall use commercially reasonable efforts to collect all amounts owing by other tenants for after-hours HVAC service. Landlord will also provide Tenant with the ability to control fan operation (in lieu of operation of the full HVAC system serving the Premises) in Premises for use outside normal working hours,

without temperature control, at no separate charge from Landlord. For purposes of this Lease provision, "**Holidays**" shall include New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas and any such other holidays as reasonably determined by Landlord, consistent with other Comparable Buildings. Landlord, at Landlord's cost, will provide a separate meter to meter Tenant's electrical use within the Premises. Other than as shown in attached **Exhibit C** or as otherwise approved by Landlord, Tenant will not install or operate in the Premises any electrically operated equipment or machinery that operates on greater than 220 volt power without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Tenant shall not install any non-customary electrically operated equipment or machinery that will necessitate any changes, replacements or additions to, or in the use of, the Building systems serving the Premises or the Building, without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be reasonably objectionable to Landlord or to any tenant in the Building shall be installed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to reduce such noise and vibration to a level reasonably satisfactory to Landlord. Landlord acknowledges that any equipment to be installed by Tenant as pre-approved by Landlord do not require any further consent or approval as may otherwise be required under this Section and such installation are acceptable. Notwithstanding anything in this Lease to the contrary, any damage to any fixtures or appliances in the Premises to the extent attributable to misuse by Tenant or its agents, employees or invitees, shall be paid by Tenant, and Landlord will not in any case be responsible therefor.

Except in the event of Landlord's material uncured breach of its Lease obligations hereunder or the negligence or willful misconduct of Landlord, the failure by Landlord to any extent to make available, or any slowdown, stoppage or interruption of these services shall not render Landlord liable in any respect for damage to either person, property or business, nor be construed as an actual or constructive eviction of Tenant or work an abatement or offset of Rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof, except as set forth below. Notwithstanding the foregoing, upon the occurrence of any interruption or discontinuance of such services, as set forth in this Section 5(A), which results from Landlord's material uncured breach of its obligations hereunder or Landlord's negligence or willful misconduct, and which was not caused by Tenant or by Tenant's subtenants, agents, employees or contractors (without any reasonably equivalent or alternative service being provided by Landlord), and such interruption or discontinuance continues for a period of five (5) consecutive days (or re-occurs on more than twelve (12) days, even if not consecutive days, within a thirty (30) day period) after Tenant shall have given written notice thereof to Landlord, then, from and after the expiration of such five (5) day period, where Tenant is unable to and does not use the affected portion of the Premises for the conduct of business as normally conducted by Tenant, gross Rent shall abate in the same proportion as the portion of the Premises that Tenant is unable to and does not use bears to the entire Premises until such time as such service is restored or Tenant begins using the affected portion of the Premises for its business. Landlord shall not, except in an emergency, voluntarily effect any stoppage or reduction of any service without giving prior oral or written notice to Tenant of the time and estimated duration thereof, and Landlord agrees to use commercially reasonable efforts to cause any such stoppage or reduction of any service to be outside of working hours for the Building. Should any equipment or machinery furnished by Landlord break down or for any cause cease to function properly, Landlord shall use reasonable diligence to repair same promptly, but, except as provided above, Tenant shall have no claim for abatement of Rent or damages on account of any interruption in service occasioned thereby or resulting therefrom.

(B) Separately Metered Utilities. Notwithstanding the foregoing, all utilities in the lab area of the Premises, including without limitation, water, electricity, natural gas and HVAC, will be separately metered or sub-metered, or otherwise accurately accounted for, by Landlord, and the costs for usage shall be billed and paid directly by Tenant when due.

(C) Common Areas. Landlord shall be responsible for providing and/or maintaining in good condition and repair the following: (i) trash removal, (ii) landscaping; (iii) all labor costs and supply costs involved in the operation of the Building; (iv) all other services of any kind and nature which Landlord determines may be used in or upon the Project; (v) management of the Project; and (vi) the repair, maintenance and replacement of the Building and improvements as follows: (1) the roof; (2) all structural interior and exterior components of the Building and improvements except those modifications installed by Tenant; (3) Garage; (4) sidewalks, alleys and any and all access drives, including the removal of snow and ice therefrom; (5) heating and air conditioning equipment, lines and fixtures except for any supplementary air conditioning systems installed by or at the request of Tenant; (6) plumbing equipment,

lines and fixtures, including, but not limited to fire sprinkler and fire control systems, except for any of these items of Tenant's personal property including, without limitation, dishwashers and refrigerators; (7) electrical equipment, lines and fixtures serving the Project, including without limitation tenants' premises, except for tenants' personal property including, for example only and without limitation, tenants' back-up generators and computer infrastructures; (8) all ingress-egress doors to the Building; (9) exterior plate glass; (10) all utility lines and services, except to the extent installed or modified by or at the direction of any tenant; (11) elevator equipment, lines and fixtures; (12) preventative maintenance to the heating and air conditioning equipment, lines and fixtures; and (13) janitorial service to the Premises (other than the lab area, which shall be Tenant's responsibility) and common areas. Landlord reserves the right to bill Tenant separately for extra janitorial service required for non-standard installations as may from time to time in Landlord's judgment be reasonably required, or shall permit Tenant to undertake such services itself, with an appropriate adjustment, if any, to the amount of Operating Expenses. The costs incurred by Landlord in connection with the performance and provision of the foregoing services shall be included in Operating Expenses except to the extent expressly excluded under Section 4(C). In no event will Landlord be responsible for alterations to the Building's structure required by applicable law because of Tenant's specific use of the Premises (other than general office use) or alterations or improvements to the Premises made by or for the benefit of Tenant.

If Landlord fails to satisfy its obligations under this Section 5(C) for any reason other than a Force Majeure event, and provided such condition was not caused by Tenant or by Tenant's subtenants, agents, employees representatives, invitees or contractors, or any other person or party for whom Tenant is responsible, and such failure continues for a period of ten (10) consecutive days after Landlord's receipt of notice of such failure from Tenant; then, from and after the expiration of such ten (10) day period, where Tenant is unable to and does not use the affected portion of the Premises for the conduct of business as normally conducted by Tenant, Base Rent shall abate in the same proportion as the portion of the Premises that Tenant is unable to and does not use bears to the entire Premises until such time as such maintenance is performed or Tenant begins using the affected portion of the Premises for its business. Notwithstanding anything to the contrary herein, Landlord's liability under this Section 5(C) shall be limited to Base Rent abatement (as provided in this paragraph) and the cost of performing such work (it being understood that nothing in this sentence shall operate to limit Landlord's indemnification obligations contained in this Lease).

(D) Utility Consumption. Tenant acknowledges and affirms its knowledge and understanding of Landlord's efforts to benchmark utility consumption within the entirety of the Building. As such, Tenant consents to Landlord's using such consumption information to enable Landlord to satisfy the requirements established by the US EPA for whole building data for, and to incorporate Tenant's utility data in, such benchmarking initiatives as Landlord actively participates in, subject only to the provision that Landlord will exercise commercially reasonable care to maintain the privacy of Tenant's specific consumption data. Any public dissemination of such data shall be in aggregate with other Building tenants' and occupants' consumption data, with no direct identification of individual tenant usage.

## 6. COMPLIANCE.

Tenant, at Tenant's sole expense, shall comply with all Governmental Requirements now in force or which may hereafter be in force, which shall impose any duty upon Tenant with respect to the use, occupation or alteration of the Premises. Notwithstanding anything to the contrary contained herein, Tenant will keep, repair, maintain and preserve the Premises (including, without limitation, all electronic, phone and data cabling and related equipment installed for the exclusive benefit of Tenant [other than building service equipment], fixtures, lighting, electrical equipment and wiring, non-structural walls, interior windows, floor coverings, doors and door frames and plate glass [provided that Landlord shall have the right to repair plate glass at Tenant's cost]) in good, neat and sanitary condition and free of insects, rodents, vermin and other pests, except for normal wear and tear, and damage by fire or casualty, and repairs or services required to be completed or provided by Landlord hereunder. Tenant shall be solely responsible, at Tenant's sole cost and expense, for the proper maintenance of the portions of any and all sanitary, electrical, heating, air conditioning, plumbing, security or other systems, equipment and appliances *to the extent* installed and/or operated by Tenant and/or exclusively serving the Premises. Tenant agrees to provide regular maintenance by contract with a reputable qualified service contractor for the heating and air conditioning, electrical, plumbing and life-safety equipment exclusively servicing the Premises. Such maintenance contract and contractor shall be subject to Landlord's reasonable approval. Tenant, at Landlord's request, shall at reasonable intervals provide Landlord with copies of such contracts and maintenance and repair records and/or reports. Tenant shall be responsible, at its sole cost and expense, for janitorial and trash removal services for the lab area of the Premises and for proper biohazard disposal services. Such services shall be performed by licensed (where required by law or governmental regulation), insured and qualified contractors approved in advance, in writing, by Landlord

(which approval shall not be unreasonably withheld, delayed or conditioned) and on a sufficient basis to ensure that the Premises are at all times kept neat and clean.

Tenant, at Tenant's sole cost and expense, shall cause all portions of the Premises used for the storage, preparation, service or consumption of food or beverages to be cleaned daily in a manner reasonably satisfactory to Landlord, and to be treated against infestation by insects, rodents and other vermin and pests whenever there is evidence of any infestation. Tenant shall not permit any person to enter the Premises for the purpose of providing such extermination services, unless such persons have been approved by Landlord. If requested by Landlord, Tenant shall, at Tenant's sole cost and expense, store any refuse generated in the Premises by the consumption of food or beverages in a cold box or similar facility.

If Tenant fails to maintain the Premises in accordance with this Lease, at Tenant's sole cost and expense, Landlord will make all interior repairs and replacements to the Premises including but not limited to interior walls, doors and windows, floors, floor coverings, light bulbs, plumbing fixtures, and electrical fixtures, except for normal wear and tear, damage by fire or casualty and repairs or services required to be completed or provided by Landlord hereunder. Subject to Section 9(C) below, Tenant will also reimburse Landlord, at Tenant's sole cost and expense, for the cost to repair or replace any broken windows and/or damage to the Building or Premises caused by the negligence of Tenant or its employees, agents, guests or invitees during the Lease Term hereof. Except in case of emergency, Landlord will provide Tenant with notice of its intent to perform such repairs or replacements at least one (1) business day before commencement of such work. The above repairs, replacements, and/or services must be performed by an approved contractor of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Should Tenant fail to perform all interior repairs and replacements to Tenant's Premises, such repairs may be performed by Landlord and charged to Tenant at Tenant's sole cost and expense. Tenant will comply with all ordinances of the City of Chicago, rules and regulations of the Board of Health and the laws of the State of Illinois, and any laws, rules or regulations of any governmental authority required of either Landlord or Tenant relative to the repair, maintenance and replacement in the Premises. Tenant shall give to Landlord prompt notice of any fire or accident in the Premises or in the Building and of any damage to, or defective condition in, any part or appurtenance of the Building including, without limitation, the sanitary, electrical, ventilation, heating and air conditioning or other systems located in, or passing through, the Premises. Tenant agrees to comply with all rules and regulations now or hereafter promulgated by Landlord from time to time of which Tenant has prior written notice ("**Rules and Regulations**"). Current Rules and Regulations are as set forth on **Exhibit B**. Notwithstanding anything to the contrary herein, the Rules and Regulations shall be subject to the following conditions (collectively, the "**Rules and Regulations Conditions**"): (i) if any amended or supplemented Rules and Regulations are in conflict with any term, covenant or condition of this Lease, then this Lease shall prevail; (ii) the Rules and Regulations shall be uniformly applied by Landlord without discrimination to the tenants and other occupants of the Building; and (iii) if any other tenant or other occupant of the Building persistently fails to comply with the Rules and Regulations, and such non-compliance materially interferes with Tenant's use of the Premises, then Landlord, upon receiving a written request from Tenant, will provide notice to the non-compliant tenant or occupant of the Building to remedy such non-compliance. Notwithstanding the foregoing, in no event will any alleged Landlord failure with respect to the immediately preceding sentence be deemed as a Landlord default under this Lease.

Tenant shall comply with all easements, covenants and restrictions now or hereafter affecting the Property or any portion thereof, and, to the best of Landlord's actual knowledge, all such easements now or hereafter affecting the Property do not, or will not, prevent Tenant from using the Premises for the Permitted Use or otherwise diminish or interfere with the rights and benefits granted Tenant under this Lease. Additionally, Tenant acknowledges that Landlord may enter into reciprocal easement agreements, operating agreements or additional covenants with adjacent property owners, and Tenant hereby agrees to cooperate with Landlord's endeavors in entering into any such easements, agreements or covenants, and shall abide by such easements, agreements and covenants as to which Landlord has provided Tenant copies thereof, and provided that no such agreements or covenant shall diminish or interfere with the rights and benefits granted Tenant under this Lease.

## 7. PARKING.

Tenant and its employees, agents and invitees shall have the right in common with other tenants of the Building to use the Tenant Parking Stalls from the Parking Spaces on an unreserved basis, subject to such reasonable Rules and Regulations (as defined herein) as Landlord may promulgate from time to time and applicable laws. As of the Effective Date, Tenant leases four (4) of the Tenant Parking Stalls, and commencing on the Expansion

Commencement Date, Tenant shall lease all of the Tenant Parking Stalls for the entirety of the Term; provided, however, that not more than one time per calendar year, Tenant may notify Landlord of its desire to relinquish one or more of the Tenant Parking Stalls, and, upon receipt of such notice, Landlord will offer such Tenant Parking Stalls to the other then-current tenants in the Building. If any such other tenants of the Building agree to lease the proposed relinquished Tenant Parking Stalls, Landlord will proceed to lease such stall to such tenants, and, upon the execution of such lease(s), the applicable Tenant Parking Stalls will be removed from Tenant's parking obligations hereunder. To the extent that no other tenants in the Building desire to lease all or any of the proposed Tenant Parking Stalls, Tenant will continue to lease such Tenant Parking Stalls throughout the Term, Notwithstanding the foregoing, if, at any time during the Lease Term, the Premises expand (due to the ROFR, as defined below, or otherwise), Tenant shall, on or before the date upon which the Lease Term commences with respect to such expansion, have the right to elect to lease on a month-to-month basis any then-unencumbered Parking Spaces allocable to the ROFR space as determined using the ratio of one unreserved Parking Space per 2,869 rentable square feet in the Premises) (it being understood that, in connection with any expansion process, upon Tenant's request, Landlord shall promptly inform Tenant of how many unencumbered Parking Spaces are then available), with any failure by Tenant to timely make such an election being deemed an election to not exercise such right; provided, however, in the case of a ROFR in which the ROFR Space Notice includes a right to lease a specific number of Parking Spaces, the preceding terms of this sentence (i.e., the terms before the proviso) shall not apply, and Tenant shall have the applicable rights to Parking Spaces described in the ROFR Space Notice. Except as otherwise expressly set forth in this Lease, the Tenant Parking Stalls shall be leased at a rate of $275.00 per Parking Space per month, plus any applicable sales tax, as such parking rate may be reasonably adjusted by Landlord from time-to-time in accordance with market prices; provided, however, in no event will the adjusted parking fee exceed fair market value. Notwithstanding anything herein to the contrary, except in the case of an Event of Default under this Lease with respect to which Landlord has commenced the exercise of any of the remedies described in Sections 19(A), 19(B) or 19(C), Landlord will not have the right to terminate Tenant's rights to any of the Tenant Parking Stalls pursuant to this Section 7. Landlord may grant or deny parking access rights to other tenants of the Project. Tenant shall only permit parking by its employees, agents, contractors, or invitees of passenger vehicles in appropriate designated parking areas. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties but Landlord shall use commercially reasonable efforts to ensure all users of the Garage observe the applicable Rules and Regulations and do not breach their respective obligations (whether under a lease agreement or otherwise) with respect to the use of the Garage and Parking Spaces. It is understood and agreed that (i) no specific, reserved Parking Spaces will be allocated for use by Tenant, and (ii) all of the Tenant Parking Stalls shall be in the Garage. Notwithstanding anything herein to the contrary, in addition to the visitor Parking Spaces, Landlord hereby reserves the right from time-to-time to designate any portion of the parking facilities to be used exclusively by visitors to the Building, other persons, entities, or tenants, and to charge for visitor parking and/or reserved parking; provided, however, Landlord shall not exercise such right in a manner that diminishes or unreasonably interferes with any of Tenant's rights with respect to the Tenant Parking Stalls. Tenant agrees that it and its employees shall observe the reasonable safety precautions in the use of parking facilities promulgated by the operator and/or Landlord governing their use. In the event that the operator and/or Landlord require that an identification or parking sticker must be displayed at all times in all cars parked in the parking facilities, any car not displaying such a sticker may be towed away, booted or ticketed at the car owner's expense.

## 8. HAZARDOUS SUBSTANCES.

(A) The term "**Hazardous Substances**", as used in this Lease shall mean pollutants, contaminants, toxic or hazardous wastes, asbestos, polychlorinated biphenyls ("**PCBs**"), oil or any hazardous, radioactive or toxic substance, material or waste or petroleum derivative, the removal of which is required or the presence or use of which is or becomes restricted, prohibited or penalized by any Environmental Law (hereinafter defined) including without limitation live organisms, viruses and fungi, medical waste and any so-called "biohazard" materials," and any materials on the right to know list of the Occupational Safety and Health Administration. The term "**Hazardous Substance**" also includes, without limitation, any material or substance which is (i) designated as a "hazardous substance," "hazardous material," "oil," "hazardous waste" or toxic substance under any Environmental Law or (ii) contains any component now or hereafter designated as such. The term "**Environmental Law**", shall mean any federal, state or local law, ordinance or other statute, rule or regulation of any local, state or federal governmental or quasi-governmental authority relating to pollution or protection of the environment or health and safety matters, including but not limited to any discharge by any of the Tenant Parties into the air (including outdoor air and indoor air), surface water, sewers, soil or groundwater of any Hazardous Substance whether within or outside the Premises, including, without limitation (a) the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., (b) the Federal Resource Conservation and Recovery Act, 42

U.S.C. Section 6901 et seq., (c) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., (d) the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601 et seq., (e) the Illinois Environmental Protection Act, 415 Ill. Comp. Stat. 5, including, without limitation, Title II, Title VI-A, Title VI-B and Title XVII, (f) the Solid Waste Planning and Recycling Act, 415 Ill. Comp. Stat. 15, and (g) the Illinois Solid Waste Management Act, 415 Ill. Comp. Stat. 20. Tenant, at its sole cost and expense, shall comply with (i) all Environmental Laws, and (ii) any rules, requirements and safety procedures of (A) the Illinois EPA, the City of Chicago, and any other governmental agency with jurisdiction over Hazardous Materials and (B) any insurer of the Building or the Premises with respect to Tenant's use, storage and disposal of any Hazardous Substances.

(B) Tenant shall not, without the prior written consent of Landlord, bring or permit to be brought to or kept at, in or on the Premises or elsewhere in the Building or the Project (a) any inflammable, combustible or explosive fluid, material, chemical or substance (except for de minimis quantities of standard office and cleaning supplies stored in compliance with Environmental Laws and in proper containers); and (b) any Hazardous Substance, other than the types of Hazardous Substances which are used by Tenant in the ordinary course of Tenant's business and are consistent with the operation of a pharmaceutical development laboratory, including, but not limited to those that are listed on **Exhibit L** attached hereto ("**Tenant's Hazardous Substances**"); provided that the same shall at all times be brought to, kept at or used in so-called 'control areas' (the location, number and size of which shall reasonably be approved by Landlord) only in accordance with all applicable Environmental Laws and prudent environmental practices (including without limitation best practices to minimize quantities of stored Hazardous Substances using a "just in time" method of purchasing the same) and (with respect to medical waste and so-called "biohazard" materials) good scientific and medical practices; and provided further that if any applicable Environmental Laws limit quantities of permitted Hazardous Substances on a per floor basis, Tenant will be allowed to utilize only such limited allowable quantity in the same proportion as the rentable square footage of the Premises bears to the entire rentable square footage of the 8th floor of the Building; and provided further that in no event shall Tenant generate, produce, bring upon, use, store or treat any infectious biological micro-organisms or any other Hazardous Substances in the Premises with a risk category above the level of Biosafety Level 2 as established and described by the U.S. Department of Health and Human Services Publication Biosafety in Microbiological and Biomedical Laboratories (Fifth Edition) (as it may be further revised, the "**BMBL**") or such nationally recognized new or replacement standards as may be reasonably selected by Landlord; and provided further that to the extent any Governmental Requirement sets a maximum quantity of any Hazardous Substances which may be stored, used or brought into the Building without additional licensing, permitting or authorizations therefor, Tenant shall not be permitted to use, store or bring into the Building more than Tenant's prorated share of such Hazardous Substances (as determined by the relative use of such Hazardous Substances by tenants operating research and development laboratories and taking into account the size of the Premises as compared to the size of such other tenants spaces). In all events, Tenant shall comply with all applicable provisions of the BMBL. No portion of the Premises will be used by Tenant as a landfill or a dump. Tenant will not install in, on, under or about the Project, any underground tanks of any type. Tenant shall be responsible for assuring that all laboratory uses are adequately and properly vented. On or before each anniversary of the Commencement Date and at least fifteen (15) days prior to any date on which Tenant intends to add a new Hazardous Substance to, or materially increase the quantity of any Hazardous Substance already on, the list of Tenant's Hazardous Substances, Tenant shall submit (via an e-mail to Landlord's email addresses set forth above, as may be updated by written notice from time to time, and Landlord's then current property manager) to Landlord an updated list of Tenant's Hazardous Substances for Landlord's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Landlord neither approves nor objects to the contents of any such Tenant list within seven (7) business days, such list will be deem approved by Landlord. Tenant shall provide such further information concerning any Tenant's Hazardous Substances and/or their use, storage and/or disposal within thirty (30) days of Landlord's reasonable request concerning the same. Landlord shall have the right, from time to time, to inspect the Premises for compliance with the terms of this Section 8 at Tenant's sole cost and expense, but not more often than once per year at Tenant's cost, unless Landlord has a good faith reasonable belief that Tenant has violated the terms hereof. Further, Landlord may inspect the Premises for compliance with this Section 8 up to an additional two times per year at Landlord's cost and expense. With respect to any Hazardous Substance brought or permitted to be brought or kept in or on the Premises or elsewhere in the Building or the Project in accordance with the foregoing, Tenant shall (i) not permit any such Tenant Hazardous Substance to escape, be released or be disposed in or about the Premises, the Building or the Land and (ii) within five (5) business days of Landlord's reasonable request, which request shall not be made more frequently than one time per calendar year unless otherwise required by a governmental authority or Landlord reasonably suspects that a release of a Hazardous Substance has occurred upon the Premises, provide evidence reasonably satisfactory to Landlord of Tenant's compliance with all applicable Environmental Laws including copies of all licenses, permits and registrations that Tenant has been required to obtain prior to handling any Hazardous Substance at the

Premises and that have not been previously provided to Landlord. Notwithstanding the foregoing, with respect to any of Tenant's Hazardous Substances which Tenant does not properly handle, store or dispose of in compliance with all applicable Environmental Laws, prudent environmental practices and (with respect to medical waste and so-called "biohazard" materials) good scientific and medical practices, Tenant shall, upon written notice from Landlord, no longer have the right to bring such material into the Building or the Project until Tenant has demonstrated, to Landlord's reasonable satisfaction, that Tenant has implemented programs to thereafter properly handle, store or dispose of such material. In order to induce Landlord to waive its otherwise applicable requirement that Tenant maintain insurance in favor of Landlord against liability arising from the presence of radioactive materials in the Premises, and without limiting the foregoing, Tenant hereby represents and warrants to Landlord that at no time during the Term will Tenant bring upon, or permit to be brought upon, the Premises any radioactive materials whatsoever.

(C) If any lender or governmental authority requires testing to determine whether there has been any release of Hazardous Substance(s) and such testing is required as a result of the acts or omissions of any of the Tenant Parties, then Tenant shall reimburse Landlord upon demand, as additional rent, for the reasonable costs thereof. If Tenant is found to have caused any release of a Tenant Hazardous Substance at, in, on, under, from or upon the Project, all reasonable, out of pocket costs incurred by Landlord in connection with Landlord's monitoring of Tenant's compliance with this Section 8, including Landlord's reasonable attorneys' fees and costs, shall be additional rent and shall be due and payable to Landlord within thirty (30) days after the delivery to Tenant of Landlord's invoice therefor. Tenant shall execute affidavits, certifications and the like, as may be reasonably requested by Landlord from time to time concerning Tenant's best knowledge and belief concerning the presence of Hazardous Substances at, in, on, under, from or upon the Premises, the Building or the Project. From time to time during the term of this Lease, Tenant shall provide Landlord with such evidence of Tenant's compliance with the terms of this Section 8 as Landlord may reasonably request, which request shall not be made more frequently than one time per calendar year unless otherwise required by a governmental authority or Landlord reasonably suspects that a release of a Hazardous Substance has occurred at, in, on, under, from or upon the Premises. Further, at Landlord's option, Landlord may (but shall have no obligation to) obtain a report or reports from time to time, but no more often than once per calendar year unless Landlord reasonably and in good faith believes that Tenant has violated the provisions hereof (each, a "**Landlord's Report**") addressed to Landlord by a licensed environmental engineer or certified industrial hygienist, which Landlord's Report shall be based on the environmental engineer's or certified industrial hygienist's inspection of the Premises and shall set forth the current condition of the Premises with respect to Tenant's use, storage and disposal of Hazardous Substances. Landlord may obtain a Landlord's Report at Tenant's cost at any time that Tenant is in default under this Lease. In addition, if any time a Landlord's Report indicates that there is a material deficiency in compliance with the standards set forth in this Section 8, then the costs of such Landlord's Report shall be reimbursed by Tenant to Landlord upon demand, as additional rent, for the reasonable cost thereof, Tenant shall promptly remedy such deficiency, and Landlord shall be entitled to a written evaluation by Landlord's consultant at Tenant's cost to confirm the proper completion of such remedy, such costs also to be reimbursed by Tenant to Landlord upon demand as additional rent, for the reasonable cost thereof, together with interest at the Default Rate until paid in full.

(D) Tenant agrees to indemnify, defend and hold harmless Landlord, its lenders, any managing agents and leasing agents of the Premises, and their respective agents, partners, officers, directors and employees, from all claims, judgments, demands, actions, liabilities, losses, penalties, costs, expenses, fees, damages and obligations of any nature (collectively, "**Claims**") arising from or as a result of Hazardous Substances or any other contamination of any part of the Project or adjacent property, or exacerbation of any Hazardous Substances or other contamination of any part of the Project or adjacent property which contamination or exacerbation, as the case may be, arises solely as a result of (i) the presence of any Tenant Hazardous Substance in the Premises, the occurrence of which is caused by any act or omission of any of the Tenant Parties, or (ii) from a breach by Tenant of its obligations under this Section 8. This indemnification by Tenant includes, without limitation, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work or any other response action required by any federal, state or local governmental agency or political subdivision because of any Hazardous Substance present in the soil, soil vapor, or ground water at, on or under, or any indoor air in, the Building based upon the circumstances identified in the first sentence of this Section 8D. The foregoing indemnifications shall survive the expiration or sooner termination of this Lease.

(E) Without limiting the obligations set forth in Section 8D above, if any Hazardous Substance is at, in, on, under, from, or upon the Building or the Project as a result of the acts or omissions of any of the Tenant Parties and results in any contamination of any part of the Project or any adjacent property that is in violation of any applicable

Environmental Law or that requires the performance of any response action pursuant to any Environmental Law, Tenant shall promptly take all actions at Tenant's sole cost and expense as are necessary to reduce such Hazardous Substance to amounts below any applicable reportable quantity, reportable concentration or any other applicable reporting or cleanup standard set forth in any Environmental Law such that (i) no further response actions are required, (ii) no Environmental Land Use Control (as that term is defined in the Illinois Administrative Code Title 35, § 742.200) is required, and (iii) no environmental easements, deed restrictions or other limitations on the use of the property is or are required; provided that Tenant shall first obtain Landlord's written approval of such actions, which approval shall not be unreasonably withheld, conditioned or delayed so long as such actions would not be reasonably expected to have an adverse effect on the market value or utility of the Project for the Permitted Uses, and in any event, Landlord shall not withhold its approval of any proposed actions which are required by applicable Environmental Laws and comply with the provisions of Sections 8E(i), (ii), and (iii), above (such approved actions, "**Tenant's Remediation**"). In the event that Tenant fails to complete Tenant's Remediation prior to the end of the Term, then, until the completion of Tenant's Remediation (as evidenced by a "No Further Remediation Letter" (as such term is defined by applicable Environmental Laws), or other appropriate regulatory closure documentation that is reasonably acceptable to Landlord) (the "**Remediation Completion Date**"), (i) Tenant shall pay to Landlord, with respect to the portion of the Premises which reasonably cannot be occupied by a new tenant until completion of Tenant's Remediation, (A) additional rent on account of Operating Expenses and Taxes and (B) Base Rent in an amount equal to the greater of (1) the fair market rental value of such portion of the Premises (as reasonably determined by Landlord), and (2) Base Rent attributable to such portion of the Premises in effect immediately prior to the end of the Term; and (ii) Tenant shall maintain responsibility for Tenant's Remediation and Tenant shall complete Tenant's Remediation as soon as reasonably practicable in accordance with all Environmental Laws. If Tenant does not diligently pursue completion of Tenant's Remediation, Landlord shall have the right to either (A) assume control of the performance of Tenant's Remediation, in which event Tenant shall pay all reasonable costs and expenses of Tenant's Remediation (it being understood and agreed that all costs and expenses of Tenant's Remediation incurred pursuant to contracts entered into by Tenant shall be deemed reasonable) within thirty (30) days of demand therefor (which demand shall be made no more often than monthly), and Landlord shall be substituted as the party identified on any governmental filings as the party performing such Tenant's Remediation or (B) require Tenant to maintain responsibility for Tenant's Remediation, in which event Tenant shall complete Tenant's Remediation as soon as reasonably practicable in accordance with all Environmental Laws, it being understood that Tenant's Remediation shall not contain any requirement that Tenant remediate any contamination to levels or standards more stringent than those associated with the Project's current office, research and development, laboratory, and vivarium uses.

(F) During the Lease Term, Tenant shall promptly provide Landlord with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, complaints, investigations, judgments, letters, notice of environmental liens, and other communications, written or oral, actual or threatened, received by Tenant from the United States Environmental Protection Agency, Occupational Safety and Health Administration, the Illinois Environmental Protection Agency or any other federal, state or local agency or authority, or any other entity or individual, concerning (i) any Hazardous Substance on, in, under or about the Premises; (ii) the imposition of any lien on the Premises; or (iii) any alleged violation of or responsibility under any Environmental Law relating to the Premises (including the use and/or occupancy thereof) by any Tenant Party.

(G) Prior to bringing any Hazardous Substance into any part of the Project, other than Tenant's Hazardous Substances and standard office, cleaning and maintenance supplies used in ordinary amounts and stored in proper containers in compliance with all Environmental Laws, Tenant shall deliver to Landlord the following information with respect thereto: (a) a description of handling, storage, use and disposal procedures; (b) all plans or disclosures and/or emergency response plans which Tenant has prepared, including without limitation Tenant's Spill Response Plan, and all plans which Tenant is required to supply to any governmental agency or authority pursuant to any Environmental Laws; and (c) other information reasonably requested by Landlord.

(H) Tenant shall be responsible, at its sole cost and expense, for Hazardous Substance and other biohazard disposal services for the Premises. Such services shall be performed by contractors reasonably acceptable to Landlord and on a sufficient basis to ensure that the Premises are at all times kept neat, clean and free of Hazardous Substances and biohazards except in appropriate, specially marked containers reasonably approved by Landlord. In addition, if any Governmental Requirements or the trash removal company requires that any substances be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site.

(I) Tenant shall not be bound by any requirements of a Building insurer which are more restrictive than those of any Environmental Law (an "**Overstandard Requirement**"), unless Landlord shall have given Tenant prior written notice of such Overstandard Requirements prior to Tenant conducting business from the Premises or taking any action required under this Lease. Landlord agrees that any Overstandard Requirement shall be applicable only to the extent that such Overstandard Requirements are generally applicable in Comparable Buildings containing laboratory uses (not owned by Landlord or its affiliates or insured by a Building insurer), are appropriate to the nature of the Building and its tenancy, and applicable to all other similarly situated tenants of the Building. Further, Tenant shall not be required to comply with any Overstandard Requirement to the extent that doing so would materially interfere with, or make materially more costly, Tenant's normal conduct of business.

## 9. INSURANCE.

(A) INSURANCE BY LANDLORD. Landlord shall, during the Lease Term, procure and keep in force at least the following insurance (the cost of Landlord's insurance hereunder will be deemed to be an Operating Expense to the extent applicable to the period after the Commencement Date):

(1) PROPERTY INSURANCE. "All Risk" property insurance covering the full replacement value of the Building and including, without limitation, coverage for earthquake and flood; and machinery (if applicable); sprinkler damage; vandalism; malicious mischief; and loss of rental income. Such insurance shall not cover Tenant's equipment, trade fixtures, inventory, fixtures or personal property located on or in the Premises.

(2) LIABILITY INSURANCE. Commercial general liability (lessor's risk) insurance against any and all claims for bodily injury, death or property damage occurring in or about the Building or the Land. Such insurance shall have a combined single limits as may be reasonably determined by Landlord from time to time in a manner consistent with Comparable Buildings, but in no event less than a combined single limit of One Million Dollars ($1,000,000) per occurrence with a Two Million Dollar ($2,000,000) aggregate limit; and

(4) OTHER. Such other insurance as Landlord deems necessary and prudent.

Should Landlord choose to self-insure, the cost of maintaining such self-insurance shall be considered an expense of the property and be payable by Tenant as a portion of Operating Expenses; provided, that in no event shall Operating Expenses include any amount in excess of the premiums that would have otherwise been included if Landlord had purchased such insurance from an insurance company and not elected to self-insure, plus commercially reasonable deductible amounts.

(B) INSURANCE BY TENANT. Tenant shall, during the Lease Term, procure and keep in force the following insurance:

(1) Tenant's Liability Insurance. Commercial general liability insurance against any and all claims for personal injury, bodily injury (including, without limitation, sickness, disease and death) and property damage (including products and completed operations) occurring in, or about the Premises arising out of Tenant's use and occupancy of the Premises. Such insurance shall have a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence with a Two Million Dollar ($2,000,000) aggregate limit and excess umbrella liability insurance in the amount of Ten Million Dollars ($10,000,000). Such liability insurance shall be primary and not contributing to any insurance available to Landlord (and Landlord's insurance shall be in excess thereto) with respect to Tenant's indemnification obligations under this Lease. In no event shall the limits of such insurance be considered as limiting the liability of Tenant under this Lease. Such policy shall name Landlord, its lenders, any managing agents and leasing agents of the Premises, and their respective agents, partners, officers, directors and employees as additional insureds, and shall include contractual liability coverage covering Tenant's liability assumed under this Lease, including without limitation Tenant's indemnification obligations.

(2) Tenant's Property Insurance. A policy of fire, vandalism, malicious mischief, extended coverage and so-called "special form" or "special cause" coverage insuring all equipment, trade fixtures, inventory, fixtures, and personal property owned by Tenant located on or in the Premises for perils covered by the causes of loss - special form (all risk) and in addition, coverage for wind, terrorism and boiler and machinery (if applicable). Such

insurance shall be written on a replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the foregoing.

(3) Business Interruption Insurance. Business interruption and extra expense insurance in such amounts to reimburse Tenant for direct or indirect loss attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or the Building as result of such perils.

(4) Workers' Compensation/Employers Liability Insurance. Workers' compensation insurance in accordance with statutory law and employers' liability insurance with a limit of not less than $1,000,000 per accident, $1,000,000 disease, policy limit and $1,000,000 disease limit each employee.

(5) Intentionally deleted.

(6) Intentionally deleted.

(7) Increase in Coverage. Landlord may, by notice to Tenant, require an increase in policy limits or require that Tenant carry other forms of insurance; provided that the same are commercially reasonable and in keeping with the insurance requirements of owners of Comparable Buildings.

(8) General Requirements. The policies required to be maintained by Tenant shall be with companies rated A- VII or better by A.M. Best. Insurers shall be licensed to do business in the state in which the Premises are located and domiciled in the USA. Any deductible amounts under any insurance policies required hereunder shall not exceed $50,000. Certificates of insurance shall be delivered to Landlord prior to the Commencement Date and annually thereafter at least thirty (30) days prior to the policy expiration date, each naming Landlord, the applicable property management company and any applicable lender as additional insureds, provided Landlord delivers such information to Tenant. Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises as a scheduled location under such policy and to Landlord as required by this Lease. Each policy of insurance shall provide notification to Landlord at least thirty (30) days (or ten (10) days in the case of non-payment of the premium) prior to any cancellation or modification to reduce the insurance coverage.

(9) Failure to Maintain. In the event Tenant does not purchase the insurance required by this Lease or keep the same in full force and effect, Landlord may, but shall not be obligated to, purchase the necessary insurance and pay the premium. The Tenant shall repay to Landlord, as additional Rent, the amount so paid promptly upon demand. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as additional Rent, any and all reasonable expenses (including without limitation attorneys' fees) and damages which Landlord may sustain by reason of the failure to Tenant to obtain and maintain such insurance.

(C) WAIVER OF SUBROGATION. Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property, to the extent that such loss or damage is insured by an insurance policy carried by such party at the time of such loss or damage or would be insured by an insurance policy required to be carried by such party under this Lease. For this purpose, applicable deductible amounts shall be treated as though they were recoverable under such policies. If Landlord elects to self-insure any of the insurance required of Landlord hereunder, Landlord shall be considered an insurance carrier for purposes of this paragraph. Each party shall cause its property insurance required herein to contain a clause (or include any special endorsements, if required by its insurer), whereby the insurer waives all rights of subrogation with respect to losses payable under such policies.

## 10. INDEMNIFICATION.

(A) Release. Except to the extent caused by the gross negligence or willful misconduct of, or violation of law by, or due to the default under this Lease beyond any applicable notice and cure period by, Landlord or its agents, employees or contractors, but subject to the provisions set forth in Article 9 above, Tenant hereby releases Landlord, its beneficiaries, mortgagees, stockholders, agents (including, without limitation, management agents), partners, officers, servants and employees, and their respective agents, partners, officers, servants and employees ("**Related Parties**"), from and waives all claims for damages to person or property sustained by Tenant, resulting

directly or indirectly from fire or other casualty, any existing or future condition, defect, matter or thing in the Premises, the Building (including the associated common areas), or from any equipment or appurtenance therein, or from any accident in or about the Building (including the associated common areas), or from any act of neglect of any third party tenant or occupant of the Building or of any other third party.

(B) Tenant's Indemnification. Except to the extent caused by the gross negligence or willful misconduct of or due to the default under this Lease beyond any applicable notice and cure period, by Landlord or its agents, employees or contractors, but subject to the provisions set forth in Article 9 above, Tenant agrees to hold harmless and indemnify Landlord and Landlord's Related Parties from and against claims and liabilities, including reasonable attorneys' fees, (i) for injuries to all persons and damage to or theft or misappropriation or loss of property (excluding the Building or any equipment or appurtenance therein belonging to Landlord) occurring in the Premises arising from Tenant's occupancy of the Premises or the conduct of its business, or from any activity, work, or thing done, permitted or suffered by Tenant, its employees, agents, guests or invitees in the Premises, (ii) the negligence or willful misconduct of Tenant or its agents, employees or contractors, or (iii) from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease beyond the expiration of applicable notice or cure periods.

(C) Tenant's Fault. Subject to the provisions set forth in Article 9 above, if any damage to the Building or any equipment or appurtenance therein belonging to Landlord, results from any grossly negligent act or the willful misconduct of Tenant, its agents or employees, Tenant shall be liable therefor and Landlord may, at Landlord's option repair such damage, and Tenant shall, upon demand by Landlord, reimburse Landlord the total reasonable cost of such repairs and damages to the Building. If Landlord has failed to procure and maintain the insurance required under Section 9(A), any damage to the Building or any equipment or appurtenance therein belonging to Landlord shall be solely to Landlord's account.

(D) Landlord's Indemnification. Subject to the provisions set forth in Article 9 above, and to the extent not due to the gross negligence or willful misconduct of Tenant or its agents, employees or contractors, Landlord agrees to indemnify, defend and hold Tenant and its officers, directors, partners, employees, agents and contractors harmless from and against all liabilities, losses, demands, actions, expenses or claims, including attorneys' fees and court costs for injury to or death of any person or for damage to any property to the extent such are determined to be caused by (i) the gross negligence or willful misconduct of Landlord, its agents, employees, or contractors in or about the Premises or Building, or (ii) the breach by Landlord of this Lease beyond any applicable notice and cure period.

(E) Limitation on Landlord's Liability.

LANDLORD SHALL NOT BE LIABLE FOR ANY INJURY OR DAMAGE TO PERSONS OR PROPERTY RESULTING FROM FIRE, EXPLOSION, FALLING PLASTER, STEAM, GAS, AIR CONTAMINANTS OR EMISSIONS, ELECTRICITY, ELECTRICAL OR ELECTRONIC EMANATIONS OR DISTURBANCE, WATER, RAIN OR SNOW OR LEAKS FROM ANY PART OF THE BUILDING OR FROM THE PIPES, APPLIANCES, EQUIPMENT OR PLUMBING WORKS OR FROM THE ROOF, STREET OR SUB-SURFACE OR FROM ANY OTHER PLACE OR CAUSED BY DAMPNESS, VANDALISM, MALICIOUS MISCHIEF OR BY ANY OTHER CAUSE OF WHATEVER NATURE, EXCEPT TO THE EXTENT CAUSED BY OR DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE LANDLORD RELATED PARTIES, AND THEN, WHERE NOTICE AND AN OPPORTUNITY TO CURE ARE APPROPRIATE (I.E., WHERE TENANT HAS AN OPPORTUNITY TO KNOW OR SHOULD HAVE KNOWN OF SUCH CONDITION SUFFICIENTLY IN ADVANCE OF THE OCCURRENCE OF ANY SUCH INJURY OR DAMAGE RESULTING THEREFROM AS WOULD HAVE ENABLED LANDLORD TO PREVENT SUCH DAMAGE OR LOSS HAD TENANT NOTIFIED LANDLORD OF SUCH CONDITION) ONLY AFTER (I) NOTICE TO LANDLORD OF THE CONDITION CLAIMED TO CONSTITUTE NEGLIGENCE OR WILLFUL MISCONDUCT, AND (II) THE EXPIRATION OF A REASONABLE TIME AFTER SUCH NOTICE HAS BEEN RECEIVED BY LANDLORD WITHOUT LANDLORD HAVING COMMENCED TO TAKE ALL REASONABLE AND PRACTICABLE MEANS TO CURE OR CORRECT SUCH CONDITION; AND PENDING SUCH CURE OR CORRECTION BY LANDLORD, TENANT SHALL TAKE ALL REASONABLY PRUDENT TEMPORARY MEASURES AND SAFEGUARDS TO PREVENT ANY INJURY, LOSS OR DAMAGE TO PERSONS OR PROPERTY. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ANY OF THE LANDLORD RELATED PARTIES BE LIABLE FOR ANY LOSS WHICH IS COVERED BY INSURANCE POLICIES ACTUALLY

CARRIED OR REQUIRED TO BE SO CARRIED BY THIS LEASE; NOR SHALL ANY OF THE LANDLORD RELATED PARTIES BE LIABLE FOR ANY ACTS, OMISSIONS OR NEGLIGENCE OF OTHER TENANTS OR PERSONS IN THE BUILDING OR DAMAGE CAUSED BY OPERATIONS IN CONSTRUCTION OF ANY PRIVATE, PUBLIC, OR QUASI-PUBLIC WORK; NOR SHALL ANY OF THE LANDLORD RELATED PARTIES BE LIABLE FOR ANY LATENT DEFECT IN THE PREMISES OR IN THE BUILDING.

TENANT AGREES THAT IN THE EVENT TENANT SHALL HAVE ANY CLAIM AGAINST LANDLORD OR LANDLORD'S RELATED PARTIES UNDER THIS LEASE ARISING OUT OF THE SUBJECT MATTER OF THIS LEASE, TENANT'S SOLE RECOURSE SHALL BE AGAINST LANDLORD'S INTEREST IN THE PROJECT (WHICH SHALL INCLUDE, WITHOUT LIMITATION, THE BUILDING, UNENCUMBERED INSURANCE PROCEEDS, CONDEMNATION PROCEEDS, PROCEEDS OF SALE AND RENTS AND OTHER INCOME FROM THE PROJECT, AND WHICH SHALL NOT AFFECT ANY RIGHTS OF TENANT TO SELF-HELP, OFFSET OR EQUITABLE RELIEF TO THE EXTENT EXPRESSLY SET FORTH HEREIN), FOR THE SATISFACTION OF ANY CLAIM, JUDGMENT OR DECREE REQUIRING THE PAYMENT OF MONEY BY LANDLORD OR LANDLORD'S RELATED PARTIES AS A RESULT OF A BREACH HEREOF OR OTHERWISE IN CONNECTION WITH THIS LEASE, AND NO OTHER PROPERTY OR ASSETS OF LANDLORD, LANDLORD'S RELATED PARTIES OR THEIR SUCCESSORS OR ASSIGNS, SHALL BE SUBJECT TO THE LEVY, EXECUTION OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF ANY SUCH CLAIM, JUDGMENT, INJUNCTION OR DECREE. UNDER NO CIRCUMSTANCE SHALL LANDLORD OR ANY OF ITS RELATED PARTIES BE LIABLE FOR CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR ANY SIMILAR TYPE OF DAMAGES, AND TENANT HEREBY WAIVES THE SAME.

## 11. DAMAGE OR CASUALTY.

(A) Landlord's Rights. In the event the Premises or the Building, or any portion thereof, is damaged or destroyed by any casualty, then Landlord shall rebuild, repair and restore the damaged portion thereof, provided that Landlord shall be entitled to terminate this Lease by written notice to Tenant within sixty (60) days after the date of the casualty if any one of the following applies: (i) the amount of insurance proceeds available to Landlord and the amount of the insurance deductible is less than the cost of such rebuilding, restoration and repair, (ii) such rebuilding, restoration and repair cannot reasonably be completed within one hundred eighty (180) days after the work commences in the opinion of a registered architect or engineer appointed by Landlord, (iii) the damage or destruction has occurred within twelve (12) months before the expiration of the Lease Term (and Tenant does not elect to exercise any then applicable renewal option within thirty (30) days after Tenant's receipt of Landlord's termination notice), or (iv) such rebuilding, restoration, or repair is not then permitted, under applicable governmental laws, rules and regulations, to be done in such a manner as to return the damaged portion thereof to substantially its condition immediately prior to the damage or destruction, including, without limitation, the same net rentable floor area. To the extent that insurance proceeds must be paid to a mortgagee or beneficiary under, or must be applied to reduce any indebtedness secured by, a mortgage or deed of trust encumbering the Premises or Building, such proceeds, for the purposes of this subsection, shall be deemed not available to Landlord unless such mortgagee or beneficiary permits Landlord to use such proceeds for the rebuilding, restoration, and repair of the damaged portion thereof. Notwithstanding the foregoing, Landlord shall have no obligation to repair any damage to, or to replace any of, Tenant's personal property, furnishings, trade fixtures, equipment or other such property or effects of Tenant. If Landlord does not timely deliver such termination notice to Tenant, Landlord shall not thereafter be entitled to terminate this Lease pursuant to this Section 11(A) and shall be obligated to restore the damage to the Building and the Premises.

In the event the Premises or the Building, or any portion thereof, is damaged or destroyed by any casualty to the extent that Landlord is not obligated, under Section 11(A) above, to rebuild, repair or restore the damaged portion thereof, then Landlord shall within sixty (60) days after such damage or destruction, notify Tenant of its election, at its option, to either (i) rebuild, restore and repair the damaged portions thereof, in which case Landlord's notice shall specify the time period within which Landlord estimates such repairs or restoration can be completed; or (ii) terminate this Lease effective as of the date the damage or destruction occurred. If Landlord does not give Tenant written notice within sixty (60) days after the damage or destruction occurs of its election to terminate this Lease, Landlord shall not thereafter be entitled to terminate this Lease pursuant to Section 11(A) and shall be obligated to restore the damage to the Building and the Premises.

(B) Tenant's Rights. Notwithstanding the foregoing, if Landlord does not elect to terminate this Lease, Tenant may terminate this Lease if either (i) Landlord notifies Tenant that in its good faith determination such repair or restoration cannot be completed within two hundred seventy (270) days (subject to delays for shortages of materials or labor) from the date of the casualty, or (ii) the damage or destruction occurs within the last fifteen (15) months of the Lease Term, unless Tenant's gross negligence or willful misconduct was the cause of the damage. If Tenant has the right to terminate the Lease in accordance with the above provisions, Tenant may so elect by written notice to Landlord which must be given within thirty (30) days after the date Landlord delivers its initial notice of the estimate of the duration of the repairs. Upon Landlord's receipt of such notice, the termination shall be effective as of the date the destruction occurred, and Tenant shall have a reasonable period thereafter to move out of the Premises.

Further, if the damage to the Premises results in the lab not being available for the conduct of Tenant's usual business operations, Landlord will notify Tenant within thirty (30) days whether repair or restoration of the lab can be completed within such two hundred seventy (270) days (subject to delays for shortages of materials or labor) from the date of the casualty ("**Lab Restoration Notice**"). If Landlord timely provides the Lab Restoration Notice, Landlord will cooperate with and assist Tenant in locating and securing replacement laboratory and office space during the period of restoration of the lab and/or the Premises, as applicable. If Landlord does not timely provide Tenant with the Lab Restoration Notice indicating that the repairs can be completed within such timeframe, Tenant shall have the additional right to terminate this Lease by providing Landlord with written notice of its election to terminate. Upon Landlord's receipt of such notice, the termination shall be effective as of the date the destruction occurred, and Tenant shall have a reasonable period thereafter to move out of the Premises.

If (x) Landlord has not substantially completed the repairs and restoration of the Premises within one hundred eighty (180) days of the date Landlord estimates for substantial completion of the required repairs in Landlord's initial notice to Tenant setting forth the estimate of the duration of the repairs and (y) Tenant cannot use all or any portion of the lab portion of the Premises for the conduct of Tenant's usual business operations, Tenant shall have the right, at any time after such one hundred eighty (180) day period but prior to the date either Landlord substantially completes the repairs to the Premises or Tenant can use all of the lab portion of the Premises for the conduct of Tenant's usual business operations, to provide Landlord with written notice of Tenant's intent to terminate this Lease if Landlord does not substantially complete such repairs and restoration within thirty (30) days of receipt of Tenant's conditional termination notice.

There shall be an abatement of rent by reason of damage to or destruction of the Premises or the Building, or any portion thereof, to the extent that the floor area of the Premises cannot be reasonably used by Tenant for conduct of its business, in which event the Rent shall abate proportionately, commencing on the date that the damage to or destruction of the Premises or Building has occurred and continuing until the date the Premises is restored and can be used by Tenant for the conduct of its business, and except that, if Landlord or Tenant elects to terminate this Lease as provided in Sections 11(A) or 11(B) above, no obligation shall accrue under this Lease after such termination. Notwithstanding the provisions of this Section, if Landlord's property insurance coverage maintained in accordance with the requirements of this Lease does not cover the applicable property-related damage or loss, and if the cause of the damage was due to the gross negligence or willful misconduct of Tenant or its employees, agents or contractors, Tenant shall not be entitled to such abatement, except to the extent such rent is recoverable by Landlord pursuant to its rent loss insurance.

(C) Sole Remedies. Landlord and Tenant agree that applicable rights set forth in this Section 11 shall be each party's sole recourse in the event of damage to or destruction of the Premises, the Building and/or the Project (inclusive of the Garage) by fire or other casualty, and each of Landlord and Tenant waive any other rights either party may have under any applicable Law to terminate this Lease by reason of damage to the Premises, the Building and/or or the Project.

(D) All of Landlord's obligations under this Section 11 to complete the restoration of the Premises or Building are subject to delays arising from (i) the collection of insurance proceeds, (ii) force majeure events and/or (iii) the time needed for Tenant to obtain any license, clearance or other authorization of any kind required for Landlord to enter into and restore the Premises issued by any governmental authority to the extent necessary as a result of the use of Hazardous Substances in, on or about the Premises (collectively referred to herein as **"Hazardous Materials Clearances"**). Tenant shall use diligent good faith efforts to obtain any and all Hazardous Materials Clearances as soon as reasonably possible. Notwithstanding anything to the contrary, to the extent any Hazardous Materials

Clearances are required for various portions of the Premises, no abatement of rent provided under this Lease shall apply to such applicable portions of the Premises from and after the date of the casualty in question until the date on which Tenant obtains such Hazardous Materials Clearances.

## 12. EMINENT DOMAIN.

In the event that the whole or a substantial part of the Premises shall be condemned or taken in any manner for any public or quasi-public use (or sold under threat of such taking), and as a result thereof, the remainder of the Premises cannot be used for the same purpose as prior to such taking, the Lease shall terminate as of the date possession is taken. If less than a substantial part of the Premises shall be so condemned or taken (or sold under threat thereof) and after such taking the Premises can be used for the same purposes as prior thereto, the Lease shall cease only as to the part so taken as of the date possession shall be taken by such authority, and Tenant shall pay full Rent up to that date (with appropriate refund by Landlord of such Rent attributable to the part so taken as may have been paid in advance for any period subsequent to the date possession is taken) and thereafter Base Rent and Operating Expenses shall be equitably adjusted to reflect the reduction in the Premises by reason of such taking, Landlord shall, at its expense, make all necessary repairs or alterations to the Building so as to constitute the remaining Premises a complete architectural unit, provided that Landlord shall not be obligated to undertake any such repairs or alterations if the cost thereof exceeds the award resulting from such taking. Landlord shall be entitled to receive the entire award, including the damages for the property taken and damages to the remainder, with respect to any condemnation proceedings affecting the Building; however, Tenant may make a separate claim against the condemnor for any damage to its business or for relocation costs.

## 13. ASSIGNMENT AND SUBLETTING.

(A) LANDLORD'S CONSENT. Tenant shall not sell, assign, encumber, mortgage or transfer this Lease or any interest therein, sublet or permit the occupancy or use by others of the Premises or any part thereof, or allow any transfer hereof of any lien upon Tenant's interest by operation of law or otherwise (collectively, a "**Transfer**") without the prior written consent of Landlord (except for Permitted Transfers, as more fully set forth below), which consent shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that denial of such consent shall be deemed reasonable if based upon, but not limited to, the following:

(i) In the reasonable judgment of Landlord, the subtenant or assignee (a) is of a character or engaged in a business or proposes to use the Premises in a manner which is not in keeping with the standards of Landlord for the Building, or would diminish the value of the Building, (b) has an unfavorable reputation, or (c) has unfavorable credit standing;

(ii) Tenant is in default under this Lease beyond any applicable notice or cure period;

(iii) The proposed assignment or sublease instrument does not have the substance or form which is reasonably acceptable to Landlord;

(iv) The proposed subtenant is a third party prospect (including tenants) with whom Landlord has either sent or received a written proposal to lease competing space in the Building within the preceding ninety (90) days;

(v) The proposed assignee or subtenant will use the Premises in a manner that would materially increase Operating Expenses;

(vi) The proposed assignee or subtenant is a governmental or quasi-governmental entity or subdivision or agency thereof, or any other entity entitled to the defense of sovereign immunity;

(vii) The proposed assignee or subtenant is currently or has been in the past involved in litigation with Landlord or any affiliate of Landlord;

(viii) The occupancy of the Premises by the proposed subtenant would cause Landlord's insurance to be cancelled or increased;

(ix) The use is not for the Permitted Use; or

(x) The use is a Prohibited Use or is not a use generally in keeping with the uses allowed at comparable Buildings.

Landlord's consent to any Transfer shall be granted or withheld in accordance with Section 13 and must be given (or rejected) within fifteen (15) business days of receipt by Landlord of such written request from Tenant (which request shall identify the transferee and contain applicable financial information on the transferee).

Under no circumstances shall Tenant be released from any liability accruing under this Lease before or after any Transfer.

Any Transfer which is not in compliance with the provisions of this Section 13 shall, at the option of Landlord, be void and of no force or effect.

(B) NOTICE TO LANDLORD. Tenant shall provide written notice of the proposed assignee, subtenant or other transferee (collectively, a "**Transferee**"), as applicable, which notice shall provide Landlord with (i) the name and address of the proposed Transferee, (ii) a reasonably detailed description of such person or entity's business, (iii) proposed Transferee's financials, and (iv) a list of Hazardous Substances (certified by the proposed Transferee to be true and correct) that the proposed Transferee intends to use or store in the Premises, and the information described in Section 8(G) above related thereto and (v) such other information as Landlord may reasonably require. If Landlord does not send written notice of disapproval to Tenant with respect to a request for approval of a Transfer within fifteen (15) business days after Landlord's receipt of Tenant's request for approval, Landlord shall be deemed to have not approved the Transfer as submitted; however, following the expiration of such fifteen (15) business day period, Tenant may elect to deliver a second written notice to Landlord requesting approval of the applicable Transfer, and if Landlord fails to respond within five (5) business days thereafter, Landlord shall be deemed to have approved the applicable Transfer.

(C) EXCESS RENT. Except in connection with a Permitted Transfer, if Tenant shall enter into any Transfer at a rental rate (or additional consideration) in excess of the then current Base Rent and Operating Expenses per rentable square foot, then fifty percent (50%) of the excess Rent (or additional consideration) shall be and become the property of Landlord and shall be paid to Landlord as it is received by Tenant, after deducting (from the first excess Rent so received), as and when incurred by Tenant, Tenant's reasonable brokerage (excluding commissions paid to brokers who are Tenant's Affiliates), legal and other expenses, including advertising, remodeling, alterations and concession costs ("**Tenant's Costs**") incurred in connection with such Transfer. If Tenant shall sublet the Premises or any part thereof, Tenant shall be responsible for all actions and neglect of the subtenant and its officers, partners, employees, agents, guests and invitees as if such subtenant and such persons were employees of Tenant. Nothing in this Section shall be construed to relieve Tenant from the obligation to obtain Landlord's prior written consent to any proposed sublease.

(D) RECAPTURE. This Section 13(D) shall not be applicable to Permitted Transfers. Until the Building's rentable square footage is 95% leased, upon giving Landlord notice pursuant to Section 13(B) above for less than the entire Premises, Landlord shall have the right, to be exercised by giving written notice to Tenant within fifteen (15) business days after receipt of Tenant's notice, to recapture the space described in Tenant's notice and such recapture notice shall, if given, cancel and terminate this Lease with respect to the space and for the term therein described as of the date stated in Tenant's notice. If Landlord shall elect to give the aforesaid recapture notice, then the Lease Term shall expire and end on the date stated in Tenant's notice as fully and completely as if that date had been herein definitely fixed for the expiration of the Lease Term, unless Tenant rescinds its request to Transfer within ten (10) business days following Landlord's delivery of the recapture notice. Landlord's recapture right under this Section 13(D) shall terminate automatically and permanently when 95% of the Building's rentable square footage is 95% leased.

(E) INCLUDED AND EXCLUDED TRANSFERS. Neither this Lease nor any interest therein nor any estate created thereby shall pass by operation of law or otherwise to any trustee, custodian or receiver in bankruptcy of Tenant or any assignee for the assignment of the benefit of creditors of Tenant.

(F) NO WAIVER AND NO RELEASE. The consent by Landlord to any Transfer and/or the making of a Permitted Transfer (as defined below), shall not be construed as a waiver or release of Tenant from liability for the performance of all covenants and obligations to be performed by Tenant under this Lease, and Tenant shall remain liable therefor, nor shall the collection or acceptance of Rent from any assignee, subtenant, transferee or other occupant constitute a waiver or release of Tenant from any of its obligations or liabilities under this Lease. Any consent given pursuant to this Section 13 shall not be construed as relieving Tenant from the obligation of obtaining Landlord's prior written consent to any subsequent Transfer.

(G) DOCUMENT REVIEW. Tenant shall pay to Landlord a Transfer request fee of $1,000.00 contemporaneous with Tenant's submission of the documentation pertaining to the Transfer. All documents utilized by Tenant to evidence any subletting or assignment for which Landlord's consent is required hereunder shall be subject to the prior, reasonable approval by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed by Landlord.

(H) PERMITTED TRANSFERS. Provided that Tenant remains liable on this Lease, Tenant provides Landlord with prior written notice and names of the applicable transferee and a copy of the assignment or sublease agreement, if applicable, and Tenant is not then in default beyond any applicable notice and cure period, then the following Transfers will not require Landlord's prior consent (each a "**Permitted Transfer**"):

(i) a transfer to any entity which is controlled by Tenant;

(ii) a transfer to any entity which controls Tenant ("**Parent**");

(iii) a transfer to any entity which is controlled by Tenant's Parent; and

(iv) a transfer to any entity which merges with Tenant or purchases substantially all of Tenant's assets or the ownership interests in Tenant, provided that Tenant provides to Landlord financial statements to Landlord evidencing that such transferee or surviving corporation has a credit rating and net worth (exclusive of intangible assets) at least as favorable as Tenant as of the date of this Lease or the date of the Transfer, whichever is greater.

Any transferee pursuant to a Permitted Transfer is referred to herein as a "**Permitted Transferee**". Notwithstanding the foregoing, no Permitted Transfers or other Transfer may be made for any Prohibited Uses.

(I) STORAGE SPACE. During the Term Tenant may sublease the Storage Space to any other tenant in the Building (but to no other party), subject to satisfaction of each of the following conditions:

(i) Tenant is not then in default beyond any applicable cure or grace period;

(ii) at least thirty (30) days prior to the proposed effective date of such Storage Space sublease, Tenant shall provide Landlord with written notice of its intent to sublease the Storage Space, including the identity of the proposed subtenant;

(iii) if Tenant subleases the Storage Space pursuant to this Section 13(I), Tenant shall remain liable under this lease for the Storage Space; and

(iv) the effectiveness of the Storage Space sublease will be subject to Landlord's Storage Space Recapture Right, as set forth below.

Prior to the effective date of the Storage Space sublease, Landlord shall have the right to recapture the Storage Space ("**Storage Space Recapture Right**"), to be exercised by giving written notice to Tenant within fifteen (15) business days after receipt of Tenant's notice specified in subsection (ii) above, and such Storage Space Recapture Notice shall, if given, cancel and terminate this Lease with respect to the Storage Space as of the date specified in Tenant's notice. If Landlord exercises its Storage Space Recapture Right, Landlord and Tenant shall enter into an amendment to the Lease memorializing the surrender of the Storage Space and making appropriate adjustments to the Base Rent and Tenant's Proportionate Share.

(J) LANDLORD'S ASSIGNMENT. Landlord may transfer and assign, in whole or in part, this Lease and its rights and obligations in the Building or Premises that are the subject to this Lease, in which case Landlord shall have no further liability hereunder, provided that such transferee assumes the obligations of Landlord hereunder.

## 14. ALTERATIONS BY TENANT.

(A) Tenant shall not, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, make or permit any alteration, improvement, addition or installation in or to the Premises. Under no circumstances may Tenant make any alterations to the structural elements of the Building, the roof, the life/safety systems, the HVAC system (except for changes solely within the Premises), the security system for which Landlord is responsible, or which have any adverse effect on any other Building systems. Notwithstanding the foregoing, written consent of Landlord shall not be required and Tenant may make alterations to the interior of the Premises that comply with the following requirements (alterations satisfying these requirements, the "**Permitted Alterations**"): (i) the alteration is non-structural in nature (except that installation or removal of demising walls and interior offices shall be permitted); (ii) the alteration does not adversely affect the roof or any area outside of the Premises; (iii) the alteration does not materially affect the electrical, plumbing, HVAC or mechanical systems in the Building or servicing the Premises, or the sprinkler or other life safety system; (iv) the alteration costs less than $50,000.00 for each such alteration project in the aggregate; (v) Landlord receives prior written notice; and (vi) Tenant is not then in default beyond any applicable notice or cure period. All work performed by or at the request of Tenant shall be performed by contractors and subcontractors approved in writing by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed), who shall be required to obtain the following insurance: (i) Workman's Compensation and Occupational Disease Insurance in accordance with the laws of the state in which the Building is located; and (ii) Commercial General Liability Insurance with limits for bodily injury and property damage of not less than One Million Dollars ($1,000,000) for any one occurrence and in the aggregate. Promptly after the completion of the alterations or improvements, Tenant, at its expense, shall deliver to Landlord an accurate as-built drawing on CADD computer disc (to the extent such drawings were produced), as well as a hard copy, showing such alterations or improvements in the Premises. Landlord's approval of any plans, specifications or work drawings shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency or compliance with any laws, rules and regulations of governmental agencies or authorities. Tenant agrees to reimburse Landlord for any actual third-party costs and expenses related to the review and approval of Tenant's plans and specifications for any alterations made during the Lease Term for which Landlord's approval is required, and to pay Landlord a management fee for oversight of such work equal to three percent (3%) of the cost thereof for all alterations requiring Landlord's consent that exceed $100,000 in total costs. Notwithstanding anything to the contrary, Landlord may withhold its consent in its sole discretion with respect to, and Permitted Alterations shall not include, any Alteration (i) affecting the fixed lab benches, fume hoods, roof, Building systems, Building structure and/or areas outside the Premises, or (ii) changing the rentable square footage of the Premises (collectively, "**Restricted Alterations**").

(B) All work herein permitted that is approved by Landlord shall be done and completed by Tenant in a good and workmanlike manner and in compliance with all requirements of laws and of governmental rules and regulations, as well as Building rules and regulations, and otherwise in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Building. If Landlord reasonably determines that, in connection with Alterations by Tenant, (A) any base Building system (including without limitation the fire alarm system) should be or is required to be shut down, and/or (B) base Building system cleaning or other maintenance or repair is required (including without limitation the changing of base Building system filters pre- or post-construction), Tenant shall reimburse Landlord for the reasonable out-of-pocket costs incurred by Landlord in connection therewith. TENANT AGREES TO INDEMNIFY AND HOLDS LANDLORD HARMLESS FROM AND AGAINST ALL MECHANICS' OR OTHER LIENS ARISING OUT OF ANY OF SUCH WORK, ANY AND ALL CLAIMS FOR DAMAGES OR INJURY WHICH MAY OCCUR DURING THE COURSE OF ANY SUCH WORK, AND ANY AND ALL COSTS, EXPENSES AND REASONABLE ATTORNEYS' FEES INCURRED BY LANDLORD IN CONNECTION THEREWITH. Landlord agrees to join with Tenant in applying for all permits necessary to be secured from governmental authorities and to promptly execute such consents as such authorities may require in connection with any of the foregoing work.

(C) Except as set forth in Section 17(B) below, Landlord may not require that Tenant remove any or all alterations, improvements or additions, including without limitation initial improvements as delivered by Landlord, at

the expiration of the Lease Term. All alterations, additions and improvements which may be made on the Premises, whether before or during the Term, shall become the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the Lease Term. Tenant shall repair any damage to the Premises caused by the installation or removal of Tenant's alterations, improvements, additions, trade fixtures, furnishings and equipment, normal wear and tear and casualty damage excepted. Without limitation to the generality of the foregoing, at all times during the term of this Lease, Tenant shall ensure that all wiring and cabling that it installs within the Premises or Building complies with all provisions of local fire and safety codes, as well as with the National Electric Code.

(D) Neither Tenant nor anyone claiming by, through or under Tenant or this Lease shall have the right to file or place any mechanics lien or other lien of any kind or character whatsoever upon the Premises or upon the Building or improvement thereon, or upon the leasehold interest of Tenant therein, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration repairs or any part thereof, shall at any time be or become entitled to any lien thereon, such notice and waiver shall be effective only to the extent permitted under Illinois law. Any lien filed by a third party (including any supplier of labor or materials) must be removed by Tenant within ten (10) business days following delivery of written notice from Landlord of the existence of such recorded lien, unless Tenant is contesting such lien diligent and in good faith and provides other security acceptable to Landlord and Landlord's lender, in either's sole and absolute discretion, in the amount of the lien for the benefit of Landlord and Landlord's lender.

(E) With respect to any alterations requiring the approval of Landlord under this Lease, Landlord may require any contractors performing work for Tenant in connection with this Lease to be union members and may withhold approval of such contractors if the use of the same could, in Landlord's reasonable judgment, violate the terms of any agreement between Landlord and any union providing work, labor or services at the Project or disturb labor harmony with the workforce or trades engaged in performing other work, labor or services at the Project). If Tenant disregards any such Landlord requirement and, as a result, Tenant uses labor (including, without limitation, any contractors), material or equipment in the performance of any work in connection with this Lease and such use causes a violation of the terms of any agreement between Landlord and any union providing work, labor or services at the Project or disturbs labor harmony with the workforce or trades engaged in performing other work, labor or services at the Project, then (i) Tenant, upon demand by Landlord, shall immediately cause all labor, materials and equipment causing such violation or disturbance to be removed from the Project, and (ii) Tenant agrees to protect, defend, indemnify and hold Landlord harmless from and against any and all Claims in any way arising or resulting from or in connection with any such violation and/or disturbance.

## 15. [Intentionally Deleted]

## 16. MORTGAGEE PROVISIONS; ESTOPPEL; SUBORDINATION.

(A) Subordination. This Lease is and shall be subject and subordinate, at all times, to all ground or underlying Leases and to the Lien or Liens or security title of all mortgages now or hereafter upon the Project or Landlord's interest or estate therein, and to all renewals, modifications, consolidations, replacements and/or extensions thereof, irrespective of the time of execution or the time of recording of any such ground or underlying Lease or any such mortgage, provided that Tenant's rights hereunder shall not be disturbed so long as Tenant is not in default hereunder. The word "**mortgage**" as used herein includes mortgages, deeds to secure debt, deeds of trust and any sale-leaseback transactions, ground Lease, underlying Lease or other similar instruments, and modifications, extensions, renewals, and replacements thereof, and any and all advances thereunder. Tenant shall execute and deliver within fifteen (15) business days any instruments, releases or other documents requested by any lessor or the holder of any Mortgage (a "**holder**"), for the purpose of subjecting and subordinating this Lease to such Mortgage, provided that Tenant receives a commercially reasonable subordination, non-disturbance and attornment agreement ("**SNDA**") from holder reasonably acceptable to Tenant. Without limiting other acceptable forms of SNDA, Tenant agrees that the SNDA form attached hereto as **Exhibit E** is approved by Tenant. Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise, only upon such party's request and at such party's sole discretion but not otherwise. Tenant shall execute all such agreements confirming such attornment as such party may reasonably request. Tenant shall not seek to enforce any remedy it may have for any alleged default on the part of Landlord without first giving written notice (by certified mail, return receipt requested, or overnight courier) specifying the alleged default in reasonable detail, to any holder whose

address has been given to Tenant, and affording such holder a reasonable opportunity to perform Landlord's obligations hereunder. Notwithstanding the generality of the foregoing, any such holder may at any time subordinate any such Mortgages to this Lease on such terms and conditions as such holder may deem appropriate. In connection with the Original Lease, Tenant and Landlord entered into an SNDA with CSFV Fulton Ogden Lender, LLC, a Delaware limited liability company, as lender ("**Current Lender**") dated August 4, 2020 (the "**Original SNDA**"), and Landlord agrees to cause Current Lender to enter into an SNDA that amends and restates the Original SNDA to reflect the terms of this Lease and otherwise be in form and substance reasonably acceptable to Tenant (the "**Amended SNDA**"). The effectiveness of this Lease shall be conditioned on Tenant's receipt of the Amended SNDA executed by the Current Lender.

(B) Estoppel. Tenant agrees that at any time within fifteen (15) business days following written notice from Landlord, it will execute, acknowledge and deliver to Landlord or any proposed mortgagee or purchaser a statement in writing certifying whether this Lease is in full force and effect and, if it is in full force and effect, what modifications have been made to the date of the certificates and whether or not any defaults or offsets exist with respect to this Lease and, if there are, what they are claimed to be and setting forth the dates to which Rent or other charges have been paid in advance, if any, and stating whether or not Landlord is in default, if so, specifying what the default may be. The form of estoppel certificate attached hereto as **Exhibit F** is approved by Tenant and Landlord. If Tenant fails to execute, acknowledge, and deliver to Landlord a statement as above within such fifteen (15) day period, Landlord may, at its discretion, deliver a second notice to Tenant requesting a response to the estoppel request (the "**Second Notice**"). The failure of Tenant to execute, acknowledge, and deliver to Landlord a statement as above within (5) business days after delivery of the Second Notice shall constitute an acknowledgment by Tenant that this Lease is unmodified and in full force and effect, that the Rent and other charges have been duly and fully paid through and including the respective due dates immediately preceding the date of Landlord's notice to Tenant, and shall constitute as to any person, a waiver of any defaults which may exist prior to such notice. In addition, if Tenant fails to execute, acknowledge, and deliver to Landlord a statement as above within such five (5) business day period after delivery of the Second Notice, in addition to the other remedies provided herein, commencing on the 6th business day following delivery of the Second Notice, Tenant shall pay a late fee of One Hundred Dollars ($100) per day until the day on which Tenant remits the estoppel certificate as set forth herein.

(C) Notice. Tenant agrees to give any holder of any first mortgage against the Project, or any interest therein, by registered or certified mail or overnight courier, a copy of any notice or claim of default served upon Landlord by Tenant, provided that prior to such notice, Tenant has been notified in writing (by way of service on Tenant of a copy of an assignment of Landlord's interest in leases, or otherwise) of the address of such first mortgage holder. Tenant further agrees that if Landlord shall have failed to cure any such default within thirty (30) days after such notice to Landlord, or such shorter time in the event of an emergency (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if Landlord has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default for up to 60 days), then Tenant shall so notify such holder and such holder of the first mortgage shall have an additional thirty (30) days within which to cure or correct such default after receipt of such notice.

(D) Quiet Enjoyment. Landlord covenants that it has good and sufficient right to enter into this Lease and that Landlord alone has full right to lease the Premises to Tenant for the Lease Term aforesaid. Landlord further covenants that, upon performing the terms and obligations of Tenant under this Lease, Tenant will have quiet enjoyment throughout the Lease Term and any renewal or extension thereof, subject, however, to all provisions of this Lease and all laws, liens, mortgages, encumbrances and restrictive covenants to which the Land is subject.

## 17. EXPIRATION OR TERMINATION OF LEASE AND SURRENDER OF POSSESSION.

(A) Holding Over. Tenant will, at the expiration or termination of this Lease by lapse of time or otherwise, yield up immediate possession to Landlord. If Tenant retains possession of the Premises or any part thereof after such expiration or termination, then Landlord may, at its option, serve written notice upon Tenant that such holding over constitutes any one of (i) creation of a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) creation of a tenancy at sufferance, in any case upon the terms and conditions set forth in this Lease; provided, however, that the monthly Base Rent (or daily Base Rent under (ii)) shall, in addition to all other sums which are to be

paid by Tenant hereunder, whether or not as additional Rent, be equal to one hundred fifty percent (150%) of the Base Rent being paid monthly to Landlord under this Lease immediately prior to such termination, however, such holdover Rent shall be prorated on the basis of a 365-day year for each day Tenant remains in possession. In addition to the foregoing, if Tenant holds over for more than sixty (60) days, Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant, including the loss of any proposed subsequent tenant for any portion of the Premises. Upon request of Tenant, Landlord shall advise Tenant within sixty (60) days of the expiration or termination date, of any situation or condition which may give rise to consequential damages. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as herein set forth; nor shall receipt of any Rent or any other act in apparent affirmance of the tenancy operate as a waiver of the right to terminate this Lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed.

(B) Removal and Restoration. Prior to the expiration of this Lease (or within thirty (30) days after any earlier termination), Tenant shall remove such trade fixtures and furnishings and machinery installed by it at Tenant's cost and any Alterations as to which Landlord advised Tenant at the time of approval of any Alterations for which its consent was necessary that such Alterations must be removed at the end of the Lease Term. All initial improvements to the Premises upon Landlord's delivery of the Premises shall remain and be surrendered with the Premises. Upon removal of any equipment, furnishings and machinery, Tenant shall repair any damage caused by such removal or installation. Without limitation to the remedies available to Landlord in the event that Tenant fails to comply with the terms and conditions of this subsection, Landlord may at Tenant's sole cost and expense remove and dispose of such trade fixtures and furnishings, machinery and Alterations, and Tenant shall pay to Landlord the actual reasonable amount that Landlord incurs in such removal and disposal.

(C) Decommissioning. Prior to the expiration of this Lease (or within thirty (30) days after any earlier termination), Tenant shall clean and otherwise decommission all interior surfaces (including floors, walls, ceilings, and counters), piping, supply lines, waste lines, acid neutralization systems and plumbing in and/or exclusively serving the Premises, and all exhaust or other ductwork in and/or exclusively serving the Premises, in each case which has carried or released or been contacted by any Hazardous Substances or other chemical or biological materials used in the operation of the Premises, and shall otherwise clean the Premises so as to permit the Surrender Plan (defined below) to be issued. At least sixty (60) days prior to the expiration of the Term (or, if applicable, within five (5) business days after any earlier termination of this Lease), Tenant shall deliver to Landlord a narrative description prepared by a third-party provider reasonably acceptable to Landlord of the actions proposed (or required by any Governmental Requirements) to be taken by Tenant in order to render the Premises (including, without limitation, floors, walls, ceilings, counters, piping, supply lines, waste lines and plumbing in or serving the Premises and all exhaust or other ductwork in or serving the Premises) free of Hazardous Substances and otherwise released for unrestricted use and occupancy including without limitation causing the Premises to be decommissioned in accordance with the regulations of the U.S. Nuclear Regulatory Commission and/or the Illinois Emergency Management Agency (the "**IEMA**") for the control of radiation and cause the Premises to be released for unrestricted use by IEMA (the "**Surrender Plan**"). The Surrender Plan shall be prepared so that, following its implementation, all exhaust and other duct work in the Premises may be reused by a subsequent tenant or disposed of in conformance with all applicable Environmental Laws without incurring special costs on account of any Hazardous Substances or undertaking special procedures for demolition, disposal, investigation, assessment, cleaning or removal of such Hazardous Substances or needing to give notice in connection with such Hazardous Substances. The Surrender Plan (i) shall be accompanied by a current list of (A) all local, state and federal licenses, registrations, permits and approvals held by or on behalf of any Tenant Party with respect to Hazardous Substances in, on, under, at or about the Premises, and (B) Tenant's Hazardous Substances, and (ii) shall be subject to the review and approval of Landlord's environmental consultant. In connection with review and approval of the Surrender Plan, upon request of Landlord, Tenant shall deliver to Landlord or its consultant such additional non-proprietary information concerning the use of and operations within the Premises as Landlord shall request. On or before the expiration of the Term (or within thirty (30) days after any earlier termination of this Lease, during which period Tenant's use and occupancy of the Premises shall be governed by Section 17(A) above), Tenant shall (i) perform or cause to be performed all actions described in the approved Surrender Plan, and (ii) deliver to Landlord a certification from a third party certified industrial hygienist reasonably acceptable to Landlord certifying that the Premises do not contain any Hazardous Substances and evidence that the approved Surrender Plan shall have been satisfactorily completed by a contractor acceptable to Landlord (the "**Decommissioning Closure Report**"), and the Decommissioning Closure Report shall also include reasonable detail concerning the clean-up measures taken, the clean-up locations, the tests run, and the analytic results. Landlord shall have the right, subject to reimbursement at Tenant's expense as set forth below, to cause Landlord's environmental consultant to inspect the Premises and perform such additional procedures as may be deemed

reasonably necessary to confirm that the Premises are, as of the expiration of the Term (or, if applicable, the date which is thirty (30) days after any earlier termination of this Lease), free of Hazardous Substances and otherwise available for unrestricted use and occupancy as aforesaid. Landlord shall have the unrestricted right to deliver the Surrender Plan, the Decommissioning Closure Report and any report by Landlord's environmental consultant with respect to the surrender of the Premises to third parties, subject to redaction of any of Tenant's proprietary information. Such third parties and the Landlord Related Parties shall be entitled to rely on the Decommissioning Closure Report. If Tenant shall fail to prepare a Surrender Plan or submit a Decommissioning Closure Report based on the Surrender Plan approved by Landlord, or if Tenant shall fail to complete the approved Surrender Plan, or if such Surrender Plan, whether or not approved by Landlord, shall fail to adequately address the use of Hazardous Substances by any of the Tenant Parties in, on, at, under, from or upon the Premises, (A) Landlord shall have the right to take any such actions as Landlord may deem reasonable or appropriate to assure that the Premises and the Project are surrendered in the condition required hereunder, the cost of which actions shall be reimbursed by Tenant as additional rent upon demand; and (B) if the Term shall have ended, unless and until Landlord elects to take such actions to assure that the Premises are surrendered in the condition required hereunder, Tenant shall be deemed to be a holdover tenant subject to the provisions of Section 17(A) above until the date on which Tenant delivers the Decommissioning Closure Report (in the form required hereunder) to Landlord. Tenant's obligations under this Section 17(C) shall survive the expiration or earlier termination of this Lease.

(D) Surrender. Except as set forth Section 17(B) above, upon the expiration of this Lease, by lapse of time or otherwise, any alterations, improvements or additions erected on and attached to the Premises by Tenant shall be and become the property of Landlord without any payment therefor and Tenant shall surrender the Premises (including without limitation all affixed lab benches, fume hoods, electric, plumbing, heating and sprinkling systems, fixtures and outlets, vaults, paneling, molding, shelving, radiator enclosures, cork, rubber, linoleum and composition floors, ventilating, silencing, air conditioning and cooling equipment therein), together with all improvements or additions thereon, whether erected by Tenant or Landlord, broom clean, free of personal property, equipment, and/or trade fixtures (including without limitation all cabling, Tenant's Rooftop Equipment and all autoclaves and cage washers) and otherwise in the condition in which the same are required to be maintained hereunder, ordinary wear and tear, damage by fire or other casualty and repairs which are the responsibility of Landlord excepted. Any items of personal property left in the Premises following the expiration or sooner termination of the Lease, if such items are not removed within five (5) days after written notice from Landlord to Tenant, may, at Landlord's option, become the sole and exclusive property of Landlord and this Lease shall act as a bill of sale therefor, and Landlord may sell or discard such property. Landlord shall not have to take any special precautions or measures with regards to any property, equipment and/or trade fixtures left within the Premises and Landlord shall not be deemed a bailee thereof. Without limitation to the generality of the foregoing, Landlord may discard computers, records, files, and data without regards to protecting the confidentiality of any information contained therein.

## 18. DEFAULT.

The occurrence of one or more of the following events shall constitute a material default and breach of this Lease by Tenant (a "**default**" or "**Event of Default**"):

(A) Failure by Tenant to make payment of any Rent herein agreed to be paid or any other payment required to be made by Tenant hereunder, as and when due, and such a failure shall continue for a period of five (5) business days after written notice has been given by Landlord to Tenant that such Rent or other payment is overdue, provided that Landlord will not be required to provide such notice more than one (1) time during any twelve (12) month period;

(B) The making by Tenant of any assignment or arrangement for the benefit of creditors;

(C) The filing by Tenant of a petition in bankruptcy or for any other relief under the Federal Bankruptcy Law or any other applicable statute;

(D) The levying of an attachment, execution of other judicial seizure upon Tenant's property in or interest under this Lease, which is not satisfied or released or the enforcement thereof stayed or superseded by an appropriate proceeding within thirty (30) days thereafter;

(E) The filing of an involuntary petition in bankruptcy or for reorganization or arrangement under the Federal Bankruptcy Law against Tenant and such involuntary petition is not withdrawn, dismissed, stayed or discharged within sixty (60) days from the filing thereof;

(F) The appointment of a Receiver or Trustee to take possession of the property of Tenant or of Tenant's business or assets, and the order or decree appointing such Receiver or Trustee shall have remained in force undischarged or unstayed for thirty (30) days after the entry of such order or decree;

(G) If Tenant causes or suffers any material release of Hazardous Substances in, on or near the Project ("**material**" meaning, for purposes of this clause (G), a release in violation of any Environmental Law or that results in a requirement to perform any response action(s) pursuant to applicable Environmental Laws, including without limitation, reporting such release to any governmental authority), which Tenant fails to undertake in accordance with the provisions of the Lease;

(H) The failure by Tenant to perform or observe any other term, covenant, agreement or condition to be performed or kept by Tenant under the terms, conditions, or provisions of this Lease, and such a failure shall continue uncorrected for thirty (30) days after written notice thereof has been given by Landlord to Tenant (provided, however, if such failure cannot be cured within such thirty (30) day period, so long as Tenant commenced the curing of such failure within such thirty (30) day period, and diligently prosecutes said cure to completion, then Tenant shall submit to Landlord a detailed plan to cure and timeline and shall not be deemed to be in default thereunder);

(I) Tenant abandons the Premises or any substantial portion thereof; or

(J) Tenant fails to pay and release of record, or diligently contest and bond around, any mechanic's or construction lien filed against the Premises or the Project for any work performed, materials furnished, or obligation incurred by or at the request of Tenant, within the time and in the manner required in this Lease.

## 19. REMEDIES.

During the existence of any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by Law, take any of the following actions:

(A) Terminate the Lease. Terminate this Lease by giving Tenant written notice thereof, in which event, Tenant shall pay to Landlord the sum of (1) all Rent accrued hereunder through the date of termination, (2) all other amounts due under this Lease, (3) to the extent permitted under applicable law, an amount equal to the total Rent that Tenant would have been required to pay for the remainder of the Lease Term discounted to present value at a per annum rate equal to the "Prime Rate" as published in *The Wall Street Journal*, in its listing of "Money Rates" as of the date this Lease is so terminated, (4) the cost of removing any property or alterations pursuant to Section 17(B) above. and (5) the portion of any brokerage commissions and tenant improvement allowances payable on any new lease for the Premises (or portion thereof), in both cases prorated to the then-remaining Lease Term; provided, however, in the event of an acceleration of future Rent, whether pursuant to the preceding provisions of this paragraph or otherwise, Tenant shall be entitled to a credit in the amount that Tenant can prove is the present value (discounted in the manner specified in clause (3) hereof) of the reasonable net rental that Landlord would likely receive during the remainder of the Lease Term following the period that Landlord would need to market the Premises, negotiate the new lease, build out the premises and rental to commence under the new lease.

(B) Terminate Tenant's Right of Possession. Terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord (1) all Rent and other amounts accrued hereunder to the date of termination of possession, (2) all other amounts due from time to time under this Lease, and (3) all Rent and other sums required hereunder to be paid by Tenant during the remainder of the Lease Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period; in any such reletting, Tenant shall be relieved of its obligations under this Lease as of the date of such reletting (however, Tenant shall remain liable for any monetary deficiencies). Tenant hereby acknowledges that (i) Landlord may reasonably elect to lease other comparable available space in the Building, or in other buildings owned by Landlord or Landlord's Affiliates, before reletting the Premises, (ii) Landlord need not enter into any new lease that Landlord does not reasonably deem to be acceptable, and (iii) Landlord may decline to incur expenses to relet,

other than customary leasing commissions and legal fees for negotiation of a lease with a new tenant. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder, except such excesses shall be used to offset any additional amounts payable by Tenant under this Section 19. Reentry by Landlord to the Premises shall not affect Tenant's obligations hereunder for the unexpired Lease Term; rather, Landlord may, from time to time, bring action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the Lease Term. Actions to collect amounts due by Tenant to Landlord under this subsection may be brought from time to time on one or more occasions, without the necessity of Landlord waiting until the Expiration Date of this Lease. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to exclude or dispossess Tenant of the Premises shall be deemed to be taken under this subsection. If Landlord elects to proceed under this Section (B), it may at any time elect to terminate this Lease under (A) above. No re-entry by Landlord or any action brought by Landlord to remove Tenant from the Premises shall operate to terminate this Lease unless Landlord shall have given written notice of termination to Tenant, in which event Tenant's liability shall be as above provided.

(C) [Intentionally Omitted].

(D) Landlord's Other Rights and Remedies. Upon any Event of Default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in (1) obtaining possession of the Premises, (2) removing, storing and/or disposing of Tenant's or any other occupant's property, (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition required by this Lease, (4) reletting all or any part of the Premises including brokerage commissions (prorated based on the time between the commencement of the new lease and the Expiration Date of this Lease), and other costs incidental to such reletting, but not the cost of new improvements for the new tenant, (5) performing Tenant's obligations which Tenant failed to perform, and (6) enforcing, or advising Landlord of, its rights, remedies, and recourses. Landlord's acceptance of Rent following an Event of Default shall not waive Landlord's rights regarding such Event of Default. Landlord's receipt of Rent with knowledge of any default by Tenant hereunder shall not be a waiver of such default, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless set forth in writing and signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term or violation of any other term. If Landlord repossesses the Premises pursuant to the authority herein granted, then Landlord shall have the right to remove and (i) store, at Tenant's expense, or (ii) sell at auction (following written notice and a thirty (30) day cure period) all of the furniture, trade fixtures, equipment and other personal property in the Premises, including that which is owned by or leased to Tenant at all times before any foreclosure thereon or repossession thereof by any lessor thereof or third party having a lien thereon. Landlord may relinquish possession of all or any portion of such furniture, trade fixtures, equipment and other property to any person (a "**Claimant**") who presents to Landlord a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, trade fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity or legality of the instrument. Landlord shall have no obligation to do so but may, at its option and without prejudice to or waiver of any rights it may have, (a) escort Tenant and or its employees to the Premises to retrieve any personal belongings of Tenant and/or its employees not covered by the security interest, or (b) obtain a list from Tenant of the personal property of Tenant and/or its employees, and make such property available to Tenant and/or Tenant's employees; however, Tenant first shall pay in cash all reasonable costs and reasonable estimated expenses to be incurred in connection with the removal of such property and making it available. No right or remedy granted to Landlord herein is intended to be exclusive of any other right or remedy, and each and every right and remedy herein provided shall be cumulative and in addition to any other right or remedy hereunder or now or hereafter existing in law or equity or by statute. All rights may be exercised at any time, in any order, or Landlord may forebear upon any right, without any waiver by Landlord. In the event of termination of this Lease, Tenant waives any and all rights to redeem the Premises either given by any statute now in effect or hereafter enacted.

(E) Late Fee. If any Rent or other payment required of Tenant under this Lease is not paid within five (5) days of the due date, Landlord may charge Tenant, and Tenant shall pay upon demand a fee equal to five percent (5%) of the delinquent payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. All such fees shall be additional Rent.

(F) Interest. Tenant shall pay interest on all amounts that are more than thirty (30) days overdue at the compounded annual rate of fifteen percent (15%) commencing as of the expiration of such thirty (30) day period and continuing until paid in full, but in no amount greater than the maximum allowable rate under law (the "**Default Rate**").

(G) No Waiver. Receipt by Landlord of Rent or other payments from Tenant shall not be deemed to operate as a waiver of any rights of Landlord to enforce payment of any Rent, additional Rent, or other payments previously due or which may thereafter become due, or of any rights of Landlord to terminate this Lease or to exercise any remedy or right which otherwise might be available to Landlord, the right of Landlord to declare a forfeiture for each and every breach of this Lease is a continuing one for the life of this Lease.

## 20. MISCELLANEOUS.

(A) Not Void. If any term or provision of this Lease is declared invalid or unenforceable, the remainder of this Lease shall not be affected by such determination and shall continue to be valid and enforceable.

(B) Entire Agreement; Amendments. This Lease contains the entire agreement between the parties hereto. This Lease may only be amended by a writing signed by the parties hereto, or by an electronic record that has been electronically signed by the parties hereto and has been rendered tamper-evident as part of the signing process. The exchange of email or other electronic communications discussing an amendment to this Lease, even if such communications are signed, does not constitute a signed electronic record agreeing to such an amendment.

(C) Authority. Tenant warrants that this Lease is being executed with full authority of Tenant and that the officers whose signatures appear hereon are duly authorized and empowered to make and execute this Lease in the name of the entity that is Tenant by appropriate and legal resolution of its owners and/or governing officers, as applicable. Tenant shall supply to Landlord, contemporaneously with the delivery of this Lease, a corporate resolution authorizing Tenant's signatory to enter into this Lease.

(D) Notices. All notices required under this Lease and other information concerning this Lease ("**Communications**") shall be personally delivered or sent by certified mail return receipt requested, or by overnight courier. Subject to the terms of this Section, Landlord may, in its sole discretion, send such Communications to the Tenant electronically, or permit the Tenant to send such Communications to the Landlord electronically, in the manner described in this Section. Such Communications sent by personal delivery, mail or overnight courier will be sent to the addresses in Section 1 of this Lease, or to such other addresses as the Landlord and the Tenant may specify from time to time in writing. Communications shall be effective (i) if mailed, upon the earlier of receipt or five (5) business days after deposit as certified mail with the U.S. mail , or (ii) if hand-delivered, by courier or otherwise when delivered. Such Communications may be sent electronically by the Landlord to the Tenant (i) by transmitting the Communication to an electronic address provided by the Tenant or to such other electronic address as the Tenant may specify from time to time in writing for such purposes , or (ii) by posting the Communication on a website and sending the Tenant a notice to the Tenant's postal address or electronic address provided by Tenant solely for such purpose, telling the Tenant that the Communication has been posted, its location, and providing instructions on how to view it. Communications sent electronically to the Tenant will be effective when the Communication, or a notice advising of its posting to a website, is sent to the Tenant's electronic address with an electronic receipt of such Communication. Notwithstanding the foregoing, Communications to Tenant which assert a default may only be delivered to Tenant by overnight courier sent to the addresses identified in Section 1.

(E) Rent. Unless the context clearly denotes the contrary, the word "Rent" or "Rental" as used in this Lease not only includes cash Base Rent and Tenant's Proportionate Share of Operating Expenses, but also all other payments and obligations to pay assumed by Tenant, whether such obligations to pay run to Landlord or to other parties.

(F) NO JURY TRIAL. IT IS MUTUALLY AGREED BY AND BETWEEN LANDLORD AND TENANT THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY HEREBY DO, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OF OR OCCUPANCY OF THE PREMISES OR ANY CLAIM OF INJURY OR DAMAGE AND ANY EMERGENCY STATUTORY OR ANY OTHER STATUTORY REMEDY. IF LANDLORD COMMENCES ANY SUMMARY

PROCEEDING FOR NONPAYMENT OF RENT, TENANT WILL NOT INTERPOSE ANY NON-COMPULSORY COUNTERCLAIM OF WHATEVER NATURE OR DESCRIPTION IN ANY SUCH PROCEEDING.

(G) [Intentionally Omitted]

(H) Confidential. Tenant and Landlord shall at all times keep all business terms and conditions of this Lease (i.e., lease rates, concessions, tenant improvement allowances, lease term options or rights) confidential and shall not disclose the terms thereof to any third party, except: (i) for its employees, manager or board of directors, accountants, attorneys, brokers, agents, lenders, equity partners and other professionals who have a legitimate business reason to know the terms of this Lease, as well as prospective purchasers and lenders; (ii) as required by any laws, rules or regulations applicable to such party, including without limitation, the requirements of the United States Securities and Exchange Commission or similar organization; or (iii) in connection with any legal proceedings. Any announcements, communication or publicity by either Landlord or Tenant regarding the subject lease transaction shall occur after the Effective Date, and only then with the prior written consent of both parties. Notwithstanding the foregoing, the parties acknowledge and agree that Tenant will file a Form 8-K with the SEC disclosing this Lease.

(I) OFAC Compliance.

(a) Tenant represents and warrants that: (1) Tenant is regulated by the SEC (a "**Regulated Entity**") and to the best of Tenant's knowledge, Tenant is: (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "**List**"), and; (ii) is not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States; (2) None of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined); (3) no person that has an ownership interest in Tenant of more than 25% is an Embargoed Person; (4) None of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and; (5) Tenant has implemented procedures, and will consistently apply those procedures to ensure the foregoing representations and warranties remain true and correct at all times.

(b) Tenant covenants and agrees: (1) To comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect; (2) To immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Tenant has a reasonable basis to believe that it may no longer be true or have been breached; (3) To not knowingly use funds from any "**Prohibited Person**" (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under the Lease, and (4) At the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant's compliance with the terms hereof.

(c) Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time during the Lease Term shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of the Lease.

(d) Tenant shall also require and shall take reasonable measures to ensure compliance with the requirement that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is an Embargoed Person. The term Embargoed Person means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law ("**Embargoed Person**"). This Subsection (d) shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, U.S. Publicly-Traded Entity means a Person, other than an

individual, whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person ("**U.S. Publicly-Traded Entity**").

(e) Landlord represents and warrants that to the best of its actual knowledge: (1) Landlord is: (i) not currently identified on the List, and; (ii) is not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States; (2) None of the funds or other assets of Landlord constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined); (3) no person that has an ownership interest in Landlord of more than 25% is an Embargoed Person; (4) None of the funds of Landlord have been derived from any unlawful activity with the result that the investment in Landlord is prohibited by law or that the Lease is in violation of law, and; (5) Landlord has implemented procedures, and will consistently apply those procedures to ensure the foregoing representations and warranties remain true and correct at all times.

(J) Wi-Fi. In addition to Lines, Tenant shall have the right to install a Wireless Fidelity Network ("**Wi-Fi Network**") within the Premises for the use of Tenant. Tenant agrees that Tenant's communications equipment associated with the Wi-Fi Network will not cause radio frequency, electromagnetic, or other interference to any other party or occupants of the Building (or to any such party or occupant's Wi-Fi Network) or any other party. Should any interference occur, Tenant shall take all necessary steps as soon as commercially practicable and no later than three (3) calendar days following such occurrence to correct such interference. If such interference continues after such three (3) day period, Tenant shall immediately cease operating Tenant's Wi-Fi Network equipment until such interference is corrected or remedied to Landlord's satisfaction. Landlord will similarly obligate the other Building tenants to avoid any Wi-Fi Network interference and to remedy the same.

(K) Successors, Assigns and Liability. The terms, covenants, conditions and agreements herein contained and as the same may from time to time hereafter be supplemented, modified or amended, shall apply to, bind, and inure to the benefit of the parties hereto and their legal representatives, successors and assigns, respectively. In the event either party now or hereafter shall consist of more than one person, firm or corporation, then and in such event all such person, firms and/or corporations shall be jointly and severally liable as parties hereunder.

(L) Exculpatory Provisions. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES HERETO, ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, THAT EACH AND ALL OF THE REPRESENTATIONS, WARRANTIES, COVENANTS, UNDERTAKINGS AND AGREEMENTS HEREIN MADE ON THE PART OF LANDLORD WHILE IN FORM PURPORTING TO BE THE REPRESENTATIONS, WARRANTIES, COVENANTS, UNDERTAKINGS AND AGREEMENTS OF LANDLORD ARE NEVERTHELESS EACH AND EVERY ONE OF THEM MADE AND INTENDED, NOT AS PERSONAL REPRESENTATIONS, WARRANTIES, COVENANTS, UNDERTAKINGS AND AGREEMENTS BY LANDLORD OR FOR THE PURPOSE OR WITH THE INTENTION OF BINDING LANDLORD PERSONALLY, BUT ARE MADE AND INTENDED FOR THE PURPOSE ONLY OF SUBJECTING LANDLORD'S INTEREST IN THE PREMISES AND PROJECT TO THE TERMS OF THIS LEASE AND FOR NO OTHER PURPOSE WHATSOEVER, AND IN CASE OF DEFAULT HEREUNDER BY LANDLORD, TENANT SHALL LOOK SOLELY TO THE INTERESTS OF LANDLORD IN THE PROJECT (WHICH SHALL INCLUDE, WITHOUT LIMITATION, THE BUILDING, UNENCUMBERED INSURANCE PROCEEDS, CONDEMNATION PROCEEDS, PROCEEDS OF SALE AND RENTS AND OTHER INCOME FROM THE PROJECT, AND WHICH SHALL NOT AFFECT ANY RIGHTS OF TENANT TO SELF-HELP, OFFSET OR EQUITABLE RELIEF TO THE EXTENT EXPRESSLY SET FORTH HEREIN); AND THAT LANDLORD SHALL NOT HAVE ANY PERSONAL LIABILITY TO PAY ANY INDEBTEDNESS ACCRUING HEREUNDER OR TO PERFORM ANY COVENANT, EITHER EXPRESS OR IMPLIED, HEREIN CONTAINED, ALL SUCH PERSONAL LIABILITY, IF ANY, BEING EXPRESSLY WAIVED AND RELEASED BY TENANT AND BY ALL PERSONS CLAIMING BY, THROUGH OR UNDER TENANT.

(M) Laws that Govern. This Lease is governed by federal law, including without limitation the Electronic Signatures in Global and National Commerce Act (15 U.S.C. §§ 7001 *et seq.*) and, to the extent that state law applies, the laws of the State of Illinois without regard to its conflicts of law rules.

(N) Financial Statements. Within ten (10) business days after Landlord's request, Tenant shall deliver to Landlord the then current audited (if previously created and available or unaudited) financial statements of Tenant, and audited (if previously created and available or unaudited) financial statement of the two (2) years prior to the current

financial statements year, with an opinion of a certified public accountant (if unaudited statements are provided), or otherwise certified to be true, correct and complete by Tenant's chief financial officer. This information includes a balance sheet, cash flow statement, and profit and loss statement for the most recent prior year, all prepared in accordance with generally accepted accounting principles consistently applied. Tenant shall not be required to report the financial information of Tenant so long as Tenant has reported such financial information to the United States Securities and Exchange Commission and the same are available to the public.

(O) Landlord's Waiver Lien. Landlord agrees to execute in favor of Tenant's lender a mutually agreeable waiver of any lien, statutory, inchoate or otherwise, that Landlord may have with respect to the goods, inventory, equipment, trade fixtures, furniture, improvements, fixtures, chattel paper, accounts, and general intangibles, and other personal property of Tenant now or hereafter situated on the Premises (collectively, "**Tenant's Property**"), excluding any property, fixtures or improvements owned by Landlord, as set forth in such waiver. Landlord specifically disclaims and waives any interest in any of Tenant's Property.

(P) Access to Premises. Subject to the provisions hereof, Landlord and its authorized agents shall have free access to the Premises at any and all reasonable times for customary services (such as regular janitorial services and other services that Landlord is required to perform on a regular basis pursuant to this Lease), and for non-customary services (such as non-emergency repairs) upon at least forty-eight (48) hours' verbal notice to Tenant, to inspect the same and for the purposes pertaining to the rights of Landlord. Landlord shall use commercially reasonable efforts to minimize any interference with operation of Tenant's business from the Premises during any such entry. During the last twelve (12) months of the term of this Lease (as may have been extended) Landlord may show the Premises to prospective lessees. Notwithstanding the foregoing, because of the nature of Tenant's business, the confidential and proprietary processes and procedures, Landlord shall have no rights to enter the lab nor any "quality assurance" area within the Premises unless accompanied by a representative of Tenant. Landlord shall strictly comply with Tenant's standard health, hygiene and safety protocols when entering the lab or the "quality assurance" areas.

(Q) Real Estate Brokers. Tenant represents that Tenant has directly dealt with and only with brokers identified in Article 1 (whose commission shall be paid by Landlord pursuant to a separate agreement with each such broker), in connection with this Lease and TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS FROM ALL DAMAGES, LIABILITY, AND EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING FROM ANY CLAIMS OR DEMANDS OF ANY OTHER BROKER OR BROKERS OR FINDERS FOR ANY COMMISSION ALLEGED TO BE DUE SUCH BROKER OR BROKERS OR FINDERS IN CONNECTION WITH ITS PARTICIPATING IN THE NEGOTIATION WITH OR FOR TENANT OF THIS LEASE. Landlord represents that Landlord has directly dealt with and only with brokers identified in Article 1 (whose commission shall be paid by Landlord pursuant to a separate agreement with each such broker), in connection with this Lease and LANDLORD AGREES TO INDEMNIFY AND HOLD TENANT HARMLESS FROM ALL DAMAGES, LIABILITY, AND EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING FROM ANY CLAIMS OR DEMANDS OF THE BROKERS IDENTIFIED IN ARTICLE 1 AND ANY OTHER BROKER OR BROKERS OR FINDERS FOR ANY COMMISSION ALLEGED TO BE DUE SUCH BROKER OR BROKERS OR FINDERS IN CONNECTION WITH ITS PARTICIPATING IN THE NEGOTIATION OF THIS LEASE ON LANDLORD'S BEHALF.

(R) Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, the party taking the action shall not be liable or responsible for, and therefore shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, pandemics (including COVID-19), shortages of labor or materials, terrorist activities, acts of war, governmental actions or inactions or laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such acting party, and which in any of such events, cannot be overcome by the commercially reasonable efforts of the acting party ("**Force Majeure**"); provided, however, in no event shall Force Majeure (including any aspect of the situation with respect to the COVID-19 virus or any other pandemic) apply to either (i) the financial obligations of Landlord or Tenant under this Lease, including, without limitation, Tenant's obligation to promptly pay Rent and Landlord's obligation to pay the allowances or (ii) Landlord's or Tenant's obligation to maintain insurance hereunder.

(S) No Estate in Land. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant, and nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture, or of any relationship other than

landlord and tenant, between the parties hereto. No estate shall pass out of Landlord and Tenant has only a usufruct not subject to levy and sale.

(T) Energy and Environmental Initiatives.

(i) Programs. Landlord and Tenant acknowledge and agree that Landlord is committed to employing sustainable operating and maintenance practices for the Building. Tenant shall fully cooperate with Landlord in any programs in which Landlord may elect to participate relating to the Building's (i) energy efficiency, management and conservation; (ii) water conservation and management; (iii) environmental standards and efficiency; (iv) recycling and reduction programs; and/or (v) safety, which participation may include, without limitation, the Leadership in Energy and Environmental Design (**LEED**) program and related Green Building Rating System promoted by the U.S. Green Building Council. All carbon tax credits and similar credits, offsets and deductions are the sole and exclusive property of Landlord. Tenant affirms its support of these practices, and agrees to cooperate with Landlord by implementing commercially reasonable conservation practices to the extent provided herein. Periodically, Landlord may offer additional examples, guidance and practices related to energy conservation measures, which Tenant agrees to consider for implementation. Should any specific practice(s) proposed by Landlord be deemed to be inconsistent or interfere with Tenant's business operations, then upon Landlord's request, Tenant shall so advise Landlord in writing as its reason for declining to implement such specific practice(s). Any monitoring and reporting of base Building energy use will be done by a third party, and costs associated with this subsection (T) shall be included in Operating Expenses. Tenant shall also use best efforts to help meet building-wide energy use reduction goals and minimize use of electricity, water, heating, and air conditioning unless Tenant's business operations shall be adversely affected thereby. Tenant shall use Energy Star or comparably efficient appliances for Tenant's Premises. All products used by Tenant in the Premises in making alterations to the Premises shall be consistent with Building standards for using environmentally friendly and recycled materials. Without limitation to the generality of the foregoing, Tenant shall comply with the Sustainable Building Guidelines attached hereto as **Exhibit H**. For avoidance of doubt, in all respects Tenant shall not be restricted from operating its business in the fashion and manner which it deems necessary or advisable, regardless of the foregoing conservation or sustainability initiatives or practices in effect or proposed by Landlord.

(ii) Recycling. Tenant shall use best efforts to recycle by separating waste stream into Single Stream (paper, plastic, metals); dispose of all electronic items (cell phones, computers, etc. in designated bins); and dispose of compostable waste appropriately. All costs of recycling programs instituted by Landlord shall be included in Operating Expenses.

(U) Counterparts; Electronic Signatures. This Lease may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Lease and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if an a paper original of this Lease had been delivered had been signed using a handwritten signature. Landlord and Tenant (i) agree that an electronic signature, whether digital or encrypted, of a party to this Lease is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intend to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Lease based on the foregoing forms of signature. If this Lease has been executed by electronic signature, all parties executing this document are expressly consenting under the Electronic Signatures in Global and National Commerce Act ("**E-SIGN**"), and Uniform Electronic Transactions Act ("**UETA**"), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

(V) Consents by Landlord. In all circumstances under this Lease where the prior consent or permission of Landlord is required before Tenant is authorized to take any particular type of action and no specific standard of

consent is specified, such consent must be in writing and the matter of whether to grant such consent or permission shall be within the sole and exclusive judgment and discretion of Landlord. With respect to any assertion or claim that Landlord delayed or withheld the granting of such consent or permission, whether or not the delay or withholding of such consent or permission was prudent or reasonable or based on good cause, in no event will Tenant have available termination of this Lease or a setoff of Rent as potential recourse for such claimed Landlord action. With respect to any provision of this Lease which provides that Tenant shall obtain Landlord's prior consent or approval, Landlord may withhold such consent or approval for any reason at its sole discretion, unless the provision specifically states that the consent or approval will not be unreasonably withheld. With respect to any provision of this Lease which provides that Landlord shall not unreasonably withhold or unreasonably delay any consent or any approval, in no event will Tenant have available termination of this Lease or a setoff of Rent as potential recourse for such claimed Landlord action.

(W) Independent Covenants. The obligation of Tenant to pay Rent and other monetary obligations provided to be paid by Tenant under this Lease and the obligation of Tenant to perform Tenant's other covenants and duties under this Lease constitute independent, unconditional obligations of Tenant to be performed at all times provided for under this Lease, save and except only when an abatement thereof or reduction therein, or and offset thereto is expressly provided for in this Lease and not otherwise, and Tenant acknowledges and agrees that in no event shall such obligations, covenants and duties of Tenant under this Lease be dependent upon the condition of the Premises or the Project, or the performance by Landlord of its obligations hereunder, except as expressly set forth herein.

(X) Recording. Neither Landlord nor Tenant shall record this Lease, but a short-form memorandum hereof may be recorded at the request of Landlord, in Landlord's sole and absolute discretion.

(Y) No Access to Roof. Except as specifically set forth in the Rider attached to this Lease Tenant shall have no right of access to the roof of the Premises or the Building.

(Z) Real Estate Investment Trust. During the term of this Lease, should a real estate investment trust become Landlord hereunder, all provisions of this Lease shall remain in full force and effect except as modified by this paragraph. If Landlord in good faith determines that its status is a real estate investment trust under the provisions of the Internal Revenue Code of 1986, as heretofore or hereafter amended, will be jeopardized because of any provision of this Lease, Landlord may request reasonable amendments to this Lease and Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such amendments do not (a) increase the monetary obligations of Tenant pursuant to this Lease or (b) in any other manner adversely affect Tenant's interest in the Premises.

(AA) Use of Trademark, Service Mark and/or Trade Name. Tenant acknowledges that Landlord claims as its sole and exclusive property the trademark, service mark, and/or trade name "West End on Fulton®" (the "**Mark**") for use in connection with the Project by Landlord or its designated assignees or licensees. Tenant shall not claim any superior right to the Mark and shall not use the Mark in any manner whatsoever in connection with the Premises or the operations conducted thereon unless it has obtained the prior written permission from Landlord. Tenant acknowledges and agrees that it shall not use the Mark on Tenant's letterhead, marketing materials or any written communication or visual presentation. Tenant may, however, reasonably identify Tenant's Premises as being located in the West End on Fulton® Project for directional purposes only.

(BB) Landlord's Limitation of Liability. It is expressly understood and agreed that notwithstanding anything to the contrary contained in this Lease, and notwithstanding any applicable law to the contrary, the liability of Landlord hereunder (including any successor landlord) and any recourse by Tenant against Landlord shall be limited solely and exclusively to the equity interest of Landlord in and to the Project (which shall include, without limitation, the Building, unencumbered insurance proceeds, condemnation proceeds, proceeds of sale and rents and other income from the Project, and which shall not affect any rights of Tenant to self-help, offset or equitable relief), and neither Landlord, nor any of its constituent partners, shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. Under no circumstances shall Landlord be liable for consequential damages, including, without limitation, injury to Tenant's business or for any loss of income or profit therefrom.

(CC) Exculpation. CBRE Investment Management, LLC, a Delaware limited liability company ("CBRE Global"), is the investment manager for California State Teachers' Retirement System, a public entity created pursuant to the laws of the State of California ("CALSTRS"), and CALSTRS is a member of Landlord. It is expressly understood and agreed that notwithstanding anything to the contrary contained in this Lease but subject to the provisions of Section 10, and notwithstanding any applicable law to the contrary, the liability of Landlord hereunder (including any successor landlord) and any recourse by Tenant against Landlord for damages shall be limited solely and exclusively to the equity interest of Landlord in and to the Project (which shall include, without limitation, the Building, unencumbered insurance proceeds, condemnation proceeds, proceeds of sale and rents and other income from the Project, and which shall not affect any rights of Tenant to self-help, offset or equitable relief to the extent expressly set forth herein), and neither Landlord, nor any of its constituent partners (including, without limitation CALSTRS), shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. Except as expressly provided in Section 17(A) herein, under no circumstances shall Landlord or Tenant be liable for consequential, punitive or special damages, including, without limitation, injury to either party's business or for any loss of income or profit therefrom; provided, that the foregoing shall not be deemed to limit Landlord's remedies with respect to any Rent payable to Landlord.

(DD) Acknowledgement, Representation and Warranty Regarding Prohibited Transactions. Tenant acknowledges that Landlord is wholly owned by CALSTRS, a unit of the California Government Operations Agency established pursuant to Title 1, Division 1, Parts 13 and 14 of the California Education Code, Sections 22000, et seq., as amended (the "**Education Code**"). As a result, Tenant acknowledges that CALSTRS is prohibited from engaging in certain transactions with or for the benefit of an "employer", "employing agency", "member", "beneficiary" or "participant" (as those terms are defined or used in the Education Code). In addition, Tenant acknowledges that certain restrictions under the Internal Revenue Code, 26 U.S.C. Section 1, et seq. (the "**Code**") may apply to distributions made by CALSTRS to its members, beneficiaries and participants. Accordingly, Tenant represents and warrants to Landlord and CALSTRS that (a) Tenant is neither an employer, employing agency, member, beneficiary or participant; (b) Tenant has not made any contribution or contributions to Landlord or CALSTRS; (c) neither an employer, employing agency, member, beneficiary nor participant, nor any person who has made any contribution to Landlord or CALSTRS, nor any combination thereof, is related to Tenant by any relationship described in Section 267(b) of the Code; (d) neither Landlord, CALSTRS, CBRE Global, their affiliates, related entities, agents, officers, directors or employees, nor any CALSTRS board member, employee or internal investment contractor thereof or therefor (collectively, "**Landlord Affiliates**") has received or will receive, directly or indirectly, any payment, consideration or other benefit from, nor does any Landlord Affiliate have any agreement or arrangement with, Tenant or any person or entity affiliated with Tenant, relating to the transactions contemplated by this Lease except as expressly set forth in this Lease; and (e) no Landlord Affiliate has any direct or indirect ownership interest in Tenant or any person or entity affiliated with Tenant.

(EE) Survival**.** Notwithstanding anything in this Lease to the contrary, the following rights, duties, and obligations shall survive the expiration or termination of this Lease: (a) any accrued, but unsatisfied, obligations of Landlord or Tenant, as applicable, as of the date of such expiration or termination, (b) any indemnification obligations, (c) any exculpatory provisions or provisions that otherwise limit the liability of the parties under this Lease, and (d) any rights, duties, and obligations which, by the terms of the applicable provisions, expressly survive the expiration or termination of this Lease.

(FF) Labor Harmony. It is understood that, in the performance of construction and other work at the Project, Landlord shall take measures consistent with those described in Section 14(E) and typical of prudent landlords of Comparable Buildings to ensure labor harmony amongst the workforce and trades performing work at the Project (including, without limitation, those contractors, subcontractors, labor and suppliers performing punch list and other work concerning the base Building improvements). Notwithstanding anything in this Lease to the contrary, no party shall be deemed in violation of any provisions of this Lease concerning labor harmony if it shall have retained (or caused to have been retained), in the particular context in question, union contractors, subcontractors (of any tier), labor or suppliers and caused them to comply with such procedures that do not result in any delay or impose any other material cost or liability, such as separate construction entrances, as may be customarily employed to maintain labor harmony.

(GG) Rider and Exhibits. The Rider, and all attached exhibits (Exhibits A through M) are attached hereto and made a part hereof, by reference, for all purposes.

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**[SIGNATURE PAGES]**

IN WITNESS WHEREOF, the parties may have executed this Lease in counterpart copies, each of which shall be deemed originals. Landlord and Tenant have executed this Lease the date and year noted above.

**TENANT:**

**XERIS PHARMACEUTICALS, INC.,**
a Delaware corporation

By: /s/ Paul Edick
Name: Paul Edick
Title: Chairman and CEO

September 29, 2022
Date

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LANDLORD:

**FULTON OGDEN VENTURE, LLC**,
a Delaware limited liability company

By: **TC FULTON OGDEN MEMBER, LLC,**
a Delaware limited liability company,
its Managing Member

By: **TRAMMELL CROW CHICAGO DEVELOPMENT, INC.,**
a Delaware corporation,
its Managing Member

By: /s/ John D. Carlson
Name: John D. Carlson
Title: Vice President

September 29, 2022
Date

[END OF SIGNATURE PAGES]

**RIDER TO LEASE**

ADDITIONAL PROVISIONS

1. This Rider Controls. The provisions set forth in this Rider control to the extent they conflict with any provision or provisions set forth in the body of this Lease.

2. Tenant's Right of Refusal.

(a) Grant of Right of Refusal. Subject to the rights of existing tenants of the Refusal Space as of the Effective Date and the terms and conditions set forth below, and provided (i) no default by Tenant beyond any applicable notice and cure periods has occurred and is then continuing; (ii) Tenant has not sublet more than 25% of the then-current Premises; and (iii) Tenant has at least three years remaining in the Term, then subject to the conditions and provisions as hereinafter set forth, Landlord hereby grants to Tenant an ongoing right of refusal ("**Right of Refusal or ROFR**") to lease from Landlord (i) any available space located on the 4th floor of the Building and (ii) any available office space located on the 9th floor of the Building, excluding any space on the 9th floor to be used as expanded amenity space or a Building management office (collectively, the "**Refusal Space**").

(b) Third Party Offer; Exercise Notice. If Landlord receives a bona fide offer from a third party prospective tenant ("**Third Party Offer**") to lease all or any portion of the Refusal Space, before proceeding to enter into a lease with such third party, Landlord shall first give to Tenant written notice that Landlord has received such Third Party Offer, and describing the material terms and conditions of such Third Party Offer that Landlord is willing to accept, including the base rental rate, lease term, rent abatement period (if any), and tenant improvement allowance (if any) ("**Third Party Offer Notice**" or "**ROFR Space Notice**"). Tenant may exercise the Right of Refusal by giving Landlord written notice of Tenant's desire to lease the Refusal Space as set forth herein and in the Third Party Offer ("**Exercise Notice**"), if at all, on or before the fifth (5th) business day after Tenant's receipt of the Third Party Offer Notice.

(c) Expansion Amendment. If Tenant timely provides an Exercise Notice, Landlord promptly shall prepare and Landlord, and Tenant shall enter into, an amendment to the Lease ("**Expansion Amendment**"), reasonably acceptable to Landlord and Tenant, based on the terms and conditions contained in the Third Party Offer Notice, and the Premises shall be adjusted accordingly; provided, that the term with respect to any Refusal Space shall be coterminous with the Lease Term and any economic concessions or terms shall be equitably adjusted to take into account such shorter term or longer term, as applicable.

(d) Failure to Exercise. If Tenant fails to timely provide an Exercise Notice, Landlord shall have a twelve (12) month period commencing with the date of the Third Party Offer Notice to enter into a lease for the portion of the Refusal Space included in such Third Party Offer Notice with a third party based on substantially the same terms as are contained in the Third Party Offer Notice or upon terms more advantageous to Landlord (not to exceed a 3% reduction in the rent or economic concessions given the tenant thereunder) ("**Third Party Lease**"). If Landlord enters into the Third Party Lease within said 12-month period, the ROFR shall terminate as to the portion of the Refusal Space included in such Third Party Lease. If Landlord does not enter into the Third Party Lease within said 12-month period, the ROFR shall be reinstated in accordance with all of the terms and conditions of this Rider Section 2.

(e) Not Transferable. Tenant acknowledges and agrees that the Right of Refusal shall be deemed personal to Tenant and if Tenant subleases, assigns or otherwise transfers any interests hereunder to any person or entity prior to the exercise of the Right of Refusal (other than a Permitted Transferee), the Right of Refusal shall lapse and be forever waived.

3. Signage. In addition to Tenant's pro-rata share of Building-standard directory strips and suite entry signage for each floor of the Premises provided by Landlord at its cost, subject to applicable City laws, codes and regulations and the terms and conditions of this Lease, upon Tenant's occupancy of the full Expansion Premises and throughout the Term thereafter (provided Tenant continues to lease at least 85,000 RSF in the Building), Tenant shall have the exclusive right to install "eyebrow" signage at the top of the exterior of the Building depicting Tenant's trade name ("**Exterior Sign**"), the exact location of which and design/size thereof shall be subject to Landlord's prior approval,

which approval will not be unreasonably withheld, conditioned or delayed. Landlord agrees that, to the extent allowable under applicable laws, (i) Tenant's Exterior Sign can be located on the east or west side of the Building, at Tenant's option: (ii) Tenant shall have the right to relocate the Exterior Sign during the Term, at its cost, and (iii) Landlord approves Tenant's logo attached hereto as **Exhibit J** to be used as the basis for the design of the Exterior Sign.

(a) Tenant's right to the exterior "eyebrow" building sign, is further contingent upon Tenant obtaining zoning and other requisite approvals from applicable governmental authorities to erect and maintain such signs. If Tenant exercises its right to the exterior signage, Tenant agrees diligently to proceed and use its commercially reasonable, good faith efforts to obtain such approvals with respect to the applicable signage. Notwithstanding the foregoing, however, if the applicable governmental authorities impose conditions upon the granting of approval for any signs, Tenant agrees to comply with such conditions and Tenant agrees to pay for all out-of-pocket costs and expenses of compliance, provided that, if Tenant does not approve of such conditions or the costs and expenses of compliance therewith, Tenant shall have no obligation to further pursue such approvals and Tenant shall have no right, and Landlord shall have no obligation, to construct or maintain any such sign unless and until Tenant elects to comply with such conditions and pay for the costs of compliance therewith).

(b) All out-of-pocket design, construction, installation, maintenance, governmental compliance and other costs incurred by Landlord with respect to such sign, if any, installed by Landlord shall be paid by Tenant to Landlord as additional Rent, in full, within thirty (30) days after Tenant's receipt of an invoice from Landlord. If Tenant fails to pay Landlord such costs on a timely basis and Landlord has commenced an enforcement action to terminate this Lease or Tenant's right to possession of the Premises, then Landlord shall have the right, in addition to its other rights and remedies arising as a result of an Event of Default by Tenant hereunder, to remove, at Tenant's expense, Tenant's sign.

(c) The signage rights under this Section 3 of this Rider are personal and exclusive to the original Tenant, and no assignment of signage rights shall be permitted except in connection with an assignment of this Lease in connection with a Permitted Transfer of this Lease. Furthermore, no assignee of Tenant's rights under this Lease (other than a Permitted Transferee) or subtenant of Tenant under this Lease shall succeed to Tenant's rights hereunder.

(d) Notwithstanding anything in this Lease or this Section 3 of this Rider to the contrary, Tenant shall have no right to change its name on the external sign without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(e) Tenant's rights under this Section 3 of this Rider shall cease and terminate immediately (i) upon the expiration or any earlier termination of this Lease or Tenant's right of possession of the Premises; (ii) if the RSF of the Premises reduces to fewer than 85,000 RSF; or (iii) if at any time Tenant subleases more than 25,000 RSF of the Premises to any party, other than a Permitted Treansferee.

4. Rooftop Equipment.

(a) Subject to the terms and conditions of this Lease and the specific terms and conditions of this Section 4 of the Rider, upon Landlord's prior written consent, not to be unreasonably withheld, conditioned or delayed, Tenant may, at its sole cost and expense, erect, maintain, install and operate solely for use in Tenant's business operations in the Premises (and not for use by third parties) during the Term, certain rooftop equipment such as satellite dish(es), supplemental air conditioning units and related equipment (the "**Rooftop Equipment**") at locations on the roof of the Building as designated by Landlord (said location being herein referred to as the "**Rooftop Equipment Space**"). Such Rooftop Equipment Space shall not exceed Tenant's Proportionate Share of the total Building rooftop space available for use by all Building tenants. Landlord shall not charge Tenant rent for the use of the Rooftop Equipment Space during the Lease Term. Upon expiration of this Lease or any earlier termination of the Lease or Tenant's right to maintain the Rooftop Equipment in the Rooftop Equipment Space under this Section 4, Tenant shall, at its sole expense, remove the Rooftop Equipment and all related conduits, cables and facilities installed on or in the Building in accordance with this Section 4 and repair any damage to the Rooftop Equipment Space and the Building caused thereby. Landlord reserves the right (without obligation) to relocate any one or more of the Rooftop Equipment, at Tenant's cost, to alternate locations, provided such space remains technologically sufficient, in Landlord's reasonable estimation. Tenant agrees to provide Tenant's "**Rooftop Equipment Plans and**

**Specifications**" (herein so called) for Landlord's approval prior to installation of same (which plans and specifications shall comply strictly with all applicable laws and all requirements for protecting and preserving Landlord's warranties relating to the Building, including the roof). All Rooftop Equipment shall be installed within the Rooftop Equipment Space in accordance with the Rooftop Equipment Plans and Specifications previously approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not materially change, alter, modify or amend the Rooftop Equipment Plans and Specifications for the Satellite Antenna or installation thereof or otherwise alter the Rooftop Equipment or the installation and/or location of the Rooftop Equipment without the prior written consent of Landlord. Nothing contained in this Lease shall be deemed to grant to Tenant any independent right of access to the Rooftop Equipment Space. All access to the roof of the Building shall under all circumstances be made through and in conjunction with Landlord or its agents and shall be subject to such reasonable controls and restrictions as Landlord may impose from time to time, provided that Landlord shall impose no fees or charges on such roof access.

(b) Tenant shall at all times maintain the Rooftop Equipment and related facilities in good order and repair and Tenant shall be responsible for any and all costs and expenses incurred in connection with such repairs to the Rooftop Equipment and such related facilities. Tenant's installation, repair, maintenance and operation of the Rooftop Equipment and all related facilities shall be subject to and performed in accordance with all terms and conditions of the Lease as well as all applicable laws in effect from time to time, and Tenant shall obtain all permits and approvals therefor prior to commencing the operation thereof and shall maintain such permits and approvals in good standing at all times thereafter. Tenant shall further be responsible for any repairs to the roof of the Building necessitated by the installation or repair of the Rooftop Equipment. Any roof penetration shall be performed by such roofing contractor as is acceptable to Landlord and is required to comply with any such roof warranty, at Tenant's expense. If the installation, repair, replacement or removal of any Rooftop Equipment or related conduit or other equipment or facilities voids Landlord's roof warranty, Tenant shall assume all responsibility and costs with regard to the roof of the Building to the extent such costs would have been covered by such warranty had it not been voided.

(c) Notwithstanding anything herein contained to the contrary, Landlord shall be entitled to require that the Rooftop Equipment be screened from public view, at Tenant's expense. Furthermore, no Rooftop Equipment may be used in any fashion which would cause any interference with the Building's voice and data communications systems and electronic data processing operation or any other antenna, radio system, or microwave dish on, at, or adjacent to or near the Building. In the event any of the Rooftop Equipment and/or related conduit, equipment or facilities cause any such interference, Tenant shall discontinue the operation of the Rooftop Equipment within twenty-four (24) hours after receipt of written notice thereof until such time as such interference is eliminated, if ever. From and after the expiration of such twenty-four (24) hour period, Tenant shall have thirty (30) days in which to eliminate such interference. If Tenant does not or cannot eliminate the interference within such thirty (30)-day period, Tenant shall discontinue all use of such Rooftop Equipment and all related equipment until such interference is eliminated, in Landlord's reasonable estimation.

5. Shuttle Bus Service. Throughout the Lease Term (including any renewals or extensions thereof), Landlord shall retain a third party provider to furnish shuttle bus service to and from the major Metra train stations, including the stations located at Ogilvie Transportation Center and Union Station (and, as necessitated by ridership demand, and at Landlord's good faith discretion after consultation with Tenant, potentially additional similar transit destinations) (collectively, the "**Transit Destinations**") and the Building as well as other properties located in the Fulton Market neighborhood that are owned as part of Landlord's (or Landlord's affiliates') portfolio as of the Effective Date (the "**Portfolio Properties**"), for the benefit of Tenant, any permitted assignees or subtenants, and their respective employees and contractors, in common with other tenants and occupants of the Building and the Portfolio Properties. Such shuttle service shall operate during morning and evening commuting time periods of 7:00 a.m. - 10:00 a.m. and 4:00 p.m. - 6:30 p.m. on business days (the "**Commute Periods**"), with such service frequencies and capacities as may be reasonably determined by Landlord from time-to-time based on normal commuting times, then-current market conditions, and the actual demand for such shuttle services. When operating, the shuttle service will run on a constant loop between the Transit Destinations and the Building and Portfolio Properties. Landlord agrees to use commercially reasonable efforts to cause the shuttle service to run continuously and arrive at each stop for the Transit Destinations and the Building approximately every fifteen (15) minutes during the Commute Periods on business days, including ensuring that a reasonable number of shuttle buses are operating with sufficient capacity to transport all such Tenant riders during the Commute Periods to provide such service to Tenant as well as the other tenants of the Building and the Portfolio Properties (with a minimum of two (2) shuttle buses operating during the entire Commute Periods, unless

otherwise agreed by Tenant); provided that such schedules are subject to normal "rush hour" delays, including traffic congestion, weather conditions and construction activities. Shuttle buses will not be deemed to have sufficient capacity if any shuttle buses are repeatedly full when arriving at any stop or repeatedly become full at any stop before all Tenant riders waiting at such stop are able to get on the applicable shuttle bus at such time. If the shuttle buses operating during the Commute Periods do not have sufficient capacity for all Tenant riders waiting at any stop(s) at or around the substantially same time and business day on three (3) or more business days in a thirty (30) day period (the parties recognizing that there may be different demand for shuttle services on different business days), then within ten (10) days of receiving written notice from Tenant, Landlord agrees to increase the number of shuttle buses operating during such peak time and day to ensure that substantially all riders are able to get on the next arriving shuttle. Landlord agrees to use commercially reasonable efforts to cause the shuttle service provider to comply with the terms and conditions of this paragraph. Throughout the Lease Term (including any renewals or extensions thereof), Landlord shall also cause a shuttle service to operate during lunch hours (11:30 AM-1:30 PM) throughout the Fulton Market neighborhood, with such service frequencies and capacities as may be reasonably determined by Landlord from time-to-time based on the actual demand for such services. A transit screen with live updates of the transit schedules will be on display on the 1st floor of the Building, and, as applicable and available, the transit schedules will be available to Tenant's employees on a mobile telephone application for the Building. All out-of-pocket costs for the shuttle bus service (net of any third party revenues derived therefrom) will be included in Operating Expenses, subject to the provisions of Section 4(C) (and any other relevant provisions) of the Lease. Except as otherwise expressly provided in this Section, such Building amenities shall be operated at no additional charge (other than inclusion in Operating Expenses as provided in this Lease) to Tenant or any permitted assignees or subtenants of Tenant or any of their respective employees or contractors. Landlord and Tenant agree to communicate and cooperate reasonably and in mutual good faith with respect to the schedules, the Transit Destinations, the number of shuttle buses operating at any given time, and other material issues and concerns with respect to the shuttle service and the provider thereof. Landlord and Tenant further agree to reasonably consider modifications to such service as usage, market conditions and other material changes in circumstances, including the possibility of replacement of the shuttle service provider, which determination Landlord ultimately will make in its reasonable discretion. In the event (i) Landlord's shuttle service provider persistently fails to comply with the requirements of this Section 5 of the Rider, (ii) Tenant provides Landlord written notice that the shuttle service is not meeting the requirements set forth in this Section 5 of the Rider (the "**Shuttle Failure Notice**"), and (iii) following such Shuttle Failure Notice, the shuttle service continues to fail to satisfy the requirements of this Section 5 of the Rider on any ten (10) business days during the thirty (30) day period following the Shuttle Failure Notice, then from and after such tenth (10th) business day of non-compliance, 50% of the fees owed for the Tenant Parking Stalls shall abate until such time as Landlord causes the shuttle service to regularly and consistently for at least ten (10) consecutive business days satisfy the approximate requirements set forth in this Section 5 of the Rider. Notwithstanding anything apparently to the contrary contained herein, in no event will any failure to meet the schedules and other terms contained in this Rider Section 5 constitute a Landlord default under this Lease; provided, however, that if Landlord fails to provide any shuttle service as provided in this paragraph, then 100% of the fees owed for the Tenant Parking Stalls shall abate until such time as Landlord continues and causes the shuttle service to regularly satisfy the approximate requirements set forth in this Section 5 of the Rider.

6. Building Amenities. Throughout the Lease Term (including any renewals or extensions thereof), Landlord shall install and operate within the Building, for the benefit of Building tenants and occupants, the following amenities: (a) a covered rideshare pick-up and drop-off point; (b) bike storage and lockers; (c) an amenity center with meeting rooms and indoor and outdoor seating areas; (d) fitness center; (e) rooftop outdoor and indoor seating and collaborative spaces, together with, an indoor and outdoor amenity center located on the 9th floor of the Building containing meeting spaces for up to 200 people, a breakout room with video-conferencing capabilities, and the provision of grab-and-go snacks and beverages (it being understood that Landlord or its operator of the amenity center may charge consumers for such food and beverages at such rates as it shall establish in its sole and absolute discretion and that such food service may be provided by vending machines offering fresh foods or substantially similar offerings and such vending machines may be in a location in the Building determined by Landlord, provided that such location must be in the common areas accessible to all tenants of the Building). Subject to Landlord's construction, repair and maintenance activities occurring on the 9th floor and Force Majeure, Landlord shall at all times during the Term maintain the 9th floor amenities and failure to do so shall entitle Tenant to a reduction in Base Rent of 15%, unless in mostly all Comparable Buildings similar amenities have been discontinued and the space re-purposed. In no event shall Tenant have any right to terminate this Lease if Landlord fails to provide any of the amenities described in the immediately preceding sentence at any time during the Lease Term.

7. Identification of Tenant's Employees and Contractors. In connection with the exercise of the rights described in this Rider, Landlord may require that employees and contractors of Tenant and of any permitted assignees or subtenants obtain such identification cards, keys or passes as Landlord generally uses with respect to such amenities. All Building amenities shall be made available to employees and contractors of Tenant, irrespective of whether (or the degree to which) any such individual employee or contractor actually occupies or uses office space in the Building, subject to the provisions of this Rider.

8. List of Approved Contractors and Service Providers. Landlord shall maintain a "white list" of approved vendors, service provider, contractors with respect to all maintenance and matters under the Lease, and shall make such list available to Tenant upon request. Tenant may engage any such person or firm identified on a current version of such list without the need for any additional approvals from Landlord.

9. Telecommunications Providers. Tenant shall have the right to select, at Tenant's sole discretion, Tenant's desired telecommunications provider(s) for the Premises; provided, any such telecommunication provider(s) shall be required to pay Landlord their proportionate share of any access infrastructure costs expended by Landlord, such costs to be assessed on a carrier-neutral basis.

10. FF&E. All furniture, fixtures and equipment provided by Landlord to Tenant for the Premises as part of the Landlord Work for the Premises (the "**FF&E**") shall be owned and insured by Landlord during the Lease Term and used by Tenant during the Lease Term, at no additional cost. Landlord shall have no obligation to replace such FF&E during the Lease Term, except to the extent covered by Landlord's insurance in connection with a casualty at the Premises. Tenant shall maintain all such FF&E during the Lease Term, subject to reasonable wear and tear or casualty. During the Lease Term, Tenant shall have the right to replace any such FF&E at any time, at Tenant's sole cost, and any such replacements shall be owned and insured by Tenant. At the expiration or early termination of the Lease, all FF&E then remaining in the Premises as of such expiration or termination shall remain in the Premises and be surrendered to Landlord.

**Exhibit 10.2**

***Execution Version***

# AMENDMENT NO. 1 TO CREDIT AGREEMENT AND GUARANTY

This AMENDMENT NO. 1 TO CREDIT AGREEMENT AND GUARANTY, dated as of September 29, 2022 (this "***Amendment***"), is by and among XERIS PHARMACEUTICALS, INC., a Delaware corporation (the "***Borrower***"), and XERIS BIOPHARMA HOLDINGS, INC., a Delaware corporation ("***Parent***"), the Lenders party hereto, and HAYFIN SERVICES LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the "***Agent***"). Reference is made to the Credit Agreement and Guaranty, dated as of March 8, 2022, among the Borrower, Parent, certain subsidiaries of Parent from time to time party thereto, the lenders from time to time party thereto (the "***Lenders***") and the Agent (as amended, supplemented or otherwise modified from time to time, the "***Credit Agreement***"). Capitalized terms used herein without definition shall have the same meanings as set forth in the Credit Agreement, as amended by this Amendment.

## RECITALS

WHEREAS, Parent and the Borrower have requested that the Agent and the Lenders amend certain provisions of the Credit Agreement; and

WHEREAS, the Agent and the Lenders are willing to do so on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, the parties hereto hereby agree as follows:

## ARTICLE I
## AMENDMENTS TO CREDIT AGREEMENT; OTHER AGREEMENTS

**SECTION 1.01. Amendments to the Credit Agreement**. As of the Amendment Effective Date, Sections 9.01(p) and 9.01(t) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

(p) Indebtedness under any letters of credit in an aggregate face amount not to exceed $2,000,000; provided such amount shall be automatically increased to (i) $4,800,000 so long as the Borrower is required to cause a letter of credit to be issued to the lessor under the lease for the premises located at 1375 W. Fulton Street, Chicago, IL 60607 or (ii) if the aggregate face amount of such letter of credit described in **clause (i)** above is reduced after the date of issuance thereof, $4,800,000 less the amount of such reduction;

(t) Permitted Refinancings of Indebtedness otherwise permitted pursuant to this **Section 9.1** (other than **Section 9.1(a)**, **(l)**, the proviso in **(p)**, **(t)** and **(u)**); and

## ARTICLE II
## ACKNOWLEDGEMENT, AGREEMENT AND CONSENT AND REPRESENTATIONS AND WARRANTIES

**SECTION 2.01.** Each Obligor party hereto confirms and agrees that, notwithstanding the effectiveness of this Amendment, the obligations of such Obligor under each Loan Document to which such Obligor is a party shall not be impaired and each Loan Document to which such

Obligor is a party is, and shall continue to be, in full force and effect and is hereby confirmed and ratified in all respects.

**SECTION 2.02.** Each Obligor party hereto hereby acknowledges and agrees that the Guaranteed Obligations will include all Obligations under, and as defined in, the Credit Agreement as amended by this Amendment.

**SECTION 2.03.** To induce the Agent and the Lenders to execute and deliver this Amendment, each Obligor party hereto represents and warrants to the Agent and the Lenders party hereto that as of the date hereof, each of the following statements are true and correct:

(a) The execution and delivery of this Amendment, and the performance of this Amendment and the Credit Agreement as amended hereby, by each Obligor party hereto has been duly authorized by all necessary corporate or other organizational action on the part of such Obligor and this Amendment and the Credit Agreement as amended hereby each constitutes a legal, valid and binding agreement of such Obligor, enforceable against such Obligor in accordance with their respective terms, except as enforcement may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights generally and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) The execution and delivery of this Amendment, and the performance of this Amendment and the Credit Agreement as amended hereby, in each case by any Obligor party hereto, does not (i) violate or conflict with any Law, (ii) result in the creation of any Lien (other than Permitted Liens) on any asset of such Obligor or any of its Subsidiaries or (iii) violate, or result in a default under, any Material Agreement binding upon Parent or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(c) No authorization or approval or other action by, and no notice or filing with, any Governmental Authority or any other Person (other than those that have been duly obtained or made and which are in full force and effect) is required for the due execution and delivery of this Amendment and the performance of this Amendment and the Credit Agreement as amended hereby, in each case by each Obligor party hereto, except for filings and recordings in respect of perfecting or recording the Liens created pursuant to the Security Documents.

(d) Parent and its Subsidiaries, on a consolidated basis, are, and immediately after giving effect to this Amendment, will be Solvent.

(e) Immediately before and after giving effect to this Amendment, no event has occurred and is continuing that constitutes a Default or an Event of Default.

## ARTICLE III
## CONDITIONS PRECEDENT

**SECTION 3.01. Conditions to Effectiveness of this Amendment**. This Amendment shall become effective only upon, and shall be subject to, the prior or simultaneous satisfaction or waiver

of each of the following conditions precedent in a manner reasonably satisfactory to the Agent (the date satisfaction of such conditions being referred to as the "***Amendment Effective Date***"):

(a) **Executed Amendment**. The Agent shall have received this Amendment, duly executed by the Borrower, Parent, the Agent and each of the Lenders.

(b) **Costs and Expenses, Etc**. The Agent shall have received for its account and the account of each Lender all reasonable and documented fees, costs and expenses due and payable to them pursuant to Section 14.03(a) of the Credit Agreement (including the Agent's and each Lender's reasonable and documented (in reasonable detail) legal fees and out-of-pocket expenses).

## ARTICLE IV
## MISCELLANEOUS

**SECTION 4.01. Governing Law; Jurisdiction; Jury Trial**. This Amendment and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; provided that Section 5-1401 and 5-1402 of the New York General Obligations Law shall apply. The jurisdiction, service of process, venue and waiver of jury trial provisions set forth in Sections 14.10 and 14.11 of the Credit Agreement, respectively, are incorporated herein by reference *mutatis mutandis*.

**SECTION 4.02. Effect of Amendment**.

(a) On and after the Amendment Effective Date, each reference in any Loan Document (other than this Amendment) to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended by this Amendment.

(b) This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement. The Obligors party hereto agree that all of the representations, warranties, terms, covenants, conditions and other provisions of the Credit Agreement and other Loan Documents shall, except as expressly set forth in this Amendment, remain unchanged and shall continue to be, and shall remain, in full force and effect in accordance with their respective terms. The amendments, waivers, consents and modifications set forth herein shall be limited precisely as provided for herein to the provisions expressly amended herein or otherwise modified, waived or consented to hereby and shall not be deemed to be an amendment to, waiver of, consent to or modification of any other term or provision of the Credit Agreement or any other Loan Document or of any transaction or further or future action on the part of any Obligor which would require the consent of the Lenders or the Agent under the Credit Agreement or any other Loan Document, or a waiver of any Default or Event of Default or non-compliance with any term or condition contained in the Credit Agreement. Except as expressly set forth in this Amendment, the Credit Agreement and the other Loan Documents are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Agent or any Lender under any Loan Document or applicable Law, nor constitute a waiver of any provision of the Credit Agreement except as expressly set forth herein.

**SECTION 4.03. No Novation**. This Amendment is not intended by the parties to be, and shall not be construed to be, a novation of the Credit Agreement or the other Loan Documents.

**SECTION 4.04. Counterparts; Electronic Signatures**. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Amendment by signing any such counterpart. Delivery of an executed signature page of this Amendment by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. Any signature (including, without limitation, (x) any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record and (y) any facsimile or .pdf signature) hereto or to any other certificate, agreement or document related to this transaction, and any contract formation or record-keeping, in each case, through electronic means, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act, and the parties hereto hereby waive any objection to the contrary.

**SECTION 4.05. Binding Nature**. The provisions of this Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns permitted by the Loan Documents; provided that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent.

**SECTION 4.06. Captions**. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Amendment.

**SECTION 4.07. Severability**. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any applicable Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

**SECTION 4.08. Integration**. This Amendment constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

*[Signature pages to follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date hereof.

PARENT:

**XERIS BIOPHARMA HOLDINGS, INC.**

By /s/ Steven M. Pieper
Name: Steven M. Pieper
Title: Chief Finance Officer

BORROWER:

**XERIS PHARMACEUTICALS, INC.**

By /s/ Steven M. Pieper
Name: Steven M. Pieper
Title: Chief Finance Officer

AGENT:

**HAYFIN SERVICES LLP**

By /s/ Vikas Mehta
Name: Vikas Mehta
Title: Authorised Signatory

LENDERS:

**HAYFIN SOF III LUXCO S.À R.L.**

By /s/ Lina Kavoliune /s/ Diana Kon Kam King
Name: Lina Kavoliune Diana Kon Kam King
Title: Manager Manager

**HAYFIN HEALTHCARE OPPORTUNITIES LUXCO S.À R.L.**

By /s/ Lina Kavoliune /s/ Diana Kon Kam King
Name: Lina Kavoliune Diana Kon Kam King
Title: Manager Manager

**HAYFIN BIG CYPRESS LUXCO S.À R.L.**

By /s/ Lina Kavoliune /s/ Ugo De Benedetti
Name: Lina Kavoliune Ugo De Benedetti
Title: Manager Manager

**HAYFIN CHIEF LUXCO S.À R.L.**

By /s/ Lina Kavoliune /s/ Diana Kon Kam King
Name: Lina Kavoliune Diana Kon Kam King
Title: Manager Manager

**HAYFIN HOSTPLUS LUXCO S.À R.L.**

By /s/ Lina Kavoliune /s/ Ugo De Benedetti
Name: Lina Kavoliune Ugo De Benedetti
Title: Manager Manager

**HAYFIN OPAL 2020 (A) LP**, acting by its manager Hayfin Management Limited

By /s/ Joshua Gallitano
Name: Joshua Gallitano
Title: Director

**HAYFIN OPAL 2020 (B) LP**, acting by its manager Hayfin Management Limited

By /s/ Joshua Gallitano
Name: Joshua Gallitano
Title: Director

**HAYFIN HAMILTON LUXCO S.À R.L.**

By /s/ Lina Kavoliune /s/ Diana Kon Kam King
Name: Lina Kavoliune Diana Kon Kam King
Title: Manager Manager

**SUNHAY LUXCO S.À R.L.**

By /s/ Lina Kavoliune /s/ Diana Kon Kam King
Name: Lina Kavoliune Diana Kon Kam King
Title: Manager Manager

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

# AMENDMENT NO. 3 TO Commercial Supply Agreement

This Amendment No. 3 to the Commercial Supply Agreement (this "Amendment") has been made and entered into as of August 31, 2022 (the "Effective Date") between PYRAMID Laboratories Inc. ("PYRAMID") and Xeris Pharmaceuticals, Inc. ("Client"). This Amendment amends that certain Commercial Supply Agreement dated as of May 14, 2018, as amended by Amendment No. 1dated as of September 1, 2018 and Amendment No. 2 dated as of May 13, 2021 as amended, the "Agreement"), by and between the parties to this Amendment. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

NOW, THEREFORE, the parties intending to be legally bound, hereby agree as follows:

1. Schedule A. The Agreement is hereby amended as of the Effective Date such that Schedule A thereto is deleted in its entirety and replaced with Schedule A attached hereto.

2. Schedule B. The Agreement is hereby amended as of the Effective Date such that Schedule is deleted in its entirety and replaced with Schedule B attached hereto.

3. Schedule C. The Agreement is hereby amended as of the Effective Date such that Schedule is deleted in its entirety and replaced with Schedule C attached hereto.

4. Miscellaneous. Except as expressly amended hereby, the terms of the Agreement (including the schedules thereto) shall remain in full force and effect, and the Agreement, as amended by this Amendment, is binding on each of the parties to this Amendment.

* * *

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date.

PYRAMID Laboratories, Inc.:

By: /s/ Medhat Gorgy
Name: Medhat Gorgy
Title: President & CEO

Xeris Pharmaceuticals, Inc.:

By: /s/ Peter Valentinsson
Name: Peter Valentinsson
Title: SVP, Product Development/Technical operations

## Schedule A

Batch Size, Dosage, Yield*, Volume, Pricing

I. [***]

| | | |
|---|---|---|
| [***] | | |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | | |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | | |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | | |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | | |

Pricing Assumptions:

1. Standard Batch [***].
2. Standard batch size estimates based on [***] theoretical yield per dosage; yield assumptions and batch sizes shall be adjusted annually based on actual production history.
3. Batch size/yield/price independent [***].
4. Pricing subject to annual adjustments as defined under Section 3.3.2, [***].
5. Pricing for Validation Batches shall be adjusted as defined under Section 3.3.3 [***].

## Schedule A (continued)

6. Price includes [***].
7. Price includes [***].
8. Price excludes [***].

[***][***]

[***] [***]

[***] [***]

[***]

[***] [***]

[***] [***]

[***]

**Schedule A (continued)**

Batch Size, Dosage, Yield, Volume Pricing

Pricing Assumptions:

1. Standard Batch [***].
2. Standard batch size estimates based on [***] theoretical yield per dosage; yield assumptions and batch sizes shall be adjusted annually based on actual production history.
3. Pricing subject to annual adjustments as defined under Section 3.3.2, [***].
4. Pricing for Validation Batches shall be adjusted as defined under Section 3.3.3 [***].
5. Price includes [***].
6. Price includes [***].
7. Price excludes [***].

**Schedule B**

Client Materials

[***]

| Name | Description | Client Part Number |
|---|---|---|
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |

[***]

| Name | Description | Client Part Number |
|---|---|---|
| [***] | [***] | [***] |
| [***] | [***] | [***] |
| [***] | [***] | [***] |

Specifications for each Client Material shall be updated from time to time as required in accordance with the provisions of the Quality Agreement.

**Schedule C**

Commercial Products

| Client Part Number | Description |
|---|---|
| [***] | [***] |
| [***] | [***] |
| [***] | [***] |
| [***] | [***] |
| [***] | [***] |
| [***] | [***] |
| [***] | [***] |

**Exhibit 31.1**

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Paul R. Edick, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Xeris Biopharma Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2022

By: /s/ Paul R. Edick
Paul R. Edick
Chairman and Chief Executive Officer
(Principal Executive Officer)

**Exhibit 31.2**

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven M. Pieper, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Xeris Biopharma Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2022

By: /s/ Steven M. Pieper
Steven M. Pieper
Chief Financial Officer
(Principal Financial Officer)

**Exhibit 32.1**

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

We, Paul R. Edick and Steven M. Pieper, of Xeris Biopharma Holdings, Inc., certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to the best of our knowledge, that:

1. The quarterly report on Form 10-Q for the quarter ended September 30, 2022 (Periodic Report) to which this statement is an exhibit fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

2. Information contained in the Periodic Report fairly presents, in all material aspects, the financial condition and results of operations of Xeris Biopharma Holdings, Inc.

Date: November 9, 2022

/s/ Paul R. Edick
Paul R. Edick
Chairman and Chief Executive Officer
(Principal Executive Officer)

/s/ Steven M. Pieper
Steven M. Pieper
Chief Financial Officer
(Principal Financial Officer)