

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

FORM 10-Q

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

For the quarterly period ended June 30, 2019

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File Number: 001-36257

RETROPHIN, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

27-4842691

(I.R.S. Employer Identification No.)

3721 Valley Centre Drive, Suite 200

San Diego, CA 92130

(Address of Principal Executive Offices)

(888) 969-7879

(Registrant's Telephone number including area code)

N/A

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, par value \$0.0001 per share | RTRX              | The Nasdaq Global Market                  |

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

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

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

Large accelerated filer  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

The number of shares of outstanding common stock, par value \$0.0001 per share, of the Registrant as of August 5, 2019 was 42,954,151.

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## **FORWARD-LOOKING STATEMENTS**

This report contains forward-looking statements regarding our business, financial condition, results of operations and prospects. Words such as “expects,” “anticipates,” “intends,” “plans,” “believes,” “seeks,” “estimates” and similar expressions or variations of such words are intended to identify forward-looking statements, but are not deemed to represent an all-inclusive means of identifying forward-looking statements as denoted in this report. Additionally, statements concerning future matters are forward-looking statements.

Although forward-looking statements in this report reflect the good faith judgment of our management, such statements can only be based on facts and factors currently known by us. Consequently, forward-looking statements are inherently subject to risks and uncertainties and actual results and outcomes may differ materially from the results and outcomes discussed in or anticipated by the forward-looking statements. Factors that could cause or contribute to such differences in results and outcomes include, without limitation, those specifically addressed under the headings “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our annual report on Form 10-K for the fiscal year ended December 31, 2018 (the “2018 10-K”), and in this quarterly report on Form 10-Q and information contained in other reports that we file with the Securities and Exchange Commission (the “SEC”). You are urged not to place undue reliance on these forward-looking statements, which speak only as of the date of this report.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this quarterly report on Form 10-Q, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and you are cautioned to not unduly rely upon these statements.

We file reports with the SEC. The SEC maintains a website ([www.sec.gov](http://www.sec.gov)) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including us.

We undertake no obligation to revise or update any forward-looking statements in order to reflect any event or circumstance that may arise after the date of this report, except as required by law. Readers are urged to carefully review and consider the various disclosures made throughout the entirety of this quarterly report, which are designed to advise interested parties of the risks and factors that may affect our business, financial condition, results of operations and prospects.

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

**RETROPHIN, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except par value and share amounts)

|  | June 30, 2019<br>(unaudited) | December 31, 2018 |
|--|------------------------------|-------------------|
| <b>Assets</b>  |                              |                   |
| Current assets:  |                              |                   |
| Cash and cash equivalents  | \$ 75,657                    | \$ 102,873        |
| Marketable securities  | 350,243                      | 368,668           |
| Accounts receivable, net   | 15,451                       | 12,662            |
| Inventory, net   | 5,050                        | 5,619             |
| Prepaid expenses and other current assets  | 9,164                        | 4,140             |
| Prepaid taxes  | 1,450                        | 1,716             |
| Total current assets   | 457,015                      | 495,678           |
| Property and equipment, net  | 3,015                        | 3,146             |
| Other non-current assets   | 12,702                       | 7,709             |
| Investment-equity  | 15,000                       | 15,000            |
| Intangible assets, net   | 158,906                      | 186,691           |
| Goodwill   | 936                          | 936               |
| Total assets   | \$ 647,574                   | \$ 709,160        |
| <b>Liabilities and Stockholders' Equity</b>  |                              |                   |
| Current liabilities:   |                              |                   |
| Accounts payable   | \$ 12,519                    | \$ 6,954          |
| Accrued expenses   | 50,557                       | 49,695            |
| Other current liabilities  | 8,417                        | 6,165             |
| Business combination-related contingent consideration  | 19,094                       | 19,350            |
| 2019 Convertible debt  | —                            | 22,457            |
| Total current liabilities  | 90,587                       | 104,621           |
| 2025 Convertible debt  | 199,891                      | 195,091           |
| Other non-current liabilities  | 22,102                       | 17,545            |
| Business combination-related contingent consideration, less current portion  | 57,905                       | 73,650            |
| Total liabilities  | 370,485                      | 390,907           |
| <b>Stockholders' Equity:</b>   |                              |                   |
| Preferred stock \$0.0001 par value; 20,000,000 shares authorized; 0 issued and outstanding as of June 30, 2019 and December 31, 2018                                     | —                            | —                 |
| Common stock \$0.0001 par value; 100,000,000 shares authorized; 42,899,318 and 41,389,524 issued and outstanding as of June 30, 2019 and December 31, 2018, respectively | 4                            | 4                 |
| Additional paid-in capital   | 625,999                      | 589,795           |
| Accumulated deficit  | (349,695)                    | (270,017)         |
| Accumulated other comprehensive income (loss)  | 781                          | (1,529)           |
| Total stockholders' equity   | 277,089                      | 318,253           |
| Total liabilities and stockholders' equity   | \$ 647,574                   | \$ 709,160        |

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

**RETROPHIN, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
(in thousands, except share and per share amounts)  
(unaudited)

|   | Three Months Ended June 30, |             | Six Months Ended June 30, |             |
|---|-----------------------------|-------------|---------------------------|-------------|
|   | 2019                        | 2018        | 2019                      | 2018        |
| Net product sales   | \$ 44,707                   | \$ 41,337   | \$ 84,277                 | \$ 79,769   |
| Operating expenses:   |                             |             |                           |             |
| Cost of goods sold  | 979                         | 1,178       | 1,996                     | 2,791       |
| Research and development                                      | 37,934                      | 34,460      | 71,377                    | 59,096      |
| Selling, general and administrative                           | 38,970                      | 25,100      | 71,639                    | 51,568      |
| Change in fair value of contingent consideration              | 3,353                       | 2,159       | 6,522                     | 5,786       |
| Impairment of L-UDCA IPR&D intangible asset                   | —                           | —           | 25,500                    | —           |
| Write off of L-UDCA contingent consideration                  | —                           | —           | (18,000)                  | —           |
| Total operating expenses                                      | 81,236                      | 62,897      | 159,034                   | 119,241     |
| Operating loss  | (36,529)                    | (21,560)    | (74,757)                  | (39,472)    |
| Other income (expenses), net:                                 |                             |             |                           |             |
| Other income (expense), net                                   | 125                         | (403)       | (177)                     | (282)       |
| Interest income   | 2,589                       | 858         | 5,408                     | 1,655       |
| Interest expense  | (4,817)                     | (1,057)     | (9,682)                   | (2,212)     |
| Total other expense, net                                      | (2,103)                     | (602)       | (4,451)                   | (839)       |
| Loss before income taxes                                      | (38,632)                    | (22,162)    | (79,208)                  | (40,311)    |
| Income tax expense  | (69)                        | (167)       | (470)                     | (396)       |
| Net loss  | \$ (38,701)                 | \$ (22,329) | \$ (79,678)               | \$ (40,707) |
| Basic and diluted net loss per common share:                  | \$ (0.92)                   | \$ (0.56)   | \$ (1.91)                 | \$ (1.03)   |
| Basic and diluted weighted average common shares outstanding: | 41,957,860                  | 40,061,045  | 41,685,599                | 39,641,334  |
| Comprehensive loss:   |                             |             |                           |             |
| Net loss  | \$ (38,701)                 | \$ (22,329) | \$ (79,678)               | \$ (40,707) |
| Foreign currency translation                                  | (91)                        | 2           | 27                        | 24          |
| Unrealized gain (loss) on marketable securities               | 815                         | 375         | 2,284                     | (161)       |
| Comprehensive loss  | \$ (37,977)                 | \$ (21,952) | \$ (77,367)               | \$ (40,844) |

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

**RETROPHIN, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(unaudited, in thousands)

|   | For the Six Months Ended June 30, |             |
|---|-----------------------------------|-------------|
|   | 2019                              | 2018        |
| <b>Cash Flows From Operating Activities:</b>                                      |                                   |             |
| Net loss  | \$ (79,678)                       | \$ (40,707) |
| Adjustments to reconcile net loss to net cash used in operating activities:       |                                   |             |
| Depreciation and amortization   | 9,742                             | 8,991       |
| Non-cash interest expense   | 798                               | 767         |
| (Accretion) amortization of discounts/premiums on investments, net                | (580)                             | 647         |
| Amortization of debt discount and issuance costs                                  | 4,933                             | 325         |
| Provision for Inventory   | (358)                             | 378         |
| Share based compensation  | 11,947                            | 10,160      |
| ESPP Expense  | 345                               | —           |
| Change in fair value of contingent consideration                                  | (11,478)                          | 5,786       |
| Payments related to change in fair value of contingent consideration              | (2,767)                           | (5,563)     |
| Impairment of IPR&D intangible assets   | 25,500                            | —           |
| Unrealized foreign currency transaction gain (loss)                               | 14                                | 214         |
| Other   | 60                                | 199         |
| <b>Changes in operating assets and liabilities, net of business acquisitions:</b> |                                   |             |
| Accounts receivable   | (2,396)                           | 1,431       |
| Inventory   | 918                               | (433)       |
| Other current and non-current operating assets                                    | (10,101)                          | 637         |
| Accounts payable and accrued expenses   | 6,305                             | (2,811)     |
| Other current and non-current operating liabilities                               | 7,195                             | 2,485       |
| Net cash used in operating activities   | (39,601)                          | (17,494)    |
| <b>Cash Flows From Investing Activities:</b>                                      |                                   |             |
| Purchase of fixed assets  | (21)                              | (601)       |
| Cash paid for intangible assets   | (7,347)                           | (11,389)    |
| Proceeds from the sale/maturity of marketable securities                          | 115,998                           | 63,565      |
| Purchase of marketable securities   | (94,812)                          | (29,519)    |
| Cash paid for investments - equity  | —                                 | (15,000)    |
| Net cash provided by investing activities   | 13,818                            | 7,056       |
| <b>Cash Flows From Financing Activities:</b>                                      |                                   |             |
| Payment of acquisition-related contingent consideration                           | (1,722)                           | (7,947)     |
| Payment of guaranteed minimum royalty   | (1,034)                           | (1,000)     |
| Payment of other liability  | —                                 | (500)       |
| Proceeds from exercise of warrants  | —                                 | 2,140       |
| Proceeds from exercise of stock options   | 317                               | 6,890       |
| Other financing activities  | 1,005                             | 800         |
| Net cash (used in) provided by financing activities                               | (1,434)                           | 383         |
| Effect of exchange rate changes on cash   | 1                                 | (34)        |
| Net change in cash and cash equivalents   | (27,216)                          | (10,089)    |
| Cash and cash equivalents, beginning of year                                      | 102,873                           | 99,394      |
| Cash and cash equivalents, end of period  | \$ 75,657                         | \$ 89,305   |

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

**RETROPHIN, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(unaudited, in thousands, except share amounts)

|   | Three Months Ended June 30, 2019      |             |                            |   |                     |                            | Three Months Ended June 30, 2018      |             |                            |   |                     |                            |
|---|---------------------------------------|-------------|----------------------------|---|---------------------|----------------------------|---------------------------------------|-------------|----------------------------|---|---------------------|----------------------------|
|   | Common Stock                          |             | Additional Paid in Capital | Accumulated Other Comprehensive Income (Loss) | Accumulated Deficit | Total Stockholders' Equity | Common Stock                          |             | Additional Paid in Capital | Accumulated Other Comprehensive Income (Loss) | Accumulated Deficit | Total Stockholders' Equity |
|   | Shares                                | Amount      |                            |   |                     |                            | Shares                                | Amount      |                            |   |                     |                            |
| <b>Balance - March 31</b>   | <b>41,438,020</b>                     | <b>\$ 4</b> | <b>\$596,644</b>           | <b>\$ 57</b>                                  | <b>\$ (310,994)</b> | <b>\$ 285,712</b>          | <b>39,873,285</b>                     | <b>\$ 4</b> | <b>\$486,717</b>           | <b>\$ (1,529)</b>                             | <b>\$ (185,717)</b> | <b>\$ 299,475</b>          |
| Share based compensation  |                                       |             | 5,577                      |   |                     | 5,577                      |                                       |             | 5,372                      |   |                     | 5,372                      |
| Issuance of common shares under the equity incentive plan and proceeds from exercise                      | 100,151                               |             | 12                         |   |                     | 12                         | 198,630                               | —           | 2,633                      |   |                     | 2,633                      |
| Exercise of warrants  |                                       |             |                            |   |                     | —                          | 255,445                               | —           | 1,533                      |   |                     | 1,533                      |
| Unrealized gain on marketable securities  |                                       |             |                            | 815   |                     | 815                        |                                       |             |                            | 375   |                     | 375                        |
| Foreign currency translation adjustments  |                                       |             |                            | (91)  |                     | (91)                       |                                       |             |                            | 2   |                     | 2                          |
| Issuance of common stock from maturity of the 2019 Convertible debt outstanding                           | 1,297,343                             |             | 22,590                     |   |                     | 22,590                     |                                       |             |                            |   |                     | —                          |
| ESPP stock purchase and expense   | 63,804                                | —           | 1,176                      |   |                     | 1,176                      | 43,161                                | —           | 928                        |   |                     | 928                        |
| Net loss  |                                       |             |                            |   | (38,701)            | (38,701)                   |                                       |             |                            |   | (22,329)            | (22,329)                   |
| <b>Balance - June 30</b>  | <b>42,899,318</b>                     | <b>\$ 4</b> | <b>\$625,999</b>           | <b>\$ 781</b>                                 | <b>\$ (349,695)</b> | <b>\$ 277,089</b>          | <b>40,370,521</b>                     | <b>\$ 4</b> | <b>\$497,183</b>           | <b>\$ (1,152)</b>                             | <b>\$ (208,046)</b> | <b>\$ 287,989</b>          |
|   | <b>Six Months Ended June 30, 2019</b> |             |                            |   |                     |                            | <b>Six Months Ended June 30, 2018</b> |             |                            |   |                     |                            |
| <b>Balance - December 31</b>  | <b>41,389,524</b>                     | <b>\$ 4</b> | <b>\$589,795</b>           | <b>\$ (1,529)</b>                             | <b>\$ (270,017)</b> | <b>\$ 318,253</b>          | <b>39,373,745</b>                     | <b>\$ 4</b> | <b>\$471,800</b>           | <b>\$ (1,015)</b>                             | <b>\$ (177,655)</b> | <b>\$ 293,134</b>          |
| Adoption of ASU 2017-11 - reclassification of derivative liability of warrants with down round provisions |                                       |             |                            |   |                     | —                          |                                       |             | 5,394                      |   | 10,316              | 15,710                     |
| Share based compensation  |                                       |             | 11,947                     |   |                     | 11,947                     |                                       |             | 9,915                      |   |                     | 9,915                      |
| Issuance of common shares under the equity incentive plan and proceeds from exercise                      | 148,647                               |             | 317                        |   |                     | 317                        | 529,558                               | —           | 6,890                      |   |                     | 6,890                      |
| Exercise of warrants  |                                       |             |                            |   |                     | —                          | 424,057                               | —           | 2,140                      |   |                     | 2,140                      |
| Unrealized gain (loss) on marketable securities   |                                       |             |                            | 2,284   |                     | 2,284                      |                                       |             |                            | (161)   |                     | (161)                      |
| Foreign currency translation adjustments  |                                       |             |                            | 26  |                     | 26                         |                                       |             |                            | 24  |                     | 24                         |
| Issuance of common stock from maturity of the 2019 Convertible debt outstanding                           | 1,297,343                             | —           | 22,590                     |   |                     | 22,590                     |                                       |             |                            |   |                     | —                          |
| ESPP stock purchase and expense   | 63,804                                | —           | 1,350                      |   |                     | 1,350                      | 43,161                                | —           | 1,044                      |   |                     | 1,044                      |
| Net loss  |                                       |             |                            |   | (79,678)            | (79,678)                   |                                       |             |                            |   | (40,707)            | (40,707)                   |
| <b>Balance - June 30</b>  | <b>42,899,318</b>                     | <b>\$ 4</b> | <b>\$625,999</b>           | <b>\$ 781</b>                                 | <b>\$ (349,695)</b> | <b>\$ 277,089</b>          | <b>40,370,521</b>                     | <b>\$ 4</b> | <b>\$497,183</b>           | <b>\$ (1,152)</b>                             | <b>\$ (208,046)</b> | <b>\$ 287,989</b>          |

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



**RETROPHIN, INC. AND SUBSIDIARIES**  
**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

## **NOTE 1. DESCRIPTION OF BUSINESS**

### **Organization and Description of Business**

Retrophin, Inc. (“we”, “our”, “us”, “Retrophin” and the “Company”) refers to Retrophin, Inc., a Delaware corporation, as well as our direct and indirect subsidiaries. Retrophin is a biopharmaceutical company headquartered in San Diego, California, focused on identifying, developing and delivering life-changing therapies to people living with rare diseases. We regularly evaluate and, where appropriate, act on opportunities to expand our product pipeline through licenses and acquisitions of products in areas that will serve patients with rare diseases and that we believe offer attractive growth characteristics.

#### *The Company is developing the following pipeline products:*

The Company is developing fosmetpantotenate (RE-024), a novel small molecule, as a potential treatment for pantothenate kinase-associated neurodegeneration (“PKAN”). PKAN is a genetic neurodegenerative disorder that is typically diagnosed in the first decade of life.

Sparsentan, also known as RE-021, is an investigational product candidate with a dual mechanism of action, a potent angiotensin receptor blocker (“ARB”) and selective endothelin receptor antagonist (“ERA”), with in vitro selectivity toward endothelin receptor type A. Sparsentan is currently being evaluated in two pivotal Phase 3 clinical studies in the following indications:

- Focal segmental glomerulosclerosis (“FSGS”) is a rare kidney disease characterized by proteinuria where the glomeruli become progressively scarred. FSGS is a leading cause of end-stage renal disease.
- Immunoglobulin A nephropathy (“IgAN”) is an immune-complex-mediated glomerulonephritis characterized by hematuria, proteinuria, and variable rates of progressive renal failure. IgAN is the most common primary glomerular disease.

In September 2017, the Company entered into a three-way Cooperative Research and Development Agreement (“CRADA”) with the National Institutes of Health’s National Center for Advancing Translational Sciences (“NCATS”) and patient advocacy foundation NGLY1.org to collaborate on research efforts aimed at the identification of potential small molecule therapeutics for NGLY1 deficiency.

In June 2019, the Company announced that it has entered into a three-way CRADA with NCATS and patient advocacy foundation Alagille Syndrome Alliance (“ALGSA”) to collaborate on research efforts aimed at the identification and development of potentially novel therapeutics for Alagille syndrome (“ALGS”).

#### *The Company sells the following three products:*

- Chenodal (chenodiol tablets) is approved in the United States for the treatment of patients suffering from gallstones in whom surgery poses an unacceptable health risk due to disease or advanced age. Chenodal has been the standard of care for cerebrotendinous xanthomatosis (“CTX”) patients for more than three decades and the Company is currently pursuing adding this indication to the label.
- Cholbam (cholic acid capsules) is approved in the United States for the treatment of bile acid synthesis disorders due to single enzyme defects and is further indicated for adjunctive treatment of patients with peroxisomal disorders.
- Thiola (tiopronin tablets) is approved in the United States for the prevention of cystine (kidney) stone formation in patients with severe homozygous cystinuria. On June 28, 2019, the Company announced that the U.S. Food and Drug Administration (“FDA”) approved 100 mg and 300 mg tablets of THIOLA® EC (tiopronin), a new enteric-coated formulation of THIOLA® (tiopronin), to be used for the treatment of cystinuria.

## **NOTE 2. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES**

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the 2018 10-K filed with the SEC on February 26, 2019. The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) for interim financial information, the instructions for Form 10-Q and the rules and regulations of the SEC. Accordingly, since they are interim statements, the accompanying condensed consolidated financial statements do not include all of the information and notes required by GAAP for annual financial statements, but reflect all adjustments consisting of normal, recurring adjustments, that are necessary for a fair presentation of the financial position, results of operations and cash flows for the interim periods presented. Interim results are not necessarily indicative of the results that may be expected for any future periods. The December 31, 2018 balance sheet information was derived from the audited financial statements as of that date. Certain reclassifications have been made to the prior period consolidated financial statements to conform to the current period presentation.

A summary of the significant accounting policies applied in the preparation of the accompanying condensed consolidated financial statements follows:

### Principles of Consolidation

The unaudited condensed consolidated financial statements represent the consolidation of the accounts of the Company and its subsidiaries in conformity with GAAP. All intercompany accounts and transactions have been eliminated in consolidation.

### Revenue Recognition

The Company recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of Topic 606, the entity performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the entity will collect substantially all the consideration it is entitled to in exchange for the goods or services it transfers to the customer. See Note 3 for further discussion.

### Research and Development Expenses

Research and development expenses are comprised of salaries and bonuses, benefits, non-cash share-based compensation, license fees, costs paid to third-party contractors to perform research, conduct clinical trials and pre/non-clinical trials, develop drug materials, and associated overhead expenses and facilities. We also incur indirect costs that are not allocated to specific programs because such costs benefit multiple development programs and allow us to increase our pharmaceutical development capabilities. These consist of internal shared resources related to the development and maintenance of systems and processes applicable to all of our programs.

### Clinical Trial Expenses

Our clinical trials are conducted pursuant to contracts with contract research organizations ("CROs") that support conducting and managing clinical trials. The financial terms and activities of these agreements vary from contract to contract and may result in uneven expense levels. Generally, these agreements set forth activities that drive the recording of expenses such as start-up, initiation activities, enrollment, treatment of patients, or the completion of other clinical trial activities.

Expenses related to clinical trials are accrued based on our estimates and/or representations from service providers regarding work performed, including actual level of patient enrollment, progress of the clinical trials, and completion of patient studies. Other incidental costs related to patient enrollment or treatment are accrued when reasonably certain. If the amounts we are obligated to pay under our clinical trial agreements are modified (for instance, as a result of changes in the clinical trial protocol or scope of work to be performed), we adjust our accruals accordingly on a prospective basis. Revisions to our contractual payment obligations are charged to expense in the period in which the facts that give rise to the revision become reasonably certain.

We currently have three Phase 3 clinical trials in process that are in varying stages of activity, with ongoing non-clinical support trials. As such, clinical trial expenses will vary depending on all the factors set forth above and may fluctuate significantly from quarter to quarter.

### Adoption of New Accounting Standards

**In February 2016, the FASB issued ASU No. 2016-02, Leases.** The new standard establishes a right-of-use ("ROU") model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. See Note 6 for further discussion.

### Recently Issued Accounting Pronouncements

From time to time, new accounting pronouncements are issued by the FASB or other standard setting bodies. Unless otherwise noted, the Company believes that the impact of recently issued standards that are not yet effective will not have a material impact on its consolidated financial position or results of operations upon adoption.

**In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments.** Topic 326 amends guidance on reporting credit losses for assets held at amortized cost basis and available-for-sale debt securities. For assets held at amortized cost basis, Topic 326 eliminates the probable initial recognition threshold in current GAAP and, instead, requires an entity to reflect its current estimate of all expected credit losses. The allowance for credit losses is a valuation account that is deducted from the amortized cost basis of the financial assets to present the net amount expected to be collected. For available-for-sale debt securities, credit losses should be measured in a manner similar to current GAAP, however Topic 326 will require that credit losses be presented as an allowance rather than as a write-down. This ASU update affects entities holding financial assets and net investment in leases that are not accounted for at fair value through net income. The amendments affect loans, debt securities, trade receivables, net investments in leases, off balance sheet credit exposures, reinsurance receivables, and any other financial assets not excluded from the scope that have the contractual right to receive cash. This update is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. As of June 30, 2019, the Company held \$350.2 million in available-for-sale debt securities. If adopted as of June 30, 2019, this ASU update would not have a material impact on the Company's financial statements.

## NOTE 3. REVENUE RECOGNITION

### Product Revenue, Net

The Company sells Chenodal and Cholbam (Kolbam), which are aggregated as bile acid products, and Thiola through direct-to-patient distributors. The Company sells its products worldwide, with more than 95% of the revenue generated in North America.

Revenues from product sales are recognized when the customer obtains control of the Company's product, which occurs upon delivery to the customer.

### Deductions from Revenue

Revenues from product sales are recorded at the net sales price, which includes provisions resulting from discounts, rebates and co-pay assistance that are offered to customers, health care providers, payors and other indirect customers relating to the Company's sales of its products. These provisions are based on the amounts earned or to be claimed on the related sales and are classified as a reduction of accounts receivable (if the amount is payable to a customer) or as a current liability (if the amount is payable to a party other than a customer). Where appropriate, these reserves take into consideration the Company's historical experience, current contractual and statutory requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled based on the terms of the contract. If actual results in the future vary from the Company's provisions, the Company will adjust the provision, which would affect net product revenue and earnings in the period such variances become known. Our historical experience is that such adjustments have been immaterial.

**Government Rebates:** We calculate the rebates that we will be obligated to provide to government programs and deduct these estimated amounts from our gross product sales at the time the revenues are recognized. Allowances for government rebates and discounts are established based on actual payer information, which is reasonably estimated at the time of delivery, and the government-mandated discounts applicable to government-funded programs. Rebate discounts are included in other current liabilities in the accompanying consolidated balance sheets.

**Commercial Rebates:** We calculate the rebates that we incur due to contracts with certain commercial payors and deduct these amounts from our gross product sales at the time the revenues are recognized. Allowances for commercial rebates are established based on actual payer information, which is reasonably estimated at the time of delivery. Rebate discounts are included in other current liabilities in the accompanying consolidated balance sheets.

**Prompt Pay Discounts:** We offer discounts to certain customers for prompt payments. We accrue for the calculated prompt pay discount based on the gross amount of each invoice for those customers at the time of sale.

**Product Returns:** Consistent with industry practice, we offer our customers a limited right to return product purchased directly from the Company, which is principally based upon the product's expiration date. Generally, shipments are only made upon a patient prescription thus returns are minimal.

**Co-pay Assistance:** We offer a co-pay assistance program, which is intended to provide financial assistance to qualified commercially insured patients with prescription drug co-payments required by payors. The calculation of the accrual for co-pay assistance is based on an identification of claims and the cost per claim associated with product that has been recognized as revenue.

The following table summarizes net product revenues for the three and six months ended June 30, 2019 and 2018 (*in thousands*):

|                           | Three Months Ended June 30, |           | Six Months Ended June 30, |           |
|---------------------------|-----------------------------|-----------|---------------------------|-----------|
|                           | 2019                        | 2018      | 2019                      | 2018      |
| Bile acid products        | \$ 20,929                   | \$ 18,594 | \$ 39,319                 | \$ 37,102 |
| Thiola                    | 23,778                      | 22,743    | 44,958                    | 42,667    |
| Total net product revenue | \$ 44,707                   | \$ 41,337 | \$ 84,277                 | \$ 79,769 |

## NOTE 4. MARKETABLE SECURITIES

The Company's marketable securities as of June 30, 2019 and December 31, 2018 were comprised of available-for-sale marketable securities which are carried at fair value, with the unrealized gains and losses reported in accumulated other comprehensive income (loss). Realized gains and losses and declines in value judged to be other-than-temporary, if any, on available-for-sale securities are included in other income or expense. Interest and dividends on securities classified as available-for-sale are included in interest income. The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization and accretion is included in interest income. During the six months ended June 30, 2019, investment activity for the Company included \$116.0 million in maturities and \$94.8 million in purchases, all relating to debt based marketable securities.

Marketable securities consisted of the following (in thousands):

|   | June 30, 2019     | December 31, 2018 |
|---|-------------------|-------------------|
| Commercial paper                            | \$ 43,675         | \$ 59,255         |
| Corporate debt securities                   | 306,568           | 299,413           |
| Securities of government sponsored entities | —                 | 10,000            |
| Total marketable securities:                | <u>\$ 350,243</u> | <u>\$ 368,668</u> |

The following is a summary of short-term marketable securities classified as available-for-sale as of June 30, 2019 (in thousands):

|                                     | Remaining Contractual Maturity (in years) | Amortized Cost    | Unrealized Gains | Unrealized Losses | Aggregate Estimated Fair Value |
|-------------------------------------|---|-------------------|------------------|-------------------|--------------------------------|
| Commercial paper                    | Less than 1                               | \$ 43,632         | \$ 43            | \$ —              | \$ 43,675                      |
| Corporate debt securities           | Less than 1                               | 178,776           | 315              | (49)              | 179,042                        |
| Total maturity less than 1 year     |   | <u>222,408</u>    | <u>358</u>       | <u>(49)</u>       | <u>222,717</u>                 |
| Corporate debt securities           | 1 to 2                                    | 126,833           | 700              | (7)               | 127,526                        |
| Total maturity 1 to 2 years         |   | <u>126,833</u>    | <u>700</u>       | <u>(7)</u>        | <u>127,526</u>                 |
| Total available-for-sale securities |   | <u>\$ 349,241</u> | <u>\$ 1,058</u>  | <u>\$ (56)</u>    | <u>\$ 350,243</u>              |

The following is a summary of short-term marketable securities classified as available-for-sale as of December 31, 2018 (in thousands):

|   | Remaining Contractual Maturity (in years) | Amortized Cost    | Unrealized Gains | Unrealized Losses | Aggregate Estimated Fair Value |
|---|---|-------------------|------------------|-------------------|--------------------------------|
| Commercial paper                            | Less than 1                               | \$ 59,313         | \$ —             | \$ (58)           | \$ 59,255                      |
| Corporate debt securities                   | Less than 1                               | 149,824           | —                | (604)             | 149,220                        |
| Total maturity less than 1 year             |   | <u>209,137</u>    | <u>—</u>         | <u>(662)</u>      | <u>208,475</u>                 |
| Corporate debt securities                   | 1 to 2                                    | 150,813           | 18               | (638)             | 150,193                        |
| Securities of government-sponsored entities | 1 to 2                                    | 9,997             | 4                | (1)               | 10,000                         |
| Total maturity 1 to 2 years                 |   | <u>160,810</u>    | <u>22</u>        | <u>(639)</u>      | <u>160,193</u>                 |
| Total available-for-sale securities         |   | <u>\$ 369,947</u> | <u>\$ 22</u>     | <u>\$ (1,301)</u> | <u>\$ 368,668</u>              |

The primary objective of the Company's investment portfolio is to enhance overall returns while preserving capital and liquidity. The Company's investment policy limits interest-bearing security investments to certain types of instruments issued by institutions with primarily investment grade credit ratings and places restrictions on maturities and concentration by asset class and issuer. All available-for-sale securities are held in current assets regardless of contractual maturities exceeding one year, as the Company has the ability to sell them within the next twelve months.

The Company reviews the available-for-sale investments for other-than-temporary declines in fair value below cost basis each quarter and whenever events or changes in circumstances indicate that the cost basis of an asset may not be recoverable. This evaluation is based on a number of factors, including the length of time and the extent to which the fair value has been below the cost basis and adverse conditions related specifically to the security, including any changes to the credit rating of the security, and the intent to sell, or whether the Company will more likely than not be required to sell the security before recovery of its amortized cost basis. The assessment of whether a security is other-than-temporarily impaired could change in the future due to new developments or changes in assumptions related to any particular security. As of June 30, 2019 and December 31, 2018, the Company believed the cost basis for available-for-sale investments was recoverable in all material respects.

## NOTE 5. FUTURE ACQUISITION RIGHT AND JOINT DEVELOPMENT AGREEMENT

### Censa Pharmaceuticals Inc.

In December 2017, the Company entered into a Future Acquisition Right and Joint Development Agreement (the "Option Agreement") with Censa, which became effective in January 2018. The Company made an upfront payment of \$10.0 million, agreed to fund certain development activities of Censa's CNSA-001 program which were expected to be approximately \$19.9 million through proof of concept, and paid \$5.0 million related to a development milestone for the right, but not the obligation, to acquire Censa (the "Option") on the terms and subject to the conditions set forth in a separate Agreement and Plan of Merger. The Company capitalized the upfront and milestone payments and expensed the development funding as incurred. The Company treated the upfront payment and milestone payment, both of which were consideration for the Option, as a cost-method investment with a carrying value of \$15.0 million as of June 30, 2019.

If the Company had exercised the Option, the Company would have acquired Censa for an additional \$65.0 million, which would have been reduced by up to \$2.8 million of development funding ("creditable"), paid as a combination of 20% in cash and 80% in shares of the Company's common stock, valued at a fixed price of \$21.40 per share; provided, however, that Censa could have elected on behalf of its equity holders to receive the

upfront consideration in 100% cash if the average price per share of the Company's common stock for the ten trading days ending on the date the Company provided notice of interest to exercise the Option was less than \$19.26. In addition, if the Company had exercised the Option and acquired Censa, the Company would have been required to make further cash payments to Censa's equity holders of up to an aggregate of \$25.0 million if the CNSA-001 program had achieved specified development and commercial milestones.

The Company determined that Censa was a variable interest entity ("VIE"), and concluded that the Company was not the primary beneficiary of the VIE. As such, the Company did not consolidate Censa's results into its consolidated financial statements.

The following table presents the Company's development funding roll-forward through June 30, 2019 and its effect on the upfront consideration if the Company exercised the Option (*in thousands*):

|  | June 30, 2019 |
|--|---------------|
| Non-creditable development funding commitment          | \$ 17,091     |
| Development funding creditable against purchase option | 2,831         |
| <b>Total development funding</b>                       | <b>19,922</b> |
| Development funding paid through June 30, 2019         | 19,308        |
| <b>Development funding payable</b>                     | <b>\$ 614</b> |

In August 2019, following a strategic review of the CNSA-001 program in patients with phenylketonuria (PKU), the Company made the decision to decline to exercise its option to acquire Censa Pharmaceuticals and accordingly discontinue its joint development program for CNSA-001. The Company expects to impair the \$15 million long term investment on the balance sheet during the third quarter of 2019.

## NOTE 6. LEASES

As of January 1, 2019 the Company adopted ASU No. 2016-02, Leases, using a modified retrospective basis method under which prior comparative periods are not restated.

The new standard establishes an ROU model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. In addition, the FASB issued ASU No. 2018-10, Codification Improvements to Topic 842, ASU No. 2018-11, Targeted Improvements, and ASU No. 2018-20, Narrow-Scope Improvements for Lessors, to clarify and amend the guidance in ASU No. 2016-02. The Company has elected the following as practical expedients from within these ASUs: 1) an entity need not reassess whether any expired or existing contracts are or contain leases, 2) an entity need not reassess the lease classification for any expired or existing leases, and 3) an entity need not reassess initial direct costs for any existing leases.

As of January 1, 2019 the Company had a single operating lease for its office located in San Diego, California. The lease was originally signed in July 2016, was amended in July 2017, and is for approximately 45,000 square feet of office space in adjacent buildings. The term of the original lease is 7 years, 7 months, and is coterminous for all space occurring in July 2024. Under the terms of the lease, the Company will pay base annual rent (subject to an annual fixed percentage increase), plus property taxes and other normal and necessary expenses, such as utilities, repairs, security and maintenance. Certain incentives were included in the lease, including approximately \$2.3 million in tenant improvement allowances and seven months of rent abatement. The Company has the right to extend the lease for five years.

As of January 1, 2019 the Company's remaining minimum lease payments and unamortized lease incentives were approximately \$14.0 million and \$1.8 million, respectively. Using a discount rate equal to our borrowing rate of 7.7% and a remaining term of 5 years, 7 months, the Company determined the ROU asset and lease liability as of adoption were \$7.9 million and \$11.3 million, respectively. There was no cumulative adjustment to our beginning accumulated deficit balance.

In March 2019, the company amended the existing office lease to add approximately 16,000 square feet of office space in adjacent buildings; 5,700 square feet has been occupied as of June 30, 2019. The total additional space is expected to be utilized through August 2020 and has future minimum lease payments of approximately \$1.0 million. The Company determined the ROU asset and lease liability were each \$0.4 million for the lease space that has commenced and is occupied as of June 30, 2019.

On April 23, 2019, the Company entered into an office lease with an effective date of April 12, 2019 with Kilroy Realty, L.P. (the "Landlord") for the lease of 77,242 square feet of the building located at 3611 Valley Centre Drive, San Diego, California. The Company expects to use the premises as its new principal corporate offices and plans to consolidate its corporate headquarters into the premises from the current location of multiple suites in adjacent buildings at 3721 and 3661 Valley Centre Drive, San Diego, California. Under the terms of the lease, the Company will have the one time right of first offer on the suites it currently occupies and a general right of first offer to lease additional space from the Landlord in the development. The commencement date of the lease is expected to be October 1, 2020. The initial term of the lease is 7 years, 7 months, and the Landlord has granted the Company an option to extend the term of the lease by a period of 5 years. The aggregate base rent due over the initial term under the terms of the lease is approximately \$36.5 million.

Following is a schedule of the future minimum rental commitments for our operating lease reconciled to the lease liability and ROU assets as of June 30, 2019 (*in thousands*):

|   | June 30, 2019   |
|---|-----------------|
| 2019  | \$ 1,318        |
| 2020  | 2,613           |
| 2021  | 2,486           |
| 2022  | 2,560           |
| 2023  | 2,637           |
| Thereafter  | 1,585           |
| <b>Total undiscounted future minimum payments</b>             | <b>13,199</b>   |
| Present value discount  | (2,278)         |
| <b>Total lease liability</b>                                  | <b>10,921</b>   |
| Lease incentives  | (1,703)         |
| <b>Straight line lease expense in excess of cash payments</b> | <b>(1,622)</b>  |
| <b>Total ROU asset</b>  | <b>\$ 7,596</b> |

As of June 30, 2019, the current and non-current portions of the ROU asset were recorded to the Condensed Consolidated Balance Sheets as follows (*in thousands*):

|   | June 30, 2019   |
|---|-----------------|
| Prepaid expenses and other current assets | \$ 2,170        |
| Other non-current assets                  | 5,426           |
| <b>Total ROU asset</b>                    | <b>\$ 7,596</b> |

As of June 30, 2019, the current and non-current portions of the lease liability were recorded to the Condensed Consolidated Balance Sheets as follows (*in thousands*):

|                                | June 30, 2019    |
|--------------------------------|------------------|
| Other current liabilities      | \$ 2,674         |
| Other non-current liabilities  | 8,247            |
| <b>Total lease liabilities</b> | <b>\$ 10,921</b> |

For the three and six months ended June 30, 2019, the Company recorded \$0.6 million and \$1.3 million in expense related to operating leases, respectively.

## NOTE 7. FAIR VALUE MEASUREMENTS

### *Financial Instruments and Fair Value*

The Company accounts for financial instruments in accordance with ASC 820, *Fair Value Measurements and Disclosures* (“ASC 820”). ASC 820 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy under ASC 820 are described below:

*Level 1* – Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

*Level 2* – Quoted prices in markets that are not active or financial instruments for which all significant inputs are observable, either directly or indirectly; and

*Level 3* – Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

The valuation techniques used to measure the fair value of the Company’s marketable securities and all other financial instruments, all of which have counter-parties with high credit ratings, were valued based on quoted market prices or model driven valuations using significant inputs derived from or corroborated by observable market data. Based on the fair value hierarchy, the Company classified marketable securities within Level 2.

In estimating the fair value of the Company’s contingent consideration, the Company used the Monte Carlo Simulation model as of June 30, 2019 and December 31, 2018. Based on the fair value hierarchy, the Company classified the fair value measurement of contingent consideration within Level 3.

Financial instruments with carrying values approximating fair value include cash and cash equivalents, accounts receivable, and accounts payable, due to their short-term nature. As of June 30, 2019, the estimated fair value of the Company’s 2.5% Convertible Senior Notes due 2025 was \$249.0

million, considering factors such as market conditions, prepayment and make-whole provisions, variability in pricing from multiple lenders and the term of the debt.

The following table presents the Company's assets and liabilities, measured and recognized at fair value on a recurring basis, classified under the appropriate level of the fair value hierarchy as of June 30, 2019 (*in thousands*):

|   | As of June 30, 2019                     |   |   |   |
|---|---|---|---|---|
|   | Total carrying and estimated fair value | Quoted prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
| <b>Assets:</b>  |   |   |   |   |
| Cash and Cash Equivalents                             | \$ 75,657                               | \$ 43,836                                 | \$ 31,821                                     | \$ —                                      |
| Marketable securities, available-for-sale             | 350,243                                 | —   | 350,243                                       | —   |
| <b>Total</b>  | <b>\$ 425,900</b>                       | <b>\$ 43,836</b>                          | <b>\$ 382,064</b>                             | <b>\$ —</b>                               |
| <b>Liabilities:</b>                                   |   |   |   |   |
| Business combination-related contingent consideration | \$ 76,999                               | \$ —                                      | \$ —  | \$ 76,999                                 |
| <b>Total</b>  | <b>\$ 76,999</b>                        | <b>\$ —</b>                               | <b>\$ —</b>                                   | <b>\$ 76,999</b>                          |

The following table presents the Company's assets and liabilities, measured and recognized at fair value on a recurring basis, classified under the appropriate level of the fair value hierarchy as of December 31, 2018 (*in thousands*):

|   | As of December 31, 2018                 |   |   |   |
|---|---|---|---|---|
|   | Total carrying and estimated fair value | Quoted prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
| <b>Assets:</b>  |   |   |   |   |
| Cash and Cash Equivalents                             | \$ 102,873                              | \$ 62,978                                 | \$ 39,895                                     | \$ —                                      |
| Marketable securities, available-for-sale             | 368,668                                 | —   | 368,668                                       | —   |
| <b>Total</b>  | <b>\$ 471,541</b>                       | <b>\$ 62,978</b>                          | <b>\$ 408,563</b>                             | <b>\$ —</b>                               |
| <b>Liabilities:</b>                                   |   |   |   |   |
| Business combination-related contingent consideration | 93,000                                  | —   | —   | 93,000                                    |
| <b>Total</b>  | <b>\$ 93,000</b>                        | <b>\$ —</b>                               | <b>\$ —</b>                                   | <b>\$ 93,000</b>                          |

The following table sets forth a summary of changes in the estimated fair value of the Company's business combination-related contingent consideration for the six months ended June 30, 2019 (*in thousands*):

|   | Fair Value Measurements of Acquisition-Related Contingent Consideration (Level 3) |
|---|---|
| Balance at January 1, 2019  | \$ 93,000   |
| L-UDCA write-off  | (18,000)  |
| Changes in the fair value of contingent consideration                 | 6,522   |
| Contractual payments included in accrued liabilities at June 30, 2019 | (2,269)   |
| Contractual payments  | (2,253)   |
| Foreign currency impact   | (1)   |
| <b>Balance at June 30, 2019</b>                                       | <b>\$ 76,999</b>  |

The key assumptions included in the calculations for contingent consideration were the future number of patients in treatment, projected revenues, discount rate, and the timing of payments. The present value of the expected payments considers the time at which the obligations are expected to be settled and a discount rate that reflects the risk associated with the performance payments.

During the three and six months ended June 30, 2019, the Company recognized \$3.4 million and \$6.5 million, respectively, in operating expense on the Condensed Consolidated Statement of Operations and Comprehensive Loss for the change in fair value of the contingent consideration liabilities. For the six months ended June 30, 2019, \$4.3 million and \$2.2 million of the charges were related to the increase in contingent consideration liabilities for the products Chenodal and Cholbam, respectively. In each case, the value increased due to passage of time. In addition, the Company made a portfolio decision not to pursue further development of its product candidate L-UDCA. The related contingent consideration of \$18.0 million was accordingly considered fully written off. See Note 17 for further discussion.

During the three and six months ended June 30, 2018, the Company incurred charges of \$2.2 million and \$5.8 million, respectively, in operating expenses on the Condensed Consolidated Statements of Operations and Comprehensive Loss for the change in fair value of the contingent consideration liabilities. For the six months ended June 30, 2018, \$1.9 million, \$1.4 million, and \$2.5 million of the charges were related to the

increase in contingent consideration liabilities for the products Chenodal and Cholbam and product candidate L-UDCA, respectively. In each case, the value increased due to passage of time.

## NOTE 8. INTANGIBLE ASSETS

As of June 30, 2019, the net book value of amortizable intangible assets was approximately \$158.9 million.

The following table sets forth amortizable intangible assets as of June 30, 2019 and December 31, 2018 (*in thousands*):

|                                | June 30, 2019     | December 31, 2018 |
|--------------------------------|-------------------|-------------------|
| Finite-lived intangible assets | \$ 237,427        | \$ 255,643        |
| Less: accumulated amortization | (78,521)          | (68,952)          |
| Net carrying value             | <u>\$ 158,906</u> | <u>\$ 186,691</u> |

During the first quarter of 2019, the Company made a portfolio decision not to pursue further development of L-UDCA, acquired in 2016. The related in-progress research and development intangible asset ("IPR&D") of \$25.5 million was accordingly considered fully impaired and written off. As of December 31, 2018, the value of the IPR&D was \$25.5 million. See Note 17 for further discussion.

The following table summarizes amortization expense for the three and six months ended June 30, 2019 and 2018 (*in thousands*):

|                                     | Three Months Ended June 30, |                 | Six Months Ended June 30, |                 |
|-------------------------------------|-----------------------------|-----------------|---------------------------|-----------------|
|                                     | 2019                        | 2018            | 2019                      | 2018            |
| Research and development            | \$ 289                      | \$ 289          | \$ 574                    | \$ 392          |
| Selling, general and administrative | 4,567                       | 4,206           | 9,013                     | 8,302           |
| Total amortization expense          | <u>\$ 4,856</u>             | <u>\$ 4,495</u> | <u>\$ 9,587</u>           | <u>\$ 8,694</u> |

## NOTE 9. CONVERTIBLE NOTES PAYABLE

### Convertible Senior Notes Due 2025

On September 10, 2018, the Company completed its registered underwritten public offering of \$276.0 million aggregate principal amount of 2.50% Convertible Senior Notes due 2025 ("2025 Notes"), and entered into a base indenture and supplemental indenture agreement ("2025 Indenture") with respect to the 2025 Notes. The 2025 Notes will mature on September 15, 2025 ("Maturity Date"), unless earlier repurchased, redeemed, or converted. The 2025 Notes are senior unsecured obligations of the Company and bear interest at an annual rate of 2.50%, payable semi-annually in arrears on March 15 and September 15 of each year. The first payment was made on March 15, 2019.

The composition of the Company's 2025 Notes are as follows (*in thousands*):

|  | June 30, 2019     | December 31, 2018 |
|--|-------------------|-------------------|
| 2.50% convertible senior notes due 2025                                    | \$ 276,000        | \$ 276,000        |
| Unamortized debt discount  | (70,484)          | (74,836)          |
| Unamortized debt issuance costs  | (5,625)           | (6,073)           |
| Total 2025 Notes, net of unamortized debt discount and debt issuance costs | <u>\$ 199,891</u> | <u>\$ 195,091</u> |

The net proceeds from the issuance of the 2025 Notes were approximately \$267.2 million, after deducting commissions and the offering expenses payable by the Company. A portion of the net proceeds from the 2025 Notes was used by the Company to repurchase \$23.4 million aggregate principal amount of its then-outstanding 4.5% senior convertible notes due in 2019 in privately-negotiated transactions.

Holders may convert their 2025 Notes at their option only in the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on December 31, 2018 (and only during such calendar quarter), if the last reported sale price per share of the Company's common stock for each of at least 20 trading days, whether or not consecutive, during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter exceeds 130% of the conversion price on the applicable trading day; (2) during the five consecutive business days immediately after any 10 consecutive trading day period ("measurement period") if the trading price per \$1,000 principal amount of 2025 Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of the Company's common stock on such trading day and the conversion rate on such trading day; (3) upon the occurrence of certain corporate events or distributions on the Company's common stock; (4) if the Company calls the 2025 Notes for redemption; and (5) at any time from, and including, May 15, 2025 until the close of business on the scheduled trading day immediately before the Maturity Date. The Company will settle conversions by paying or delivering, as applicable, cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock, at the Company's election, based on the applicable conversion rate.



The initial conversion rate for the 2025 Notes is 25.7739 shares of the Company's common stock per \$1,000 principal amount of 2025 Notes, which represents an initial conversion price of approximately \$38.80 per share. If a "make-whole fundamental change" (as defined in the 2025 Indenture) occurs, then the Company will, in certain circumstances, increase the conversion rate for a specified period of time.

The 2025 Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after September 15, 2022 and, in the case of any partial redemption, on or before the 40th scheduled trading day before the Maturity Date, at a cash redemption price equal to the principal amount of the 2025 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price on each of at least 20 trading days during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice. If a fundamental change (as defined in the 2025 Indenture) occurs, then, subject to certain exceptions, holders may require the Company to repurchase their 2025 Notes at a cash repurchase price equal to the principal amount of the 2025 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date.

In the event of conversion, holders would forgo all future interest payments, any unpaid accrued interest and the possibility of further stock price appreciation. Upon the receipt of conversion requests, the settlement of the 2025 Notes will be paid pursuant to the terms of the 2025 Indenture. In the event that all of the 2025 Notes are converted, the Company would be required to repay the \$276.0 million principal amount and any conversion premium in any combination of cash and shares of its common stock at the Company's option. In addition, calling the 2025 Notes for redemption will constitute a "make whole fundamental change."

The 2025 Notes are the Company's general unsecured obligations that rank senior in right of payment to all of its indebtedness that is expressly subordinated in right of payment to the 2025 Notes, and equal in right of payment to the Company's unsecured indebtedness.

The 2025 Notes are currently classified on the Company's Condensed Consolidated Balance Sheets at June 30, 2019 as long-term debt.

Under ASC 470-20, Debt with Conversion and Other Options, an entity must separately account for the liability and equity components of convertible debt instruments (such as the 2025 Notes) that may be settled entirely or partially in cash upon conversion, in a manner that reflects the issuer's economic interest cost. The liability component of the instrument is valued in a manner that reflects the market interest rate for a similar nonconvertible instrument at the date of issuance. The initial carrying value of the liability component was \$198.6 million. The equity component of \$77.4 million, representing the conversion option, was determined by deducting the fair value of the liability component from the par value of the 2025 Notes and is recorded in additional paid-in capital on the consolidated balance sheet at the issuance date. That equity component is treated as a discount on the liability component of the 2025 Notes, which is amortized over the seven year term of the 2025 Notes using the effective interest rate method. The equity component is not re-measured as long as it continues to meet the conditions for equity classification. The Company allocated the total transaction costs of approximately \$8.8 million related to the issuance of the 2025 Notes to the liability and equity components of the 2025 Notes based on their relative values. Transaction costs attributable to the liability component are amortized to interest expense over the seven-year term of the 2025 Notes, and transaction costs attributable to the equity component are netted with the equity component in stockholders' equity.

The effective interest rate on the liability components of the 2025 Notes for the period from the date of issuance through June 30, 2019 was 7.7%. The following table sets forth total interest expense recognized related to the 2025 Notes (*in thousands*):

|   | Three Months Ended June 30, |      | Six Months Ended June 30, |      |
|---|-----------------------------|------|---------------------------|------|
|   | 2019                        | 2018 | 2019                      | 2018 |
| Contractual interest expense              | \$ 1,725                    | \$ — | \$ 3,450                  | \$ — |
| Amortization of debt discount             | 2,197                       | —    | 4,352                     | —    |
| Amortization of debt issuance costs       | 224                         | —    | 448                       | —    |
| Total interest expense for the 2025 Notes | \$ 4,146                    | \$ — | \$ 8,250                  | \$ — |

The 2025 Notes do not contain any financial or operating covenants or any restrictions on the payment of dividends, the issuance of other indebtedness or the issuance or repurchase of securities by the Company. The 2025 Indenture contains customary events of default with respect to the 2025 Notes, including that upon certain events of default, 100% of the principal and accrued and unpaid interest on the 2025 Notes will automatically become due and payable.

### Senior Convertible Notes Due 2019

On May 29, 2014, the Company entered into a Note Purchase Agreement relating to a private placement by the Company of \$46.0 million aggregate principal amount of 4.50% senior convertible notes due in 2019 (the "2019 Notes") which were convertible into shares of the Company's common stock at an initial conversion price of \$17.41 per share. The conversion price was subject to customary anti-dilution protection. The 2019 Notes bore interest at a rate of 4.5% per annum, payable semiannually in arrears on May 15 and November 15 of each year. The 2019 Notes had a maturity date of May 30, 2019 and there were no contractual payments due prior to that date.

In September 2018, the Company used part of the net proceeds from the issuance of the 2025 Notes to repurchase \$23.4 million aggregate principal amount of the 2019 Notes in privately-negotiated transactions for approximately \$40.2 million in cash. The partial repurchase of the 2019 Notes resulted in a \$17.0 million loss on early extinguishment of debt in September 2018.

In May 2019, the remaining \$22.6 million outstanding principal amount of 2019 Notes was converted by the holders thereof into approximately 1.3 million shares of common stock.

The composition of the Company's 2019 Notes at December 31, 2018 was as follows (*in thousands*):

|  | <b>December 31, 2018</b> |
|--|--------------------------|
| 4.50% senior convertible notes due 2019                                    | \$ 22,590                |
| Unamortized debt discount  | (125)                    |
| Unamortized debt issuance costs  | (8)                      |
| Total 2019 Notes, net of unamortized debt discount and debt issuance costs | <u>\$ 22,457</u>         |

## NOTE 10. ACCRUED EXPENSES

Accrued expenses at June 30, 2019 and December 31, 2018 consisted of the following (*in thousands*):

|  | <b>June 30, 2019</b> | <b>December 31, 2018</b> |
|--|----------------------|--------------------------|
| Government rebates payable                     | \$ 6,024             | \$ 8,464                 |
| Compensation related costs                     | 10,122               | 10,446                   |
| Accrued royalties and contingent consideration | 6,912                | 6,805                    |
| Research and development                       | 21,011               | 16,515                   |
| Selling, general and administrative            | 3,422                | 2,990                    |
| Miscellaneous accrued                          | 3,066                | 4,475                    |
| Total accrued expenses                         | <u>\$ 50,557</u>     | <u>\$ 49,695</u>         |

## NOTE 11. LOSS PER COMMON SHARE

Basic and diluted net loss per common share is calculated by dividing net loss applicable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration of common stock equivalents. The Company's potentially dilutive shares, which include outstanding stock options, restricted stock units, warrants, and shares issuable upon conversion of the 2019 Notes and 2025 Notes, are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive.

Basic and diluted net loss per share is calculated as follows (*net loss amounts are stated in thousands*):

|                                  | <b>Three Months Ended June 30,</b> |                 |            |               |                 |            |
|----------------------------------|------------------------------------|-----------------|------------|---------------|-----------------|------------|
|                                  | <b>2019</b>                        |                 |            | <b>2018</b>   |                 |            |
|                                  | <b>Shares</b>                      | <b>Net Loss</b> | <b>EPS</b> | <b>Shares</b> | <b>Net Loss</b> | <b>EPS</b> |
| Basic and diluted loss per share | 41,957,860                         | \$ (38,701)     | \$ (0.92)  | 40,061,045    | \$ (22,329)     | \$ (0.56)  |

|                                  | <b>Six Months Ended June 30,</b> |                 |            |               |                 |            |
|----------------------------------|----------------------------------|-----------------|------------|---------------|-----------------|------------|
|                                  | <b>2019</b>                      |                 |            | <b>2018</b>   |                 |            |
|                                  | <b>Shares</b>                    | <b>Net Loss</b> | <b>EPS</b> | <b>Shares</b> | <b>Net Loss</b> | <b>EPS</b> |
| Basic and diluted loss per share | 41,685,599                       | \$ (79,678)     | \$ (1.91)  | 39,641,334    | \$ (40,707)     | \$ (1.03)  |

The following common stock equivalents have been excluded because they were anti-dilutive (*in thousands*):

|                            | <b>Three Months Ended June 30,</b> |               | <b>Six Months Ended June 30,</b> |               |
|----------------------------|------------------------------------|---------------|----------------------------------|---------------|
|                            | <b>2019</b>                        | <b>2018</b>   | <b>2019</b>                      | <b>2018</b>   |
| Restricted stock units     | 650                                | 350           | 600                              | 250           |
| Convertible debt           | 7,900                              | 2,600         | 8,200                            | 2,600         |
| Options                    | 7,950                              | 7,200         | 7,800                            | 7,100         |
| Warrants                   | —                                  | 450           | —                                | 550           |
| Total anti-dilutive shares | <u>16,500</u>                      | <u>10,600</u> | <u>16,600</u>                    | <u>10,500</u> |

## NOTE 12. COMMITMENTS AND CONTINGENCIES

### *Research Collaboration and Licensing Agreements*

As part of the Company's research and development efforts, the Company enters into research collaboration and licensing agreements with unrelated companies, scientific collaborators, universities, and consultants. These agreements contain varying terms and provisions which include fees and milestones to be paid by the Company, services to be provided, and ownership rights to certain proprietary technology developed under the agreements. Some of these agreements contain provisions which require the Company to pay royalties, in the event the Company sells or licenses any proprietary products developed under the respective agreements.

### **Legal Proceedings**

In August 2017, Martin Shkreli, the Company's former Chief Executive Officer, was convicted on securities fraud charges following investigations by the U.S. Attorney for the Eastern District of New York and the U.S. Securities and Exchange Commission. Mr. Shkreli appealed his conviction to the United States Court of Appeals for the Second Circuit, and in July 2019, the Court of Appeals affirmed his conviction. In connection with the trial and appeal proceedings, the Company advanced a portion of Mr. Shkreli's legal fees, of which \$3.8 million was reimbursed by its directors' and officers' insurance carriers. Pending the outcome of Mr. Shkreli's appeal, the insurance carriers reserved their rights to assert that certain of the advanced funds pertain to claims excluded from coverage under the relevant insurance policy and are therefore recoverable by the carriers, and therefore the final amount of the reimbursement from the insurance carriers is not currently estimable.

As previously disclosed, in August 2015, the Company filed a lawsuit in federal district court for the Southern District of New York against Mr. Shkreli, asserting that he breached his fiduciary duty of loyalty during his previous tenure as the Company's Chief Executive Officer and a member of its Board of Directors. Mr. Shkreli subsequently initiated a JAMS arbitration against the Company claiming that the Company breached his December 2013 employment agreement. The Company asserted counterclaims in the arbitration that were substantially similar to the claims it previously asserted in the federal lawsuit. In February 2019, Mr. Shkreli amended his arbitration demand to add a claim relating to an October 2014 summary separation proposal. After the arbitration panel determined that Mr. Shkreli could not bring claims against Stephen Aselage, Margaret Valeur-Jensen, and Gary Lyons before JAMS for lack of jurisdiction, Mr. Shkreli brought suit against them in federal court for the Southern District of New York in May 2019 (SDNY Action). The hearing on the merits before the JAMS arbitration panel was scheduled to commence in June 2019.

In advance of the scheduled arbitration hearing on the above-referenced claims and counterclaims, the Company and Mr. Shkreli reached a comprehensive settlement covering all of the disputes between them and Mr. Aselage, Dr. Valeur-Jensen, and Mr. Lyons as of such time and on June 17, 2019, the Company and Mr. Shkreli entered into a Settlement Agreement memorializing such terms. Under the terms of the Settlement Agreement, each of the parties' pending claims and counterclaims was dismissed with prejudice (and Mr. Shkreli dismissed, with prejudice, the SDNY Action), and the parties, including Retrophin on behalf of Mr. Aselage, Dr. Valeur-Jensen, and Mr. Lyons, granted one another a broad mutual release of claims. Mr. Shkreli also agreed to extinguish his rights to future advancement of legal fees and indemnification by the Company (other than for certain pending litigation), and to abide by certain standstill restrictions and the Company made an undisclosed cash payment to Mr. Shkreli.

In October 2018, Spring Pharmaceuticals, LLC (Spring) filed a lawsuit against the Company, Martin Shkreli, Mission Pharmacal Company and Alamo Pharma Services, Inc. in the United States District Court for the Eastern District of Pennsylvania alleging that the Company violated various federal and state antitrust and unfair competition laws by allegedly refusing to sell samples of the Thiola® brand drug so that Spring can conduct the bioequivalence testing needed to submit an ANDA to the FDA for approval to market a generic version of the product. Spring is seeking injunctive relief and damages. The Company intends to vigorously defend against Spring's claims. In January 2019, the Company filed a motion to dismiss the lawsuit. In April 2019, the Court stayed the Company's motion to dismiss to allow for discovery limited to the question of whether Spring has standing to sue, which has been largely completed. No amounts have been accrued related to this matter and the outcome cannot be determined.

The Company is not aware of any other proceedings or claims that could have, individually or in the aggregate, a material adverse effect on its results of operations or financial condition.

## NOTE 13. SHARE BASED COMPENSATION

### Restricted Shares

#### Service Based Restricted Stock Units

The following table summarizes the Company's service based restricted stock unit activity during the six months ended June 30, 2019:

|                            | Number of Restricted<br>Stock Units | Weighted Average<br>Grant Date Fair Value |
|----------------------------|-------------------------------------|---|
| Unvested December 31, 2018 | 400,426                             | \$ 24.95                                  |
| Granted                    | 395,015                             | 18.89                                     |
| Vested                     | (124,120)                           | 24.25                                     |
| Forfeited/canceled         | (13,126)                            | 23.26                                     |
| Unvested June 30, 2019     | 658,195                             | \$ 21.48                                  |

At June 30, 2019, unamortized stock compensation for service based restricted stock units was \$12.9 million, with a weighted-average recognition period of 3.3 years.

#### Performance Based Restricted Stock Units

The following table summarizes the Company's performance based restricted stock unit activity during the six months ended June 30, 2019:

|                            | Number of Restricted<br>Stock Units | Weighted Average<br>Grant Date Fair Value |
|----------------------------|-------------------------------------|---|
| Unvested December 31, 2018 | 226,750                             | \$ 21.54                                  |
| Granted                    | 80,000                              | 21.32                                     |
| Vested                     | —                                   | —   |
| Forfeited/canceled         | —                                   | —   |
| Unvested June 30, 2019     | 306,750                             | \$ 21.48                                  |

At June 30, 2019, unamortized stock compensation for performance based restricted stock units was \$1.9 million, with a weighted-average recognition period of 1.0 years.

### Stock Options

The following table summarizes stock option activity during the six months ended June 30, 2019:

|                                  | Shares Underlying<br>Options | Weighted Average<br>Exercise Price | Weighted Average<br>Remaining<br>Contractual Life<br>(years) | Aggregate Intrinsic<br>Value (in<br>thousands) |
|----------------------------------|------------------------------|------------------------------------|--|--|
| Outstanding at December 31, 2018 | 7,277,337                    | \$18.55                            | 6.94   | \$ 40,650                                      |
| Granted                          | 1,188,625                    | \$20.03                            |  |  |
| Exercised                        | (24,527)                     | \$12.92                            |  |  |
| Forfeited/canceled               | (852,000)                    | \$11.06                            |  |  |
| Outstanding at June 30, 2019     | 7,589,435                    | \$19.64                            | 7.13   | \$ 21,722                                      |

At June 30, 2019, unamortized stock compensation for stock options was \$34.1 million, with a weighted-average recognition period of 2.9 years.

At June 30, 2019, outstanding options to purchase 4.8 million shares of common stock were exercisable with a weighted-average exercise price per share of \$18.62.

## Share Based Compensation

The following table sets forth total stock-based compensation for the three and six months ended June 30, 2019 and 2018 (*in thousands*):

|                                   | Three Months Ended June 30, |          | Six Months Ended June 30, |           |
|-----------------------------------|-----------------------------|----------|---------------------------|-----------|
|                                   | 2019                        | 2018     | 2019                      | 2018      |
| Research and development          | \$ 1,896                    | \$ 1,582 | \$ 3,566                  | \$ 2,989  |
| Selling, general & administrative | 3,852                       | 3,844    | 8,702                     | 7,046     |
| Total                             | \$ 5,748                    | \$ 5,426 | \$ 12,268                 | \$ 10,035 |

## Exercise of Warrants

The Company issued 255,445 and 424,057 shares of common stock upon the exercise of outstanding warrants during the three and six months ended June 30, 2018, respectively, for cash received by the Company in the amount of \$1.5 million and \$2.1 million, respectively. As of June 30, 2019 and December 31, 2018, there were no warrants outstanding or exercisable.

## NOTE 14. INCOME TAXES

The following table summarizes our effective tax rate and income tax expense for the three and six months ended June 30, 2019 and 2018 (*dollars in millions*):

|                    | Three Months Ended June 30, |          | Six Months Ended June 30, |          |
|--------------------|-----------------------------|----------|---------------------------|----------|
|                    | 2019                        | 2018     | 2019                      | 2018     |
| Effective tax rate | (0.2)%                      | (0.8)%   | (0.6)%                    | (1.0)%   |
| Income tax expense | \$ (0.1)                    | \$ (0.2) | \$ (0.5)                  | \$ (0.4) |

## NOTE 15. INVENTORY

Inventory, net of reserves, consisted of the following at June 30, 2019 and December 31, 2018 (*in thousands*):

|                 | June 30, 2019 | December 31, 2018 |
|-----------------|---------------|-------------------|
| Raw materials   | \$ 4,220      | \$ 4,689          |
| Finished goods  | 830           | 930               |
| Total inventory | \$ 5,050      | \$ 5,619          |

The inventory reserve was \$2.0 million and \$1.8 million at June 30, 2019 and December 31, 2018, respectively.

## NOTE 16. ACCOUNTS RECEIVABLE

Accounts receivable, net of reserves for prompt pay discounts and doubtful accounts, was \$15.5 million and \$12.7 million at June 30, 2019 and December 31, 2018, respectively. The total reserves for both periods were immaterial.

## NOTE 17. DISPOSITIONS

In June 2016, the Company acquired certain rights to its product candidate L-UDCA for \$0.5 million cash. At the same time the Company established a related non-cash asset of \$25.5 million for IPR&D and a liability of \$25.0 million for contingent consideration related net sales royalties and milestones. As a result of our quarterly valuation update process during 2016 and 2017, the contingent liability was decreased by \$2.3 million and \$5.7 million, respectively, and increased by \$1.0 million during 2018. The resulting balance of the L-UDCA contingent liability at December 31, 2018 was \$18.0 million.

During the first quarter of 2019, the Company elected to discontinue development of the L-UDCA program, resulting in the write off of the intangible asset of \$25.5 million originally recorded in 2016, and the reversal of associated contingent consideration of \$18.0 million. This resulted in a net \$7.5 million non-cash charge to first quarter operations.

## NOTE 18. SUBSEQUENT EVENT

In August 2019, following a strategic review of the CNSA-001 program in patients with phenylketonuria (PKU), the Company made the decision to decline to exercise its option to acquire Censa Pharmaceuticals and accordingly discontinue its joint development program for CNSA-001. The Company expects to impair the \$15 million long term investment on the balance sheet during the third quarter of 2019.

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

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and the audited financial statements and notes thereto as of and for the year ended December 31, 2018 and the related Management’s Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K for the year ended December 31, 2018, filed with the Securities and Exchange Commission (SEC) on February 26, 2019. Past operating results are not necessarily indicative of results that may occur in future periods.*





### **Forward-Looking Statements**

*The information in this discussion contains forward-looking statements and information within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which are subject to the “safe harbor” created by those sections. These forward-looking statements include, but are not limited to, statements concerning our strategy, future operations, future financial position, future revenues, projected costs, prospects and plans and objectives of management. The words “anticipates,” “believes,” “estimates,” “expects,” “intends,” “may,” “plans,” “projects,” “will,” “would” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. These statements are inherently uncertain and you are cautioned not to unduly rely upon these statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those in the forward-looking statements, including, without limitation, the risks set forth in Part II, Item IA, “Risk Factors” in this Quarterly Report on Form 10-Q and in our other filings with the SEC. The forward-looking statements are applicable only as of the date on which they are made, and we do not assume any obligation to update any forward-looking statements.*

## Overview

We are a biopharmaceutical company headquartered in San Diego, California, focused on identifying, developing and delivering life-changing therapies to people living with rare diseases.

## Our Product Candidates and Approved Products

| Program / Product  | Indication        | Preclinical | Phase 1 | Phase 2 | Phase 3 | Approved |
|--|-------------------|-------------|---------|---------|---------|----------|
| Fosmetpantotenate (RE-024)   | PKAN              |             |         |         |         |          |
| Sparsentan (RE-021)  | FSGS              |             |         |         |         |          |
|  | IgAN              |             |         |         |         |          |
| NGLY1 Collaboration  | NGLY1 Deficiency  |             |         |         |         |          |
| ALGS Collaboration   | Alagille Syndrome |             |         |         |         |          |
|   |                   |             |         |         |         |          |
|    |                   |             |         |         |         |          |
|   |                   |             |         |         |         |          |

We are developing the following pipeline products:

### Fosmetpantotenate

We are developing fosmetpantotenate, a novel small molecule, as a potential treatment for pantothenate kinase-associated neurodegeneration (“PKAN”). PKAN is a genetic neurodegenerative disorder that is typically diagnosed in the first decade of life. Symptoms of PKAN include dystonia, dysarthria, rigidity, retinal degeneration, and severe digestive problems. PKAN is estimated to affect up to 5,000 patients worldwide. There are currently no viable treatment options for patients with PKAN. Fosmetpantotenate is a phosphopantothenate replacement therapy that aims to restore levels of this key substrate in PKAN patients. Certain international health regulators have approved the initiation of dosing fosmetpantotenate in PKAN patients under physician-initiated studies in accordance with local regulations in their respective countries.

In 2015 and 2016 we filed a U.S. Investigational New Drug application (“IND”), completed the Phase I clinical trials and obtained both orphan drug and fast track designation in the United States. Additionally, we received orphan drug designation in the European Union and reached an agreement with the FDA under the Special Protocol Assessment (“SPA”) process for a Phase 3 clinical trial for PKAN.

In the fourth quarter of 2018, the pivotal Phase 3 FORT Study of fosmetpantotenate in PKAN completed patient enrollment. The FORT Study is designed to be registration-enabling in the U.S. and Europe, and we expect top-line data to become available during the third quarter of 2019.

### Sparsentan

Sparsentan is an investigational product candidate with a dual mechanism of action, a potent angiotensin receptor blocker (“ARB”) and selective endothelin receptor antagonist (“ERA”), with in vitro selectivity toward endothelin receptor type A. We have secured a license to sparsentan from Ligand Pharmaceuticals, Inc. and Bristol-Myers Squibb (who referred to it as DARA). Sparsentan is currently being evaluated in two pivotal Phase 3 clinical studies in the following indications:

- Focal segmental glomerulosclerosis ("FSGS"), a leading cause of end-stage renal disease and nephrotic syndrome ("NS"). There are currently no FDA approved pharmacologic treatments for FSGS and off-label treatments are limited to ACE/ARBs, steroids, and immunosuppressant agents, which are effective in only a subset of patients. Every year approximately 5,400 patients are diagnosed with FSGS and we estimate that there are up to 40,000 FSGS patients in the United States with approximately half of them being candidates for sparsentan. In 2015 and 2016 we received orphan drug designation in the United States and European Union and generated positive data from our Phase 2 DUET study of sparsentan for the treatment of FSGS. In the second quarter of 2018, we announced the initiation of the Phase 3 DUPLEX Study of sparsentan in FSGS, and enrollment continues. This pivotal DUPLEX Study is designed to include an interim analysis of modified partial remission of proteinuria. We expect that successful achievement of this endpoint will serve as the basis for submission of a New Drug Application ("NDA") for sparsentan for the treatment of FSGS under the Subpart H accelerated approval pathway in the United States and Conditional Marketing Authorization ("CMA") consideration in Europe. The confirmatory endpoint of the study will compare changes in slope of estimated glomerular filtration rate ("eGFR"). Top-line data from the interim analysis are expected to become available in the first half of 2021.
- Immunoglobulin A nephropathy ("IgAN") is characterized by hematuria, proteinuria, and variable rates of progressive renal failure. With an estimated prevalence of more than 100,000 people in the United States and greater numbers in Europe and Asia, IgAN is the most common primary glomerular disease. Most patients are diagnosed between the ages of 16 and 35, with up to 40% progressing to end stage renal disease within 15 years. There are currently no FDA approved treatments for IgAN. The current standard of care is renin-angiotensin-aldosterone system ("RAAS") blockade with immunosuppression also being commonly used for patients with significant proteinuria or rapidly progressive glomerulonephritis. In the fourth quarter of 2018, we announced that the first patient had been dosed in the PROTECT Study, a global, pivotal Phase 3 clinical trial evaluating the long-term nephroprotective potential of sparsentan for the treatment of IgAN. The primary efficacy endpoint in the PROTECT Study is the change in proteinuria (urine protein-to-creatinine ratio) from baseline after 36 weeks of treatment. We expect that successful achievement of this endpoint will serve as the basis for submission of an NDA for sparsentan for the treatment of IgAN under the Subpart H accelerated approval pathway in the U.S. and CMA consideration in Europe. Secondary efficacy endpoints include change in eGFR from baseline to four weeks post-cessation of randomized treatment, as well as the rate of change in eGFR over 52-week and 104-week periods following the first six weeks of randomized treatment. Top-line data from the primary endpoint are expected to become available in the first half of 2022.

### **NGLY1 Collaboration**

NGLY1 deficiency, is an extremely rare genetic disorder believed to be caused by a deficiency in an enzyme called N-glycanase-1, which is encoded by the gene NGLY1. The condition is characterized by symptoms such as developmental delays, seizures, complex hyperkinetic movement disorders, diminished reflexes and an inability to produce tears. There are no approved therapeutic options for NGLY1 deficiency, and current therapeutic strategies are limited to symptom management.

In September 2017, we entered into a three-way Cooperative Research and Development Agreement ("CRADA") with the National Institutes of Health's National Center for Advancing Translational Sciences ("NCATS") and patient advocacy foundation NGLY1.org to collaborate on research efforts aimed at the identification of potential small molecule therapeutics for NGLY1 deficiency.

### **Alagille Collaboration**

Alagille syndrome ("ALGS"), is a rare genetic disorder that can affect the liver, heart, skeleton, eyes and kidneys. Symptoms and severity of ALGS can vary greatly from one person to another. Symptoms often develop during the first three months of life and include interrupted bile flow (cholestasis), jaundice, poor weight gain and growth, and severe itching (pruritis). ALGS is an autosomal dominant disorder or can occur spontaneously. According to the National Organization for Rare Disorders ("NORD"), the estimated incidence of ALGS is between 1 in 30,000 and 1 in 45,000 births. There are currently no approved therapies for ALGS.

In June 2019, we announced that we entered into a three-way CRADA with NCATS and patient advocacy foundation Alagille Syndrome Alliance ("ALGSA") to collaborate on research efforts aimed at the identification and development of potential therapeutics for ALGS.

### ***We sell the following three products:***

#### **Chenodal® (chenodiol tablets)**

Chenodal is a synthetic oral form of chenodeoxycholic acid, a naturally occurring primary bile acid synthesized from cholesterol in the liver, indicated for the treatment of radiolucent stones in well-opacifying gallbladders in patients in whom selective surgery would be undertaken except for the presence of increased surgical risk due to systemic disease or age.

Chenodal administration is known to reduce biliary cholesterol and the dissolution of radiolucent gallstones through suppression of hepatic synthesis of cholesterol, cholic acid and deoxycholic acid in the bile pool. Chenodal was first approved by the U.S. Food and Drug Administration ("FDA") in 1983 for the management of gallstones but its marketing was later discontinued due to lack of commercial success. In 2009, Nexgen Pharma Inc.'s Abbreviated New Drug Application ("ANDA") for Chenodal was approved by the FDA for the treatment of gallstones. Chenodal is manufactured under this ANDA. In 2010, Chenodal was granted orphan drug designation for the treatment of cerebrotendinous xanthomatosis ("CTX"), a rare autosomal recessive lipid storage disease. We acquired Chenodal in March 2014.

While Chenodal is not labeled for CTX, it has been used as the standard of care for over three decades. We are working to obtain FDA approval of Chenodal for the treatment of CTX. The prevalence of CTX is estimated in the literature to be as high as 1 in 70,000 in the overall population. Pathogenesis of CTX involves deficiency of the enzyme 27-hydroxylase (encoded by the gene CYP27A1), a rate-limiting enzyme in the synthesis of



primary bile acids, including chenodeoxycholic acid ("CDCA"), from cholesterol. The disruption of primary bile acid synthesis in CTX leads to toxic accumulation of cholesterol and cholestanol in most tissues. Most patients present with intractable diarrhea, premature cataracts, tendon xanthomas, atherosclerosis, and cardiovascular disease in childhood and adolescence. Neurological manifestations of the disease, including dementia and cognitive and cerebellar deficiencies, emerge during late adolescence and adulthood. Oral administration of CDCA has been shown to normalize primary bile acid synthesis in patients with CTX.

### Cholbam® (cholic acid capsules)

The FDA approved Cholbam (cholic acid capsules) in March 2015, the first FDA approved treatment for pediatric and adult patients with bile acid synthesis disorders due to single enzyme defects, and for adjunctive treatment of patients with peroxisomal disorders (including Zellweger spectrum disorders). The effectiveness of Cholbam has been demonstrated in clinical trials for bile acid synthesis disorders and the adjunctive treatment of peroxisomal disorders. An estimated 200 to 300 patients are current candidates for therapy.

Kolbam, the branded name of Cholbam in Europe, is indicated in Europe for the treatment of certain inborn errors of primary bile acid synthesis, encompassing select single enzyme defects, in infants from one month of age for continuous lifelong treatment through adulthood.

### Thiola® (tiopronin)

Thiola is approved by the FDA for the treatment of cystinuria, a rare genetic cystine transport disorder that causes high cystine levels in the urine and the formation of recurring kidney stones. The resulting long-term damage can cause loss of kidney function in addition to substantial pain and loss of productivity associated with renal colic and stone passage. The prevalence of cystinuria in the United States is estimated to be 10,000 to 12,000, indicating that there may be as many as 4,000 to 5,000 affected individuals with cystinuria in the United States that would be candidates for Thiola.

In June 2019, we announced that the FDA approved 100 mg and 300 mg tablets of THIOLA® EC (tiopronin), a new enteric-coated formulation of THIOLA® (tiopronin). THIOLA EC became available to patients in July 2019 and the original formulation also remains available to patients.

### Pipeline portfolio changes:

During the first quarter of 2019, the Company elected to discontinue development of the L-UDCA program, resulting in removing the intangible asset of \$25.5 million, originally recorded in 2016, and the related \$18.0 million in contingent liability. This resulted in a net \$7.5 million non-cash charge to first quarter operations. In June 2016, the Company acquired certain rights to its product candidate L-UDCA for \$0.5 million cash. At the same time the Company established a related non-cash asset of \$25.5 million and liability of \$25.0 million for IPR&D and contingent consideration (deferred financing) related net sales royalties and milestones. As a result of our quarterly valuation update process during 2016 and 2017, the contingent liability was decreased by \$2.3 million and \$5.7 million, respectively, and increased by \$1.0 million during 2018. The resulting balance of the L-UDCA contingent liability at December 31, 2018 was \$18.0 million.

In August 2019, following a strategic review of the CNSA-001 program in patients with phenylketonuria (PKU), the Company made the decision to decline to exercise its option to acquire Censa Pharmaceuticals and accordingly discontinue its joint development program for CNSA-001. The Company expects to impair the \$15 million long term investment on the balance sheet during the third quarter of 2019.

## Results of Operations

### Results of operations for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018.

#### Net Product Sales:

The following table provides information regarding net product sales (*in thousands*):

|                                  | Three Months Ended June 30, |           |          | Six Months Ended June 30, |           |          |
|----------------------------------|-----------------------------|-----------|----------|---------------------------|-----------|----------|
|                                  | 2019                        | 2018      | Change   | 2019                      | 2018      | Change   |
| Net product revenues by product: |                             |           |          |                           |           |          |
| Bile acid products               | \$ 20,929                   | \$ 18,594 | \$ 2,335 | \$ 39,319                 | \$ 37,102 | \$ 2,217 |
| Thiola                           | 23,778                      | 22,743    | 1,035    | 44,958                    | 42,667    | 2,291    |
| Total net product revenues       | \$ 44,707                   | \$ 41,337 | \$ 3,370 | \$ 84,277                 | \$ 79,769 | \$ 4,508 |

The sales increase for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018 was due to increased patient counts, as well as the normal fluctuations in timing of new patient starts and prescription refills.

## Operating Expenses:

The following table provides information regarding operating expenses (*in thousands*):

|  | Three Months Ended June 30, |                  |                  | Six Months Ended June 30, |                   |                  |
|--|-----------------------------|------------------|------------------|---------------------------|-------------------|------------------|
|  | 2019                        | 2018             | Change           | 2019                      | 2018              | Change           |
| Cost of goods sold                               | \$ 979                      | \$ 1,178         | \$ (199)         | \$ 1,996                  | \$ 2,791          | \$ (795)         |
| Research and development                         | 37,934                      | 34,460           | 3,474            | 71,377                    | 59,096            | 12,281           |
| Selling, general and administrative              | 38,970                      | 25,100           | 13,870           | 71,639                    | 51,568            | 20,071           |
| Change in fair value of contingent consideration | 3,353                       | 2,159            | 1,194            | 6,522                     | 5,786             | 736              |
| Impairment of L-UDCA IPR&D intangible asset      | —                           | —                | —                | 25,500                    | —                 | 25,500           |
| Write off of L-UDCA contingent consideration     | —                           | —                | —                | (18,000)                  | —                 | (18,000)         |
|  | <u>\$ 81,236</u>            | <u>\$ 62,897</u> | <u>\$ 18,339</u> | <u>\$ 159,034</u>         | <u>\$ 119,241</u> | <u>\$ 39,793</u> |

### Research and development expenses

We make significant investments in research and development in support of our development programs. Research and development costs are expensed as incurred and include salaries and bonuses, benefits, non-cash share based compensation, license fees, costs paid to third-party contractors to perform research, conduct clinical trials, and develop drug materials, and associated overhead expenses and facility costs.

For the three and six months ended June 30, 2019 as compared to the three and six months ended June 30, 2018, the Company increased its research and development expenses by \$3.5 million and \$12.3 million, respectively, which is due to increased clinical trial expenses related to our three on-going Phase 3 studies, fosmetpantotenate in PKAN and sparsentan in FSGS and IgAN.

### Selling, general and administrative expenses

Selling, general and administrative expenses include salaries and bonuses, benefits, non-cash share based compensation, professional fees, rent, depreciation and amortization, travel, insurance, business development, sales and marketing programs, and other operating expenses.

For the three and six months ended June 30, 2019 as compared to the three and six months ended June 30, 2018, the Company increased its selling, general and administrative expenses by \$13.9 million and \$20.1 million, respectively, due to compensation expense, primarily as a result of a larger employee base, and increased legal expenses.

### Change in the valuation of contingent consideration

For the three and six months ended June 30, 2019 as compared to the three and six months ended June 30, 2018, the change in fair value of contingent consideration is due to timing of payments for Chenodal and Cholbam.

The following table summarizes the Company's change in valuation of contingent consideration (*in thousands*):

|  | Three Months Ended June 30, |                 |                 | Six Months Ended June 30, |                 |               |
|--|-----------------------------|-----------------|-----------------|---------------------------|-----------------|---------------|
|  | 2019                        | 2018            | Change          | 2019                      | 2018            | Change        |
| Chenodal   | \$ 2,741                    | \$ 1,107        | \$ 1,634        | \$ 4,280                  | \$ 1,908        | \$ 2,372      |
| Cholbam  | 612                         | (458)           | 1,070           | 2,242                     | 1,378           | 864           |
| L-UDCA   | —                           | 1,500           | (1,500)         | —                         | 2,500           | (2,500)       |
| Change in fair value of contingent consideration | <u>\$ 3,353</u>             | <u>\$ 2,149</u> | <u>\$ 1,204</u> | <u>\$ 6,522</u>           | <u>\$ 5,786</u> | <u>\$ 736</u> |

### Write off of L-UDCA Contingent Consideration and impairment of L-UDCA IPR&D intangible assets

In June 2016, the Company acquired certain rights to its product candidate L-UDCA for \$0.5 million cash. At the same time the Company established a related non-cash asset of \$25.5 million and liability of \$25.0 million for IPR&D and contingent consideration (deferred financing) related net sales royalties and milestones. As a result of our quarterly valuation update process during 2016 and 2017, the contingent liability was decreased by \$2.3 million and \$5.7 million, respectively, and increased by \$1.0 million during 2018. The resulting balance of the L-UDCA contingent liability at December 31, 2018 was \$18.0 million.

During the first quarter of 2019, the Company elected to discontinue development of the L-UDCA program, resulting in removing the intangible asset of \$25.5 million which was originally recorded in 2016, and the reversal of associated contingent consideration of \$18.0 million. This resulted in a net \$7.5 million non-cash charge to first quarter operations.

## Other Income (Expenses):

The following table provides information regarding other income (expenses), net (*in thousands*):

|                             | Three Months Ended June 30, |                 |                   | Six Months Ended June 30, |                 |                   |
|-----------------------------|-----------------------------|-----------------|-------------------|---------------------------|-----------------|-------------------|
|                             | 2019                        | 2018            | Change            | 2019                      | 2018            | Change            |
| Other income (expense), net | \$ 125                      | \$ (403)        | \$ 528            | \$ (177)                  | \$ (282)        | \$ 105            |
| Interest income             | 2,589                       | 858             | 1,731             | 5,408                     | 1,655           | 3,753             |
| Interest expense            | (4,817)                     | (1,057)         | (3,760)           | (9,682)                   | (2,212)         | (7,470)           |
|                             | <u>\$ (2,103)</u>           | <u>\$ (602)</u> | <u>\$ (1,501)</u> | <u>\$ (4,451)</u>         | <u>\$ (839)</u> | <u>\$ (3,612)</u> |

The change in the Company's other income (expenses) for the three and six months ended June 30, 2019 as compared to the three and six months ended June 30, 2018 of \$1.5 million and \$3.6 million, respectively, is primarily due to the additional interest from the Company's 2.50% Convertible Senior Notes due in 2025 ("2025 Notes") issued in September 2018.

## Income Tax Expense:

For the three and six months ended June 30, 2019, we recognized an income tax expense of \$0.1 million and \$0.5 million, representing an effective tax rate for the year of 0.2%. Under GAAP, quarterly effective tax rates may vary significantly depending on the actual operating results in the various tax jurisdictions, and significant transactions, as well as changes in the valuation allowance related to the expected recovery of deferred tax assets.

At June 30, 2019, we had no unrecognized tax benefits. We did not recognize any interest or penalties related to unrecognized tax benefits during the six months ended June 30, 2019.

## Liquidity and Capital Resources

We believe that our available cash and short-term investments as of the date of this filing will be sufficient to fund our anticipated level of operations for at least the next 12 months. Management believes that our operating results will vary from quarter to quarter and year to year depending upon various factors including revenues, general and administrative expenses, and research and development expenses.

The Company had the following financial performance at June 30, 2019 and December 31, 2018 (*in thousands*):

|                             | June 30, 2019 | December 31, 2018 |
|-----------------------------|---------------|-------------------|
| Cash & Cash Equivalents     | \$ 75,657     | \$ 102,873        |
| Marketable securities       | 350,243       | 368,668           |
| Accumulated Deficit         | (349,695)     | (270,017)         |
| Stockholders' Equity        | 277,089       | 318,253           |
| Net Working Capital*        | \$ 366,428    | \$ 391,057        |
| Net Working Capital Ratio** | 5.05          | 4.74              |

\* Current assets less current liabilities.

\*\*Current assets divided by current liabilities.

## Convertible Notes Payable

### Convertible Senior Notes Due 2025

On September 10, 2018, the Company completed its registered underwritten public offering of \$276.0 million aggregate principal amount of the 2025 Notes, and entered into a base indenture and supplemental indenture agreement ("2025 Indenture") with respect to the 2025 Notes. The 2025 Notes will mature on September 15, 2025 ("Maturity Date"), unless earlier repurchased, redeemed, or converted. The 2025 Notes are senior unsecured obligations of the Company and bear interest at an annual rate of 2.50%, payable semi-annually in arrears on March 15 and September 15 of each year. The first payment was made on March 15, 2019.

The composition of the Company's 2025 Notes are as follows (*in thousands*):

|  | June 30, 2019     | December 31, 2018 |
|--|-------------------|-------------------|
| 2.50% convertible senior notes due 2025                                    | \$ 276,000        | \$ 276,000        |
| Unamortized debt discount  | (70,484)          | (74,836)          |
| Unamortized debt issuance costs  | (5,625)           | (6,073)           |
| Total 2025 Notes, net of unamortized debt discount and debt issuance costs | <u>\$ 199,891</u> | <u>\$ 195,091</u> |

The net proceeds from the issuance of the 2025 Notes were approximately \$267.2 million, after deducting commissions and the offering expenses payable by the Company. A portion of the net proceeds from the 2025 Notes were used by the Company to repurchase \$23.4 million aggregate principal amount of its then-outstanding 4.50% Senior Convertible Notes due in 2019 ("2019 Notes") in privately-negotiated transactions for approximately \$40.2 million in cash.

Holders may convert their 2025 Notes at their option only in the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on December 31, 2018 (and only during such calendar quarter), if the last reported sale price per share of the Company's common stock for each of at least 20 trading days, whether or not consecutive, during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter exceeds 130% of the conversion price on the applicable trading day; (2) during the five consecutive business days immediately after any 10 consecutive trading day period (such 10 consecutive trading day period, the "measurement period") if the trading price per \$1,000 principal amount of 2025 Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of the Company's common stock on such trading day and the conversion rate on such trading day; (3) upon the occurrence of certain corporate events or distributions on the Company's common stock; (4) if the Company calls the 2025 Notes for redemption; and (5) at any time from, and including, May 15, 2025 until the close of business on the scheduled trading day immediately before the Maturity Date. The Company will settle conversions by paying or delivering, as applicable, cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock, at the Company's election, based on the applicable conversion rate.

The initial conversion rate for the 2025 Notes is 25.7739 shares of the Company's common stock per \$1,000 principal amount of 2025 Notes, which represents an initial conversion price of approximately \$38.80 per share. If a "make-whole fundamental change" (as defined in the 2025 Indenture) occurs, then the Company will in certain circumstances increase the conversion rate for a specified period of time.

The 2025 Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after September 15, 2022 and, in the case of any partial redemption, on or before the 40th scheduled trading day before the Maturity Date, at a cash redemption price equal to the principal amount of the 2025 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date but only if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price on each of at least 20 trading days during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice. If a fundamental change (as defined in the 2025 Indenture) occurs, then, subject to certain exceptions, holders may require the Company to repurchase their 2025 Notes at a cash repurchase price equal to the principal amount of the 2025 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date.

In the event of conversion, holders would forgo all future interest payments, any unpaid accrued interest and the possibility of further stock price appreciation. Upon the receipt of conversion requests, the settlement of the 2025 Notes will be paid pursuant to the terms of the 2025 Indenture. In the event that all of the 2025 Notes are converted, the Company would be required to repay the \$276.0 million in principal value and any conversion premium in any combination of cash and shares of its common stock (at the Company's option).

### Convertible Senior Notes Due 2019

On May 29, 2014, the Company entered into a Note Purchase Agreement relating to a private placement by the Company of \$46.0 million aggregate principal amount of 2019 Notes which were convertible into shares of the Company's common stock at an initial conversion price of \$17.41 per share. The conversion price was subject to customary anti-dilution protection. The 2019 Notes bore interest at a rate of 4.5% per annum, payable semiannually in arrears on May 15 and November 15 of each year. The maturity date of the 2019 Notes was on May 30, 2019, and there were no contractual payments due prior to that date.

In September 2018, the Company used part of the net proceeds from the issuance of the 2025 Notes to repurchase \$23.4 million aggregate principal amount of the 2019 Notes in privately-negotiated transactions for approximately \$40.2 million in cash. The partial repurchase of the 2019 Notes resulted in a \$17.0 million loss on early extinguishment of debt in September 2018.

In May 2019, the remaining \$22.6 million outstanding principal amount of 2019 Notes was converted by the holders thereof into approximately 1.3 million shares of common stock.

The composition of the 2019 Notes at December 31, 2018 was as follows (in thousands):

|  | <b>December 31, 2018</b> |
|--|--------------------------|
| 4.50% senior convertible notes due 2019                        | \$ 22,590                |
| Unamortized debt discount                                      | (125)                    |
| Unamortized debt issuance costs                                | (8)                      |
| Total 2019 Notes, net of debt discount and debt issuance costs | <u>\$ 22,457</u>         |

### Cash Flows from Operating Activities

Cash used in operating activities was \$39.6 million for the six months ended June 30, 2019 compared to cash used of \$17.5 million for the six months ended June 30, 2018. The increase in cash used is attributable to increased R&D and legal expenses.

### Cash Flows from Investing Activities

Cash provided by investing activities for the six months ended June 30, 2019 was \$13.8 million, compared to cash provided of \$7.1 million for the six months ended June 30, 2018. The increase is due to timing differences associated with the purchases and sales and maturities of our available-for-sale investments, as well as changes in our portfolio-mix between cash equivalents and short-term and long-term investment holdings, offset by our \$15.0 million investment in Censa in the first quarter of 2018.

### ***Cash Flows from Financing Activities***

Cash used by financing activities for the six months ended June 30, 2019 was \$1.4 million compared to cash provided of \$0.4 million for the six months ended June 30, 2018. The change was due to lower contingent consideration payments in 2019, offset by lower proceeds from the exercise of stock options and warrants.

### **Funding Requirements**

We believe that our available cash and short-term investments as of the date of this filing will be sufficient to fund our anticipated level of operations for at least the next 12 months. This belief is based on many factors, some of which are beyond our control. Factors that may affect financing requirements include, but are not limited to:

- revenue growth of our marketed products;
- the rate of progress and cost of our clinical trials, preclinical studies and other discovery and research and development activities;
- the timing of, and costs involved in, seeking and obtaining marketing approvals for our products, and in maintaining quality systems standards for our products;
- debt service obligations on the 2025 Notes;
- our ability to manufacture sufficient quantities of our products to meet expected demand;
- the costs of preparing, filing, prosecuting, maintaining and enforcing any patent claims and other intellectual property rights, litigation costs and the results of litigation;
- our ability to enter into collaboration, licensing or distribution arrangements and the terms and timing of these arrangements;
- the potential need to expand our business, resulting in additional payroll and other overhead expenses;
- the potential in-licensing of other products or technologies; and
- the emergence of competing technologies or other adverse market or technological developments.

Future capital requirements will also depend on the extent to which we acquire or invest in additional complementary businesses, products and technologies.

### **Other Matters**

#### **Adoption of New Accounting Standards**

See Note 2 to our unaudited Condensed Consolidated Financial Statements in this report for a discussion of adoption of new accounting standards.

#### **Recently Issued Accounting Pronouncements**

See Note 2 to our unaudited Condensed Consolidated Financial Statements in this report for a discussion of recently issued accounting pronouncements.

### **Off Balance Sheet Arrangements**

In December 2017, the Company entered into a Future Acquisition Right of Joint Development Agreement with Censa, which became effective in January 2018. The Company determined that Censa is a variable interest entity ("VIE") and concluded that the Company is not the primary beneficiary of the VIE. As such, the Company did not consolidate Censa's results into its consolidated financial statements.

In August 2019, following a strategic review of the CNSA-001 program evaluating CNSA-001 in patients with phenylketonuria (PKU), the Company made the decision to decline to exercise its option to acquire Censa Pharmaceuticals and accordingly discontinue its joint development program for CNSA-001. The Company expects to impair the \$15 million long term investment on the balance sheet during the third quarter of 2019. See Note 5 to the Unaudited Condensed Consolidated Financial Statements.

### Item 3. Quantitative and Qualitative Disclosures about Market Risk

We invest our excess cash and marketable securities primarily in United States government backed securities, asset-backed securities, and debt instruments of financial institutions and corporations with investment-grade credit ratings. These instruments have various short and long-term maturities, not exceeding two years. We do not utilize derivative financial instruments, derivative commodity instruments, or other market risk sensitive instruments, positions or transactions. Accordingly, we believe that, while the instruments held are subject to changes in the financial standing of the issuer of such securities, we are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive investments. A hypothetical 1% adverse move in interest rates along the entire interest rate yield curve would decrease our available-for-sale marketable securities by approximately \$2.8 million if the Company were to sell the securities.

### Item 4. Controls and Procedures

#### Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports required by the Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the timelines specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by SEC Rule 13a-15(b), we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the quarter covered by this report. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

#### Changes in Internal Control over Financial Reporting

An evaluation was also performed under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of any change to our internal control over financial reporting that occurred during the quarter covered by this report and that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. Our evaluation did not identify significant changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) that occurred during the quarter ended June 30, 2019, 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

The information required by this Item is incorporated herein by reference to the Notes to the Unaudited Condensed Consolidated Financial Statements--Note 12 Commitments and Contingencies: Legal Proceedings in Part I, Item 1, of this Quarterly Report on Form 10-Q.

### Item 1A. Risk Factors

The following risk factors do not reflect any material changes to the risk factors set forth in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, other than the revisions to the risk factors set forth below with an asterisk (\*) next to the title. The following information sets forth risk factors that could cause our actual results to differ materially from those contained in forward-looking statements we have made in this Quarterly Report on Form 10-Q and those we may make from time to time. If any of the following risks actually occur, our business, operating results, prospects or financial condition could be harmed. Additional risks not presently known to us, or that we currently deem immaterial, may also affect our business operations.

#### Risks Related to the Development of our Product Candidates

##### **Our clinical trials may fail to demonstrate the safety and efficacy of our product candidates which could prevent or significantly delay their regulatory approval.**

Before obtaining regulatory approval for the sale of any of our product candidates, we must subject these product candidates to extensive preclinical and clinical testing to demonstrate their safety and efficacy for humans. Clinical trials are expensive, time-consuming and may take years to complete.

We may experience numerous unforeseen events during, or as a result of, preclinical or nonclinical testing and the clinical trial process that could delay or prevent our ability to obtain regulatory approval or commercialize our product candidates, including:

- our preclinical or nonclinical tests or clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional preclinical testing or clinical trials or we may abandon projects that we expect to be promising;
- regulators may require us to conduct studies of the long-term effects associated with the use of our product candidates;
- regulators or institutional review boards may not authorize us to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- the FDA or any non-United States regulatory authority may impose conditions on us regarding the scope or design of our clinical trials or may require us to resubmit our clinical trial protocols to institutional review boards for re-inspection due to changes in the regulatory environment;
- the number of patients required for our clinical trials may be larger than we anticipate or participants may drop out of our clinical trials at a higher rate than we anticipate;
- our third-party contractors or clinical investigators may fail to comply with regulatory requirements or fail to meet their contractual obligations to us in a timely manner;
- we might have to suspend or terminate one or more of our clinical trials if we, regulators or institutional review boards determine that the participants are being exposed to unacceptable health risks;
- regulators or institutional review boards may require that we hold, suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements;
- the cost of our clinical trials may be greater than we anticipate;
- the supply or quality of our product candidates or other materials necessary to conduct our clinical trials may be insufficient or inadequate or we may not be able to reach agreements on acceptable terms with prospective clinical research organizations; and
- the effects of our product candidates may not be the desired effects or may include undesirable side effects or the product candidates may have other unexpected characteristics.

These risks and uncertainties impact all of our clinical programs. We will only obtain regulatory approval to commercialize a product candidate if we can demonstrate to the satisfaction of the FDA, and in the case of foreign commercialization, to the applicable foreign regulatory authorities, in well-designed and conducted clinical trials, that our product candidates are safe and effective and otherwise meet the appropriate standards required for approval for a particular indication.

Our product development costs will also increase if we experience delays in testing or approvals. We do not know whether any preclinical tests or clinical trials will be initiated as planned, will need to be restructured or will be completed on schedule, if at all. Significant preclinical or clinical trial delays also could shorten the patent protection period during which we may have the exclusive right to commercialize our product candidates. Such delays could allow our competitors to bring products to market before we do and impair our ability to commercialize our products or product candidates.

If we are required to conduct additional clinical trials or other testing of our product candidates beyond those that we currently contemplate, if we are unable to successfully complete our clinical trials or other testing, if the results of these trials or tests are not positive or are only modestly positive or if there are safety concerns, we may:

- be delayed in obtaining, or may not be able to obtain, marketing approval for one or more of our product candidates;
- obtain approval for indications that are not as broad as intended or entirely different than those indications for which we sought approval; and
- have the product removed from the market after obtaining marketing approval.

Our product candidates are intended to treat PKAN, FSGS and IgAN, each of which is a rare disease. Given that these development candidates are still undergoing required testing, we may not be able to initiate or continue clinical trials if we are unable to locate a sufficient number of eligible patients willing and able to participate in the clinical trials required by the FDA or foreign regulatory agencies. In addition, as other companies and researchers may be concurrently developing therapies for the same or similar indications that we are focused on, we could face competition for a limited number of patients, investigators and clinical trial sites willing to participate in clinical trials. Our inability to enroll a sufficient number of patients for any of our current or future clinical trials would result in significant delays or may require us to abandon one or more clinical trials altogether.

**Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and initial results from a clinical trial do not necessarily predict final results.**

Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and initial results from a clinical trial do not necessarily predict final results. For example, there can be no assurance that the favorable responses we have seen with the physician-initiated treatment of fosmetpantotenate in PKAN patients outside the United States will translate to positive data in the Phase 3 clinical trial of fosmetpantotenate or that the positive results from the DUET study of sparsentan in FSGS will be repeated in the Phase 3 clinical trial. Similarly, there can be no assurance that our clinical experience with sparsentan in FSGS will translate to favorable data in IgAN, which patient population has

not previously been treated with sparsentan prior to the Phase 3 trial currently being conducted. We cannot assure that any current or future clinical trials of fosmetpantotenate and/or sparsentan will ultimately be successful.

Before obtaining regulatory approval to conduct clinical trials of our product candidates, we must conduct extensive preclinical tests to demonstrate the safety of our product candidates in animals. Preclinical testing is expensive, difficult to design and implement, and can take many years to complete. In addition, during the clinical development process, additional nonclinical toxicology studies are routinely conducted concurrently with the clinical development of a product candidate. If any of our product candidates show unexpected findings in concurrent toxicology studies, we could experience potentially significant delays in, or be required to abandon, development of that product candidate. A failure of one or more of our nonclinical studies can occur at any stage of testing.

**Communications and/or feedback from the FDA related to our current or planned future clinical trials does not guarantee any particular outcome from regulatory review for such clinical trials.**

Communications and/or feedback from the FDA related to our current or future clinical trials does not guarantee any particular outcome from regulatory review for such clinical trials. For example, although we have obtained a Special Protocol Assessment ("SPA") agreement from the FDA for the Phase 3 clinical trial of fosmetpantotenate for the treatment of PKAN, this agreement does not guarantee any particular outcome from regulatory review. The SPA is intended to provide assurance that if the agreed upon clinical trial protocols are followed and the clinical trial endpoints are achieved, the data may serve as the primary basis for an efficacy claim in support of an NDA. However, a SPA is not a guarantee of an approval of a product candidate or any permissible claims about the product candidate. In particular, a SPA agreement is not binding on the FDA if previously unrecognized public health concerns arise during the performance of the clinical trial, if other new scientific concerns regarding product candidate safety or efficacy arise or if the sponsoring company fails to comply with the agreed upon clinical trial protocols. Moreover, a SPA does not address all of the variables and details that may go into planning for or conducting a clinical trial, and changes in the protocol for a clinical trial can invalidate a SPA or require that the FDA agree in writing to the modified protocol. In addition, while a SPA addresses the requirements for submission of an NDA, the results of the related clinical trial may not support FDA approval. There can be no assurance that the Phase 3 clinical trial for fosmetpantotenate will demonstrate that fosmetpantotenate is safe and effective for treating PKAN or that the data will support an application for approval by the FDA. During the third quarter of 2019, we plan to un-blind the data from our ongoing pivotal Phase 3 trial of fosmetpantotenate. If the results of this trial are not positive, or are not viewed sufficiently favorably, the market price of our common stock could decline significantly. In addition, following the initial 24 week study period, patients in this trial are eligible to participate in an open label extension. Even if the initial un-blinded results from the trial are viewed positively, it is possible that negative consequences of the treatment could be observed in the future, which could adversely impact the regulatory and commercial prospects of fosmetpantotenate and our business may suffer.

In addition, in 2018, we initiated the following Phase 3 clinical trials of sparsentan: 1) a single Phase 3 clinical trial designed to serve as the basis for an NDA and MAA filing for sparsentan for the treatment of FSGS (the "DUPLEX Study"), and 2) a single Phase 3 clinical trial designed to serve as the basis for an NDA and MAA filing for sparsentan for the treatment of IgAN (the "PROTECT Study"). We are conducting the DUPLEX Study and the PROTECT Study under the Subpart H pathway for potential accelerated approval in the US, and in the EU we plan to pursue potential Conditional Marketing Authorization, in both jurisdictions based on change in proteinuria. Recognition of change in proteinuria as a surrogate endpoint in kidney disease is a relatively new regulatory development, and, as the field continues to evolve, new learnings may impact regulatory viewpoints. We expect that the FDA's and EMA's determination as to whether the sufficiency of the data supports an accelerated approval in either jurisdiction will be made during the application review process. There can be no assurance that even if we achieve statistical significance on the interim or primary endpoints for the DUPLEX Study and/or the PROTECT Study, as applicable, that the FDA or EMA will deem that sufficient to grant accelerated approval or Conditional Marketing Authorization.

Although we received feedback from the FDA at an End of Phase 2 meeting for the sparsentan FSGS program during which the FDA communicated that it was open to accepting a substantial treatment effect on proteinuria in the DUPLEX Study as a basis for accelerated approval pursuant to Subpart H of the FDA regulations and although we subsequently gained alignment that our statistical modeling supported initiating a Phase 3 trial that proceeds on the Subpart H pathway, there can be no guarantee that the data generated from the study will be sufficient to serve as the basis for an NDA filing, including an NDA under Subpart H for accelerated approval. In addition, our statistical modeling that supports proceeding with the Duplex Study on the Subpart H pathway is based on data from other FSGS studies. To the extent that the model population is not representative of the Duplex Study population, the FDA may not agree that the new results continue to support a Subpart H pathway. Furthermore, even if sparsentan is granted accelerated approval for FSGS, there can be no assurance that the post-marketing confirmatory data will support full approval of sparsentan as a treatment for FSGS.

Also, although we have reached agreement with the FDA regarding the initiation of the PROTECT Study and the trial began in December 2018, we continue to have regulatory interactions regarding certain details of the study. There can be no assurance that the study will proceed as planned and there can be no guarantee that the data generated from the study will be sufficient to serve as the basis for an NDA filing, including an NDA under Subpart H for accelerated approval or support Conditional Marketing Authorization in the EU. Furthermore, even if sparsentan is granted accelerated approval for IgAN, there can be no assurance that the post-marketing confirmatory data will support full approval of sparsentan as a treatment for IgAN.

In addition, because both the DUPLEX Study and PROTECT Study are evaluating the same compound for the treatment of chronic kidney diseases and utilizing similar endpoints, the risk of success or failure for the two studies may, depending on the outcomes of the studies, end up being correlated.



**\* Interim, topline and preliminary data from our clinical trials that we announce or publish from time to time may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.**

From time to time, we may publicly disclose preliminary or topline or interim data from our clinical studies, which is based on a preliminary analysis of then-available data, and the results and related findings and conclusions are subject to change following a more comprehensive review of the data related to the particular study. We also make assumptions, estimations, calculations and conclusions as part of our analyses of data, and we may not have received or had the opportunity to fully and carefully evaluate all data. As a result, the topline results that we report may differ from future results of the same studies, or different conclusions or considerations may qualify such results, once additional data have been received and fully evaluated. Topline data also remain subject to audit and verification procedures that may result in the final data being materially different from the preliminary data we previously published. As a result, topline data should be viewed with caution. From time to time, we may also disclose interim data from our clinical trials. Interim data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment and dosing continues and more patient data become available. Adverse differences between preliminary or interim data and final or confirmatory data could significantly harm our business prospects.

Further, others, including regulatory agencies, may not accept or agree with our assumptions, estimates, calculations, conclusions or analyses or may interpret or weigh the importance of data differently, which could impact the value of the particular program, the approvability or commercialization of the particular product candidate or product and our company in general. In addition, the information we choose to publicly disclose regarding a particular study or clinical trial is based on what is typically extensive information, and you or others may not agree with what we determine is the material or otherwise appropriate information to include in our disclosure, and any information we determine not to disclose may ultimately be deemed significant with respect to future decisions, conclusions, views, activities or otherwise regarding a particular drug, drug candidate or our business. If the topline data that we report differ from actual results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for, and commercialize, our product candidates may be harmed, which could harm our business, operating results, prospects or financial condition.

**Even if we receive regulatory approval for any product candidates, we will be subject to ongoing regulatory obligations and continued regulatory review, which may result in significant additional expense.**

Any regulatory approvals that we receive for any product candidates may be subject to significant limitations on the approved indicated uses for which the product may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase 4 clinical trials, and surveillance to monitor the safety and efficacy of the product candidate.

In addition, if the FDA or a comparable foreign regulatory authority approves any product candidates, those products will be subject to extensive and ongoing regulatory requirements, including for the manufacturing, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion, import, export, recordkeeping, conduct of potential post-marketing studies and post-market submission requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with current good manufacturing practices and good clinical practices, for any clinical trials that we conduct post-approval. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, undesirable side effects caused by the product, problems encountered by our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, either before or after product approval, may result in, among other things:

- restrictions on the marketing, manufacturing, or distribution of the product;
- requirements to include additional warnings on the label;
- requirements to create or enhance a medication guide outlining the risks to patients;
- withdrawal of the product from the market;
- voluntary or mandatory product recalls;
- requirements to change the way the product is administered or for us to conduct additional clinical trials;
- fines, warning or untitled letters or holds on clinical trials;
- refusal by the FDA to approve pending applications or supplements to approved applications filed by us or our strategic partners, or suspension or revocation of product license approvals;
- product seizure or detention, or refusal to permit the import or export of products;
- injunctions or the imposition of civil or criminal penalties; and
- harm to our reputation.

For example, we have certain post-marketing requirements and commitments associated with Cholbam. Further, we face risks relating to the post marketing obligations and commercial acceptance of Cholbam, which was approved by the FDA on March 17, 2015. If the regulatory approval for Chenodal, Cholbam and/or Thiola are withdrawn for any reason, it would have a material adverse impact on our sales and profitability.

**The independent clinical investigators and contract research organizations that we rely upon to conduct our clinical trials may not be diligent, careful or timely, and may make mistakes, in the conduct of our trials.**

We depend on independent clinical investigators and contract research organizations (“CROs”) to conduct our clinical trials under agreements with us. The CROs play a significant role in the conduct of our clinical trials. Failure of the CROs to meet their obligations could adversely affect clinical development of our product candidates. The independent clinical investigators are not our employees and we cannot control the timing or amount of resources they devote to our studies. If their performance is substandard, it could delay or prevent approval of our FDA applications. Moreover, these independent investigators and CROs may also have relationships with other commercial entities, some of which may compete with us. If independent investigators and CROs allocate their resources to assist our competitors at our expense, it could harm our competitive position.

## Risks Related to the Commercialization of Our Products

### **The commercial success of Chenodal, Cholbam and Thiola depends on them being considered to be effective drugs with advantages over other therapies.**

The commercial success of our products Chenodal, Cholbam and Thiola depends on them being considered to be effective drugs with advantages over other therapies. A number of factors, as discussed in greater detail below, may adversely impact the degree of acceptance of these products, including their efficacy, safety, price and benefits over competing therapies, as well as the coverage and reimbursement policies of third-party payers, such as government and private insurance plans.

If unexpected adverse events are reported in connection with the use of any of these products, physician and patient acceptance of the product could deteriorate and the commercial success of such product could be adversely affected. We are required to report to the FDA events associated with our products relating to death or injury. Adverse events could result in additional regulatory controls, such as a requirement for costly post-approval clinical studies or revisions to our approved labeling which could limit the indications or patient population for a product or could even lead to the withdrawal of a product from the market.

### **\*We are subject to generic competition, and recent developments relating to generic competition for pharmaceutical products could cause our product sales and business to be negatively impacted.**

Under the Hatch-Waxman Amendments of the Federal Food, Drug, and Cosmetic Act, a pharmaceutical manufacturer may file an ANDA, seeking approval of a generic copy of an approved innovator product or an NDA under Section 505(b)(2) that relies on the FDA’s prior findings of safety and effectiveness in approving the innovator product. A Section 505(b)(2) NDA may be for a new or improved version of the original innovator product. Certain of our products, including Thiola, are subject to immediate competition from compounded and generic entrants, as the ANDA and NDA for these drug products have no remaining or current patent or nonpatent exclusivity.

There have been a number of recent regulatory and legislative initiatives designed to encourage generic competition for pharmaceutical products, including expedited review procedures for generic manufacturers and incentives designed to spur generic competition of branded drugs. In particular, the FDA and the U.S. Federal Trade Commission (“FTC”) have been focused on brand companies’ denial of drug supply to potential generic competitors for testing, and the U.S. Congress has been considering a legislatively defined private right of action under which generic companies could bring suit against companies who refuse access to product for the bioequivalence testing needed to support approval of a generic product.

In October 2018, we were named as a defendant in a lawsuit brought by Spring Pharmaceuticals, LLC (“Spring”), alleging that we refused to sell samples of Thiola in order for Spring to conduct bioequivalence studies. In addition, we are currently responding to a civil investigative demand received from the FTC in July 2019, requesting information related to the marketing, sale, distribution and pricing of our products, including Thiola. At this time, the FTC has not initiated any claim or proceeding against the Company relating to these matters.

We cannot currently predict the specific outcome or impact on our business of such regulatory and legislative initiatives, litigation or investigation. However, it is our policy to evaluate requests for samples of our branded products, and to provide samples in response to bona fide requests from qualified third parties, including generic manufacturers, subject to specified conditions. We are in the process of providing samples to Spring and certain generic manufacturers, the provision of which we expect to be complete in the third quarter of 2019.

If a generic version of Thiola, Chenodal or any of our other current or future products is approved, sales of that product likely would be negatively impacted, which could have a material adverse impact on our sales and profitability. In addition, the defense of litigation and response to investigation requests could result in substantial costs, reputational impact, and the diversion of management attention and resources.

### **\*Changes in reimbursement practices of third-party payers could affect the demand for our products and the prices at which they are sold.**

The business and financial condition of healthcare-related businesses will continue to be affected by efforts of governments and third-party payers to contain or reduce the cost of healthcare through various means. 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 marketing approval for fosmetpantotenate and sparsentan, or any other product candidate that we develop, restrict or regulate post-approval activities and affect our ability to profitably sell fosmetpantotenate and sparsentan, or any other product candidate for which we obtain marketing approval.

Our products are sold to patients whose healthcare costs are met by third-party payers, such as government programs, private insurance plans and managed-care programs. These third-party payers are increasingly attempting to contain healthcare costs by limiting both coverage and the level of reimbursement for medical products and services. Levels of reimbursement, if any, may be decreased in the future, and future healthcare reform legislation, regulations or changes to reimbursement policies of third party payers may otherwise adversely affect the demand for and price levels of our products, which could have a material adverse effect on our sales and profitability.

Economic, social, and congressional pressure may result in individuals and government entities increasingly seeking to achieve cost savings through mechanisms that limit coverage or payment for our products. For example, state Medicaid programs are increasingly requesting manufacturers to pay supplemental rebates and requiring prior authorization for use of drugs. Managed care organizations continue to seek price discounts and, in some cases, to impose restrictions on the coverage of particular drugs. Government efforts to reduce Medicaid expenses may lead to increased use of managed care organizations by Medicaid programs. This may result in managed care organizations influencing prescription decisions for a larger segment of the population and a corresponding constraint on prices and reimbursement for our products.

**We are dependent on third parties to manufacture and distribute our pharmaceutical products who may not fulfill their obligations.**

We have no manufacturing capabilities and rely on third party manufacturers who are sole source suppliers for manufacturing of Chenodal, Cholbam and Thiola. The facilities used by our third party manufacturers must be approved by the FDA, or in the case of Kolbam in the European Union, the European Medicines Agency. Our dependence on third parties for the manufacture of our products may harm our profit margin on the sale of products and our ability to deliver products on a timely and competitive basis. If our third party manufacturers are unable to manufacture to specifications or in compliance with applicable regulatory requirements, our ability to commercialize our products will be adversely impacted and could affect our ability to gain market acceptance for our products and negatively impact our revenues.

We currently have no in-house distribution channels for Chenodal, Cholbam or Thiola and we are dependent on a third-party distributor, Dohmen Life Sciences Services, an Eversana Company, to distribute such products. We rely on this distributor for all of our proceeds from sales of Chenodal, Cholbam and Thiola in the United States. The outsourcing of our distribution function is complex, and we may experience difficulties that could reduce, delay or stop shipments of such products. If we encounter such distribution problems, and we are unable to quickly enter into a similar agreement with another distributor on substantially similar terms, distribution of Chenodal, Cholbam and/or Thiola could become disrupted, resulting in lost revenues, provider dissatisfaction, and/or patient dissatisfaction.

**Governments outside the United States tend to impose strict price controls and reimbursement approval policies, which may adversely affect our prospects for generating revenue.**

In some countries, particularly European Union countries, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time (6 to 12 months or longer) 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 candidate 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 prospects for generating revenue outside of the United States, if any, could be adversely affected and our business may suffer.

If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell our product candidates, we may be unable to generate product revenue outside of the United States.

**We may not be able to rely on orphan drug exclusivity for Cholbam/Kolbam or any of our products.**

Regulatory authorities in some jurisdictions, including the United States and Europe, may designate drugs for relatively small patient populations as orphan drugs. We have obtained orphan designation for Cholbam/Kolbam in the United States and the European Union. Generally, if a product with an orphan drug designation subsequently receives the first marketing approval for the indication for which it has such designation, that product is entitled to a period of marketing exclusivity, which precludes the applicable regulatory authority from approving another marketing application for the same drug for the same indication for that time period. The applicable period is seven years in the United States and ten years in Europe. Even though we have been awarded orphan drug exclusivity for Cholbam in the United States, we may not be able to maintain it. For example, if a competitive product that contains the same active moiety and treats the same disease as our product is shown to be clinically superior to our product, any orphan drug exclusivity we have obtained will not block the approval of such competitive product and we may effectively lose orphan drug exclusivity. Similarly, if a competitive product that contains the same active moiety and treats the same disease as our product candidate is approved for orphan drug exclusivity before our product candidate, we may not be able to obtain approval for our product candidate until the expiration of the competitive product's orphan drug exclusivity unless our product candidate is shown to be clinically superior to the competitive product.

## **Risks Related to our Products and Product Candidates**

**\*Our products may not achieve or maintain expected levels of market acceptance or commercial success.**

The success of our products is dependent upon achieving and maintaining market acceptance. Commercializing products is time consuming, expensive and unpredictable. There can be no assurance that we will be able to, either by ourselves or in collaboration with our partners or through our licensees, successfully commercialize new products or current products or gain market acceptance for such products. New product candidates that appear promising in development may fail to reach the market or may have only limited or no commercial success.

Further, the discovery of significant problems with a product similar to one of our products that implicate (or are perceived to implicate) an entire class of products could have an adverse effect on sales of the affected products. Accordingly, new data about our products, or products similar to our products, could negatively impact demand for our products due to real or perceived side effects or uncertainty regarding efficacy and, in some cases, could result in product withdrawal.

Our current products and any products that we bring to the market, including fosmetopantenate and sparsentan, if they receive marketing approval, may not gain market acceptance by physicians, patients, third-party payers, and others in the medical community. If these products do not achieve

an adequate level of acceptance, we may not generate significant product revenue and we may not become profitable. The degree of market acceptance of our current products and product candidates, if approved for commercial sale, will depend on a number of factors, including:

- the prevalence and severity of any side effects, including any limitations or warnings contained in a product's approved labeling;
- the efficacy and potential advantages over alternative treatments;
- the pricing of our product candidates;
- relative convenience and ease of administration;
- the willingness of the target patient population to try new therapies and of physicians to prescribe these therapies;
- the strength of marketing and distribution support and timing of market introduction of competitive products;
- publicity concerning our products or competing products and treatments; and
- sufficient third-party insurance coverage and reimbursement.

Even if a potential or current product displays a favorable efficacy and safety profile in preclinical and clinical trials, market acceptance of the product will not be known until after it is launched. Our efforts to educate patients, the medical community, and third-party payers on the benefits of our product may require significant resources and may never be successful. Such efforts to educate the marketplace may require more resources than are required by the conventional marketing technologies employed by our competitors.

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

Certain of the diseases that our current and future product candidates are being developed to address, such as PKAN, PKU, FSGS and IgAN, are relatively rare. Our projections of both the number of people who have these diseases, as well as the subset of people with these diseases who have the potential to benefit from treatment with our product candidates, may not be accurate.

Currently, most reported estimates of the prevalence of PKAN and FSGS are based on studies of small subsets of the population of specific geographic areas, which are then extrapolated to estimate the prevalence of the diseases in the broader world population. As new studies are performed the estimated prevalence of these diseases may change. There can be no assurance that the prevalence of PKAN and FSGS in the study populations accurately reflect the prevalence of these diseases in the broader world population. If our estimates of the prevalence of PKAN, PKU, FSGS, or IgAN or of the number of patients who may benefit from treatment with fosmetpantotenate and sparsentan prove to be incorrect, the market opportunities for our product candidates may be smaller than we believe they are, our prospects for generating revenue may be adversely affected and our business may suffer.

**Our product candidates may cause undesirable side effects or have other properties that could delay or prevent their regulatory approval or commercialization.**

Undesirable side effects caused by our product candidates could interrupt, delay or halt clinical trials and could result in the denial of regulatory approval by the FDA or other regulatory authorities for any or all targeted indications, and in turn prevent us from commercializing our product candidates and generating revenues from their sale.

In addition, if any of our product candidates receive marketing approval and we or others later identify undesirable side effects caused by the product:

- regulatory authorities may require the addition of restrictive labeling statements;
- regulatory authorities may withdraw their approval of the product; and
- we may be required to change the way the product is administered or conduct additional clinical trials.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product or could substantially increase the costs and expenses of commercializing the product candidate, which in turn could delay or prevent us from generating significant revenues from its sale or adversely affect our reputation.

**We do not currently have patent protection for certain of our products and product candidates. If we are unable to obtain and maintain protection for the intellectual property relating to our technology and products, the value of our technology and products will be adversely affected.**

Our success will depend in large part on our ability to obtain and maintain protection in the United States and other countries for the intellectual property covering, or incorporated into, our technology and products. The patent situation in the field of biotechnology and pharmaceuticals generally is highly uncertain and involves complex legal, technical, scientific and factual questions. We may not be able to obtain additional issued patents relating to our technology or products. Even if issued, patents issued to us or our licensors may be challenged, narrowed, invalidated, held to be unenforceable or circumvented, which could limit our ability to stop competitors from marketing similar products or reduce the term of patent protection we may have for our products. Changes in either patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property or narrow the scope of our patent protection. Fosmetpantotenate is covered by our U.S. Patent No. 8,673,883, which was granted in 2014 and expires in 2033. In addition, our U.S. Patent No. 9,181,286, which was granted on November 10,

2015 and expires in 2033, covers the use of fosmetpantotenate for the treatment of PKAN, and our U.S. Patent No. 9,629,862, which was granted on April 25, 2017 and also expires in 2033, covers pharmaceutical compositions that contain fosmetpantotenate. Sparsentan is covered by U.S. Patent No. 6,638,937, which expires in 2019 and to which we have an exclusive license. In addition, U.S. Patent No. 9,662,312, to which we also have an exclusive license and which was granted on May 30, 2017 and expires in 2030, covers the use of sparsentan for treating glomerulosclerosis, including FSGS. And U.S. Patent No. 9,993,461, to which we also have an exclusive license and which was granted on June 12, 2018 and expires in 2030, covers the use of sparsentan for treating IgA nephropathy as well as glomerulosclerosis, including FSGS.

For products we develop based on a new chemical entity not previously approved by the FDA, we expect that in addition to the protection afforded by our patent filings that we will be able to obtain either five years regulatory exclusivity via the provisions of the FDC Act and possibly seven years regulatory exclusivity via the orphan drug provisions of the FDC Act. In addition, we may be able to obtain up to five years patent term extension (to compensate for regulatory approval delay) for a patent covering such a product.

The degree of future protection for our proprietary rights is uncertain, and we cannot ensure that:

- we or our licensors were the first to make the inventions covered by each of our pending patent applications;
- we or our licensors were the first to file patent applications for these inventions;
- others will not independently develop similar or alternative technologies or duplicate any of our technologies;
- any patents issued to us or our licensors that provide a basis for commercially viable products will provide us with any competitive advantages or will not be challenged by third parties;
- we will develop additional proprietary technologies that are patentable;
- we will file patent applications for new proprietary technologies promptly or at all;
- the claims we make in our patents will be upheld by patent offices in the United States and elsewhere;
- our patents will not expire prior to or shortly after commencing commercialization of a product; and
- the patents of others will not have a negative effect on our ability to do business.

We have negotiated a license agreement with Ligand Pharmaceuticals for the rights to sparsentan which we are initially developing for the treatment of FSGS and IgAN. This license subjects us to various commercialization, reporting and other obligations. If we were to default on our obligations, we could lose our rights to sparsentan. We have obtained a U.S. and European patent covering the use of sparsentan for treating glomerulosclerosis, including FSGS, and a second U.S. patent covering both the use of sparsentan for treating IgAN and the use of sparsentan for treating glomerulosclerosis, including FSGS. However, we cannot be certain that we will be able to obtain patent protection for various other potential indications for sparsentan, or whether, if granted, we would be able to enforce such patents.

Our patents also may not afford us protection against competitors with similar technology. Because patent applications in the United States and many other jurisdictions are typically not published until 18 months after filing, or in some cases not at all, and because publications of discoveries in the scientific literature often lag behind the actual discoveries, neither we nor our licensors can be certain that we or they were the first to make the inventions claimed in our or their issued patents or pending patent applications, or that we or they were the first to file for protection of the inventions set forth in these patent applications. If a third party has also filed a United States patent application prior to the effective date of the relevant provisions of the America Invents Act (i.e. before March 16, 2013) covering our product candidates or a similar invention, we may have to participate in an adversarial proceeding, known as an interference, declared by the USPTO to determine priority of invention in the United States. The costs of these proceedings could be substantial and it is possible that our efforts could be unsuccessful, resulting in a loss of our United States patent position.

We cannot assure you that third parties will not assert patent or other intellectual property infringement claims against us with respect to technologies used in our products. If patent infringement suits were brought against us, we may be unable to commercialize some of our products which could severely harm our business. Litigation proceedings, even if not successful, could result in substantial costs and harm our business.

**We expect to rely on orphan drug status to develop and commercialize certain of our product candidates, but our orphan drug designations may not confer marketing exclusivity or other expected commercial benefits.**

We expect to rely on orphan drug exclusivity for fosmetpantotenate and sparsentan and potential future product candidates that we may develop. Orphan drug status currently confers seven years of marketing exclusivity in the United States under the FDC Act, and up to ten years of marketing exclusivity in Europe for a particular product in a specified indication. The FDA and EMA have granted orphan designation for Chenodal, fosmetpantotenate and sparsentan for the treatment of CTX, PKAN and FSGS, respectively. While we have been granted these orphan designations, we will not be able to rely on these designations to exclude other companies from manufacturing or selling these molecules for the same indication beyond these time frames. Furthermore, any marketing exclusivity in Europe can be reduced from ten years to six years if the initial designation criteria have significantly changed since the market authorization of the orphan product.

For any product candidate for which we have been granted orphan drug designation in a particular indication, it is possible that another company also holding orphan drug designation for the same product candidate will receive marketing approval for the same indication before we do. If that were to happen, our applications for that indication may not be approved until the competing company's period of exclusivity expires. Even if we are the first to obtain marketing authorization for an orphan drug indication in the United States, there are circumstances under which a competing product may be approved for the same indication during the seven-year period of marketing exclusivity, such as if the later product is shown to be

clinically superior to our orphan product, or if the later product is deemed a different product than ours. Further, the seven-year marketing exclusivity would not prevent competitors from obtaining approval of the same product candidate as ours for indications other than those in which we have been granted orphan drug designation, or for the use of other types of products in the same indications as our orphan product.

**\*Any drugs we develop may become subject to unfavorable pricing regulations, third-party reimbursement practices or healthcare reform initiatives, thereby harming our business.**

In March 2010, President Obama signed the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the "PPACA"), a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. The PPACA revised the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates to states. The PPACA also increased the mandated Medicaid rebate from 15.1% to 23.1% of the average manufacturer price, expanded the rebate to Medicaid managed care utilization and increased the types of entities eligible for the federal 340B drug discount program. Further, the law imposes a significant annual fee on companies that manufacture or import certain branded prescription drug products. There have been judicial, Congressional, and political challenges to certain aspects of the PPACA, as well as recent efforts by the Trump administration to repeal or replace certain aspects of the PPACA. Since January 2017, President Trump has signed two Executive Orders and other directives designed to delay the implementation of certain provisions of the PPACA or otherwise circumvent some of the requirements for health insurance mandated by the PPACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the PPACA. While Congress has not passed comprehensive repeal legislation, bills affecting the implementation of certain taxes under the PPACA have been signed into law. For example, the Tax Cuts and Jobs Act includes a provision which repealed, effective January 1, 2019, the tax-based shared responsibility payment imposed by the PPACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate". In addition, on January 22, 2018, President Trump signed a continuing resolution on appropriations for fiscal year 2018 that delayed the implementation of certain PPACA-mandated fees, including the so-called "Cadillac" tax on certain high cost employer-sponsored insurance plans, the annual fee imposed on certain health insurance providers based on market share, and the medical device excise tax on non-exempt medical devices. The Bipartisan Budget Act of 2018 ("BBA"), among other things, amends the PPACA, effective January 1, 2019, to increase the discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D from 50 percent to 70 percent, and closes the coverage gap in most Medicare drug plans, commonly referred to as the "donut hole". In December 2018, the Centers for Medicare & Medicaid Services ("CMS") published a new final rule permitting further collections and payments to and from certain PPACA qualified health plans and health insurance issuers under the PPACA risk adjustment program. On December 14, 2018, a Texas U.S. District Court Judge ruled that the PPACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of the Tax Cuts and Jobs Act. While the Texas U.S. District Court Judge, as well as the Trump administration and CMS, have stated that the ruling will have no immediate effect pending appeal of the decision, it is unclear how this decision, subsequent appeals, and other efforts to repeal and replace the PPACA will impact the PPACA and our business.

In addition, other legislative changes have been proposed and adopted since the PPACA was enacted. For example, in August 2011, the President signed into law the Budget Control Act of 2011, which, among other things, created the Joint Select Committee on Deficit Reduction to recommend to Congress proposals in spending reductions. The Joint Select Committee on Deficit Reduction did not achieve a targeted deficit reduction of at least \$1.2 trillion for fiscal years 2012 through 2021, triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, which went into effect beginning on April 1, 2013 and, due to subsequent legislative amendments, including the BBA, will stay in effect through 2027 unless additional Congressional action is taken. Additionally, in January 2013, the American Taxpayer Relief Act of 2012 was signed into law, which, among other things, reduced Medicare payments to several providers, including hospitals and imaging centers.

If we are unable to obtain coverage and adequate reimbursement from governments or third-party payers for any products that we may develop or if we are unable to obtain acceptable prices for those products, our prospects for generating revenue and achieving profitability will suffer.

Our prospects for generating revenue and achieving profitability will depend heavily upon the availability of coverage and adequate reimbursement for the use of our approved product candidates from governmental and other third-party payers, both in the United States and in other markets. Reimbursement by a third-party payer may depend upon a number of factors, including the third-party payer's determination that use of a product is:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- neither experimental nor investigational.

Obtaining reimbursement approval for a product from each government or other third-party payer is a time consuming and costly process that could require us to provide supporting scientific, clinical and cost effectiveness data for the use of our products to each payer. We may not be able to provide data sufficient to gain acceptance with respect to reimbursement or we might need to conduct post-marketing studies in order to demonstrate the cost-effectiveness of any future products to such payers' satisfaction. Such studies might require us to commit a significant amount of management time and financial and other resources. Even when a payer determines that a product is eligible for reimbursement, the payer may impose coverage limitations that preclude payment for some uses that are approved by the FDA or non-United States regulatory authorities. Also prior authorization for a product may be required. In addition, there is a risk that full reimbursement may not be available for high-priced products.

Moreover, eligibility for coverage does not imply that any product will be reimbursed in all cases or at a rate that allows us to make a profit or even cover our costs. Interim payments for new products, if applicable, may also not be sufficient to cover our costs and may not be made permanent.

A primary trend in the United States healthcare industry and elsewhere is toward cost containment. We expect the changes made by PPACA, other legislation impacting the Medicare program and the 340B program, and the increasing emphasis on managed care to continue to put pressure on pharmaceutical product pricing. As these concerns continue to grow over the need for tighter oversight, there remains the possibility that the Health Resources and Services Administration or another agency under the HHS will propose regulations or that Congress will explore changes to the 340B program through legislation. For example, on November 30, 2018, HRSA published its final rule regarding the calculation of 340B ceiling price and imposition of civil monetary penalties on manufacturers for knowingly and intentionally overcharging covered entities, which became effective on January 1, 2019. Pursuant to the final rule, after January 1, 2019, manufacturers must calculate 340B program ceiling prices on a quarterly basis. Moreover, manufacturers could be subject to a \$5,000 penalty for each instance where they knowingly and intentionally overcharge a covered entity under the 340B program.

Further, there has been increasing legislative and enforcement interest in the United States with respect to drug pricing practices, including several recent U.S. congressional inquiries and federal and state legislation designed to, among other things, increase drug pricing transparency, expedite generic competition, review relationships between pricing and manufacturer patient assistance programs, and reform government program drug reimbursement methodologies. At the federal level, the Trump administration's budget proposal for fiscal year 2019 contains further drug price control measures that could be enacted during the 2019 budget process or in other future legislation, including, for example, measures to permit Medicare Part D plans to negotiate the price of certain drugs under Medicare Part B, to allow some states to negotiate drug prices under Medicaid, and to eliminate cost sharing for generic drugs for low-income patients. Further, the Trump administration released a "Blueprint" to lower drug prices and reduce out of pocket costs of drugs that contains additional proposals to increase manufacturer competition, increase the negotiating power of certain federal healthcare programs, incentivize manufacturers to lower the list price of their products and reduce the out of pocket costs of drug products paid by consumers. The HHS has started soliciting feedback on some of these measures and, at the same time, is immediately implementing others under its existing authority. For example, in May 2019, CMS issued a final rule to allow Medicare Advantage Plans the option to use step therapy for Part B drugs beginning January 1, 2020. The final rule codified CMS's policy change that was effective January 1, 2019. Although a number of these existing measures, and other potential proposals, may require additional authorization to become effective, Congress and the Trump administration have each indicated that it will continue to seek new legislative and/or administrative measures to control drug costs. At the state level, legislatures are increasingly passing legislation and implementing regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing.

Any reduction in reimbursement from Medicare, Medicaid or other government-funded programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability or commercialize our drugs. Additionally, we are currently unable to predict what additional legislation or regulation, if any, relating to the healthcare industry may be enacted in the future or what effect recently enacted federal legislation or any such additional legislation or regulation would have on our business.

#### **We face potential product liability exposure far in excess of our limited insurance coverage.**

The use of any of our potential products in clinical trials, and the sale of any approved products, may expose us to liability claims. These claims might be made directly by consumers, health care providers, pharmaceutical companies or others selling our products. We have obtained limited product liability insurance coverage for our clinical trials in the amount of \$10 million per occurrence and \$10 million in the aggregate. However, our insurance may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. We intend to expand our insurance coverage to include the sale of commercial products if we obtain marketing approval for product candidates in development, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, juries have awarded large judgments in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us would decrease our cash reserves and could cause our stock price to fall.

#### **We face substantial competition, which may result in others discovering, developing or commercializing products before or more successfully than we do. Our operating results will suffer if we fail to compete effectively.**

Several of our competitors have substantially greater financial, research and development, distribution, manufacturing and marketing experience and resources than we do and represent substantial long-term competition for us. Other companies may succeed in developing and marketing products that are more effective and/or less costly than any products that may be developed and marketed by us, or that are commercially accepted before any of our products. Factors affecting competition in the pharmaceutical and drug industries vary, depending on the extent to which a competitor is able to achieve a competitive advantage based on its proprietary technology and ability to market and sell drugs. The industry in which we compete is characterized by extensive research and development efforts and rapid technological progress. Although we believe that our orphan drug status for Cholbam and proprietary position with respect to fosmetpantotenate and sparsentan may give us a competitive advantage, new developments are expected to continue and there can be no assurance that discoveries by others will not render such potential products noncompetitive. Furthermore, competitors could enter the market with generic versions of our products.

Our competitive position also depends on our ability to enter into strategic alliances with one or more large pharmaceutical and contract manufacturing companies, attract and retain qualified personnel, develop effective proprietary products, implement development and marketing

plans, obtain patent protection, secure adequate capital resources and successfully sell and market our approved products. There can be no assurance that we will be able to successfully achieve all of the foregoing objectives.

**Use of third parties to manufacture and distribute our products and product candidates may increase the risk that we will not have sufficient quantities of our product and product candidates or such quantities at an acceptable cost, and clinical development and commercialization of our product and product candidates could be delayed, prevented or impaired.**

We do not own or operate manufacturing facilities for clinical or commercial production of our products. We have limited personnel with experience in drug manufacturing and we lack the resources and the capabilities to manufacture any of our product candidates on a clinical or commercial scale. We outsource all manufacturing and packaging of our preclinical, clinical, and commercial products to third parties. The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production, particularly in scaling up initial production and in maintaining required quality control. These problems include difficulties with production costs and yields and quality control, including stability of the product candidate.

We do not currently have any agreements with third-party manufacturers for the long-term commercial supply of any of our development stage product candidates. We may be unable to enter into agreements for commercial supply with third-party manufacturers, or may be unable to do so on acceptable terms. Even if we enter into these agreements, the manufacturers of each product candidate will be single source suppliers to us for a significant period of time. Reliance on third-party manufacturers entails risks to which we may not be subject if we manufactured our product candidates or products ourselves, including:

- reliance on the third party for regulatory compliance and quality assurance;
- limitations on supply availability resulting from capacity and scheduling constraints of the third parties;
- impact on our reputation in the marketplace if manufacturers of our products fail to meet the demands of our customers;
- the possible breach of the manufacturing agreement by the third party because of factors beyond our control; and
- the possible termination or nonrenewal of the agreement by the third party, based on its own business priorities, at a time that is costly or inconvenient for us.

The failure of any of our contract manufacturers to maintain high manufacturing standards could result in injury or death of clinical trial participants or patients using our products. Such failure could also result in product liability claims, product recalls, product seizures or withdrawals, delays or failures in testing or delivery, cost overruns or other problems that could seriously harm our business or profitability.

Our contract manufacturers will be required to adhere to FDA regulations setting forth cGMP. These regulations cover all aspects of the manufacturing, testing, quality control and recordkeeping relating to our product candidates and any products that we may commercialize. Our manufacturers may not be able to comply with cGMP regulations or similar regulatory requirements outside the United States. Our manufacturers are subject to unannounced inspections by the FDA, state regulators and similar regulators 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 fines, injunctions, civil penalties, failure of regulatory authorities to grant marketing approval of our product candidates, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect regulatory approval and supplies of our product candidates.

Our product and any products that we may develop may compete with other product candidates and products for access to manufacturing facilities. There are a limited number of manufacturers that operate under cGMP regulations and that are both capable of manufacturing for us and willing to do so. If the third parties that we engage to manufacture products for our developmental or commercial products should cease to continue to do so for any reason, we likely would experience interruptions in cash flows and/or delays in advancing our clinical trials while we identify and qualify replacement suppliers, and we may be unable to obtain replacement supplies on terms that are favorable to us. Later relocation to another manufacturer will also require notification, review and other regulatory approvals from the FDA and other regulators and will subject our production to further cost and instability in the availability of our product candidates. In addition, if we are not able to obtain adequate supplies of our product candidates, or the drug substances used to manufacture them, it will be more difficult for us to sell our products and to develop our product candidates. This could greatly reduce our competitiveness.

Our current and anticipated future dependence upon others for the manufacture of our product candidates may adversely affect our future profit margins and our ability to develop product candidates and commercialize any products that obtain regulatory approval on a timely and competitive basis.

**Materials necessary to manufacture our products and product candidates may not be available on commercially reasonable terms, or at all, which may delay the development and commercialization of our products and product candidates.**

We rely on the manufacturers of our products and product candidates to purchase from third-party suppliers the materials necessary to produce the compounds for our preclinical and clinical studies and rely on these other manufacturers for commercial distribution if we obtain marketing approval for any of our product candidates. Suppliers may not sell these materials to our manufacturers at the time we need them or on commercially reasonable terms and all such prices are susceptible to fluctuations in price and availability due to transportation costs, government regulations, price controls, and changes in economic climate or other foreseen circumstances. We do not have any control over the process or timing of the acquisition of these materials by our manufacturers. Moreover, we currently do not have any agreements for the commercial production of these



materials. If our manufacturers are unable to obtain these materials for our preclinical and clinical studies, product testing and potential regulatory approval of our product candidates would be delayed, significantly impacting our ability to develop our product candidates. If our manufacturers or we are unable to purchase these materials after regulatory approval has been obtained for our product candidates, the commercial launch of our product candidates would be delayed or there would be a shortage in supply, which would materially affect our ability to generate revenues from the sale of our product candidates.

## Risks Related to Our Business

### **Our limited operating history makes it difficult to evaluate our future prospects, and our profitability in the future is uncertain.**

We face the problems, expenses, difficulties, complications and delays, many of which are beyond our control, associated with any business in its early stages and have a limited operating history on which an evaluation of our prospects can be made. Such prospects should be considered in light of the risks, expenses and difficulties frequently encountered in the establishment of a business in a new industry, characterized by a number of market entrants and intense competition, and in the shift from development to commercialization of new products based on innovative technologies.

We have experienced significant growth over the past three years in the number of our employees and the scope of our operations. We have added sales and marketing, compliance and legal functions in addition to expansion of all functions to support a commercial organization. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited resources, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The physical expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability on the part of our management to manage growth could delay the execution of our business plans or disrupt our operations.

Factors that may inhibit our efforts to commercialize our products without strategic partners or licensees include:

- our inability to recruit and retain adequate numbers of effective sales and marketing personnel;
- the inability of sales personnel to obtain access to or educate adequate numbers of physicians to prescribe our products;
- the lack of complementary products to be offered by our sales personnel, which may put us at a competitive disadvantage against companies with broader product lines;
- unforeseen costs associated with expanding our own sales and marketing team for new products or with entering into a partnering agreement with an independent sales and marketing organization; and
- efforts by our competitors to commercialize competitive products.

Moreover, though we generate revenues from product sales arrangements, we may incur significant operating losses over the next several years. Our ability to achieve profitable operations in the future will depend in large part upon successful in-licensing of products approved by the FDA, selling and manufacturing these products, completing development of our products, obtaining regulatory approvals for these products, and bringing these products to market. The likelihood of the long-term success of our company must be considered in light of the expenses, difficulties and delays frequently encountered in the development and commercialization of new drug products, competitive factors in the marketplace, as well as the regulatory environment in which we operate.

In addition, we may encounter unforeseen expenses, difficulties, complications, delays and other known and unknown factors.

### **\* We will likely experience fluctuations in operating results and could incur substantial losses.**

We expect that our operating results will vary significantly from quarter-to-quarter and year-to-year as a result of investments in research and development, specifically our clinical and preclinical development activities. We have not completed development of any drugs and we anticipate that our expenses will increase substantially as we:

- continue our ongoing clinical development of fosmetpantotenate for the treatment of PKAN;
- continue the open label portion of DUET and conduct the planned Phase 3 trials of sparsentan indications;
- launch Thiola EC;
- continue the research and development of additional product candidates;
- expand our sales and marketing infrastructure to commercialize our current products and any new products for which we may obtain regulatory approval; and
- expand operational, financial, and management information systems and personnel, including personnel to support product development efforts and our obligations as a public company.

To attain and sustain profitability, we must succeed in developing and commercializing drugs with significant market potential. This will require us to be successful in a range of challenging activities, including the discovery of product candidates, successful completion of preclinical testing and clinical trials of our product candidates, obtaining regulatory approval for these product candidates and manufacturing, marketing and selling those products for which we may obtain regulatory approval. We are only in the preliminary stages of these activities. We may not be successful enough in these activities to generate revenues that are substantial enough 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 or remain profitable could 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. A decline in the market price of our common stock may also cause a loss of a part or all of your investment.

**Negative publicity regarding any of our products could impair our ability to market any such product and may require us to spend time and money to address these issues.**

If any of our products or any similar products distributed by other companies prove to be, or are asserted to be, harmful to consumers and/or subject to FDA enforcement action, our ability to successfully market and sell our products could be impaired. Because of our dependence on patient and physician perceptions, any adverse publicity associated with illness or other adverse effects resulting from the use or misuse of our products or any similar products distributed by other companies could limit the commercial potential of our products and expose us to potential liabilities.

**We may not have sufficient insurance to cover our liability in any current or future litigation claims either due to coverage limits or as a result of insurance carriers seeking to deny coverage of such claims.**

We face a variety of litigation-related liability risks. Our certificate of incorporation, bylaws, other applicable agreements, and/or Delaware law require us to indemnify (and advance expenses to) our current and past directors and officers and employees from reasonable expenses related to the defense of any action arising from their service to us, including circumstances under which indemnification is otherwise discretionary. While our directors and officers are included in a director and officer liability insurance policy, which covers all our directors and officers in some circumstances, our insurance coverage does not cover all of our indemnification obligations and may not be adequate to cover any indemnification or other claims against us. In addition, the underwriters of our present coverage may seek to avoid coverage in certain circumstances based upon the terms of the respective policies. If we incur liabilities that exceed our coverage under our directors and officers insurance policy or incur liabilities not covered by our insurance, we would have to self-fund any indemnification amounts owed to our directors and officers and employees in which case our results of operations and financial condition could be materially adversely affected. Further, if D&O insurance becomes prohibitively expensive to maintain in the future, we may be unable to renew such insurance on economic terms or unable to renew such insurance at all. The lack of D&O insurance may make it difficult for us to retain and attract talented and skilled directors and officers to serve our company, which could adversely affect our business.

**\* We may need substantial funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.**

We expect our general and research and development expenses to increase in connection with our ongoing and planned activities, particularly as we conduct Phase 3 clinical trials of fosmetpantotenate and sparsentan, and conduct any other later-stage clinical trials of our product candidates. In addition, subject to obtaining regulatory approval of any of our product candidates, we expect to incur significant commercialization expenses for product sales and marketing, securing commercial quantities of product from our manufacturers, and product distribution. We currently have no additional commitments or arrangements for any additional financing to fund the research and development and commercial launch of our product candidates.

Management believes our ability to continue our operations depends on our ability to sustain and grow revenue, results of operations and our ability to access capital markets when necessary to accomplish our strategic objectives. Management believes that we may incur losses in the immediate future. We expect that our operating results will vary significantly from quarter-to-quarter and year-to-year as a result of investments in research and development, specifically our clinical and preclinical development activities. We expect to finance our cash needs from cash on hand and results of operations, and depending on results of operations we may either need additional equity or debt financing, or need to enter into strategic alliances on products in development to continue our operations until we can achieve sustained profitability and positive cash flows from operating activities. Additional funds may not be available to us when we need them on terms that are acceptable to us, or at all. If adequate funds are not available to us on a timely basis, we may be required to reduce or eliminate research development programs or commercial efforts.

Our future capital requirements will depend on many factors, including:

- the progress and results of our pre-clinical and clinical studies of fosmetpantotenate, sparsentan, and other drug candidates;
- the costs, timing and outcome of regulatory review of our product candidates;
- debt service obligations on the 2025 Notes;
- the number and development requirements of other product candidates that we pursue;
- the costs of commercialization activities, including product marketing, sales and distribution;
- the emergence of competing technologies and other adverse market developments;
- the costs of preparing, filing and prosecuting patent applications and maintaining, enforcing and defending intellectual property related claims;
- the extent to which we acquire or invest in businesses, products and technologies; and
- our ability to establish collaborations and obtain milestone, royalty or other payments from any such collaborators.

**The market price for shares of our common stock may be volatile and purchasers of our common stock could incur substantial losses.**

The price of our stock is likely to be volatile. The stock market in general, and the market for biotechnology companies in particular, have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The market price for our common stock may be influenced by many factors, including:

- results of clinical trials of our product candidates or those of our competitors;
- our entry into or the loss of a significant collaboration;
- regulatory or legal developments in the United States and other countries, including changes in the health care payment systems;
- our ability to obtain and maintain marketing approvals from the FDA or similar regulatory authorities outside the United States;
- variations in our financial results or those of companies that are perceived to be similar to us;
- changes in the structure of healthcare payment systems;
- market conditions in the pharmaceutical and biotechnology sectors and issuance of new or changed securities analysts' reports or recommendations;
- general economic, industry and market conditions;
- results of clinical trials conducted by others on drugs that would compete with our product candidates;
- developments or disputes concerning patents or other proprietary rights;
- public concern over our product candidates or any products approved in the future;
- litigation;
- communications from government officials regarding health care costs or pharmaceutical pricing;
- future sales or anticipated sales of our common stock by us or our stockholders; and
- the other factors described in this "Risk Factors" section.

In addition, the stock markets, and in particular, the Nasdaq Global Market, have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many pharmaceutical companies. The realization of any of the above risks or any of a broad range of other risks, including those described in these "Risk Factors" could have a dramatic and material adverse impact on the market price of our common stock.

**We may be unable to successfully integrate new products or businesses we may acquire.**

We intend to expand our product pipeline by pursuing acquisition of pharmaceutical products. If an acquisition is consummated, the integration of the acquired business, product or other assets into our company may also be complex and time-consuming and, if such businesses, products and assets are not successfully integrated, we may not achieve the anticipated benefits, cost-savings or growth opportunities. Potential difficulties that may be encountered in the integration process include the following:

- integrating personnel, operations and systems, while maintaining focus on producing and delivering consistent, high quality products;
- coordinating geographically dispersed organizations;
- distracting employees from operations;
- retaining existing customers and attracting new customers; and
- managing inefficiencies associated with integrating the operations of the Company.

Furthermore, these acquisitions and other arrangements, even if successfully integrated, may fail to further our business strategy as anticipated, expose us to increased competition or challenges with respect to our products or geographic markets, and expose us to additional liabilities associated with an acquired business, product, technology or other asset or arrangement. Any one of these challenges or risks could impair our ability to realize any benefit from our acquisitions or arrangements after we have expended resources on them.

**If we are unable to maintain an effective and specialized sales force, we will not be able to commercialize our products successfully.**

In order to successfully commercialize our products, we have built a specialized sales force. Factors that may hinder our ability to successfully market and commercially distribute our products include:

- inability of sales personnel to obtain access to or convince adequate numbers of physicians to prescribe our products;
- inability to recruit, retain and effectively manage adequate numbers of effective sales personnel;
- lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies that have more extensive product lines; and
- unforeseen delays, costs and expenses associated with maintaining our sales organization.

If we are unable to maintain our sales force for our products, we may not be able to generate sufficient product revenue.

We will need to continue to expend significant time and resources to train our sales forces to be credible, persuasive and compliant in discussing our products with the specialists treating the patients indicated under the product's label. In addition, if we are unable to effectively train our sales force and equip them with effective marketing materials our ability to successfully commercialize our products could be diminished, which would have a material adverse effect on our business, results of operations and financial condition.

**Product liability lawsuits against us could cause us to incur substantial liabilities and to limit commercialization of any products that we may develop.**

Our business exposes us to potential liability risks inherent in the research, development, manufacturing and marketing of pharmaceutical products. If any of our product candidates in clinical trials or commercialized products harm people we may be subject to costly and damaging product liability claims. We have clinical trial insurance and commercial product liability coverage. However, this insurance may not be adequate to cover all claims. We may be exposed to product liability claims and product recalls, including those which may arise from misuse or malfunction of, or design flaws in, such products, whether or not such problems directly relate to the products and services we have provided. If we cannot successfully defend ourselves against claims that our product candidates or products caused injuries, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for any product candidates or products that we may develop;
- damage to our reputation;
- regulatory investigations that could require costly recalls or product modifications;
- withdrawal of clinical trial participants;
- costs to defend the related litigation;
- substantial monetary awards to trial participants or patients, including awards that substantially exceed our product liability insurance, which we would then be required to pay from other sources, if available, and would damage our ability to obtain liability insurance at reasonable costs, or at all, in the future;
- loss of revenue;
- the diversion of management's attention from managing our business; and
- the inability to commercialize any products that we may develop.

A successful product liability claim or a series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our available cash and adversely affect our business.

**We are involved in certain litigation matters, any of which could result in substantial costs, divert management's attention and otherwise have a material adverse effect on our business, operating results or financial condition.**

We are involved in certain litigation matters, including those described in Note 12 of the Consolidated Financial Statements included in this report. Although we intend to vigorously defend our interests in each matter, there is no guarantee that we will be successful and we may have to pay damages awards or otherwise may enter into settlement arrangements in connection with such matters. Any such payments or settlement arrangements could have material adverse effects on our business, operating results or financial condition. Even if we are successful in defending our interests in each matter, litigation with respect to such matters could result in substantial costs and significant adverse impact on our reputation and divert management's attention and resources, which could have a material adverse effect on our business, operating results or financial condition.

**We are subject to significant ongoing regulatory obligations and oversight, which may result in significant additional expense and may limit our commercial success.**

We are subject to significant ongoing regulatory obligations, such as safety reporting requirements and additional post-marketing obligations, including regulatory oversight of the promotion and marketing of our products. In addition, the manufacture, quality control, labeling, packaging, safety surveillance, adverse event reporting, storage and recordkeeping for our products are subject to extensive and ongoing regulatory requirements. If we become aware of previously unknown problems with any of our products, a regulatory agency may impose restrictions on our products, our contract manufacturers or us. If we, our products and product candidates, or the manufacturing facilities for our products and product candidates fail to comply with applicable regulatory requirements, a regulatory agency, including the FDA, may send enforcement letters, mandate labeling changes, suspend or withdraw regulatory approval, suspend any ongoing clinical trials, refuse to approve pending applications or supplements filed by us, suspend or impose restrictions on manufacturing operations, request a recall of, seize or detain a product, seek criminal prosecution or an injunction, or impose civil or criminal penalties or monetary fines. In such instances, we could experience a significant drop in the sales of the affected products, our product revenues and reputation in the marketplace may suffer, and we could become the target of lawsuits.

We are also subject to regulation by national, regional, state and local agencies, including but not limited to the FDA, CMS, Department of Justice, the Federal Trade Commission, the HHS Office of Inspector General and other regulatory bodies. The FDC Act, Social Security Act, Public Health Service Act and other federal and state statutes and regulations govern to varying degrees the research, development, manufacturing and commercial activities relating to prescription pharmaceutical products, including preclinical testing, clinical research, approval, production, labeling,

sale, distribution, post-market surveillance, advertising, dissemination of information, promotion, marketing, and pricing to government purchasers and government health care programs. Our manufacturing partners are subject to many of the same requirements.

Companies may not promote drugs for “off-label” uses—that is, uses that are not described in the product’s labeling and that differ from those approved by the FDA or other applicable regulatory agencies. However, a company may share truthful and not misleading information that is otherwise consistent with the product’s labeling. A company that is found to have improperly promoted off-label uses may be subject to significant liability, including civil and administrative remedies as well as criminal sanctions. In addition, management’s attention could be diverted from our business operations and our reputation could be damaged.

The federal health care program Anti-Kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving remuneration to induce or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any health care item or service reimbursable under Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted broadly to apply to arrangements that pharmaceutical companies have with prescribers, purchasers and formulary managers, among others. Further, the PPACA, among other things, amends the intent requirement of the federal anti-kickback statute so that a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. In addition, the PPACA provides that the government may assert that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act. Although there are a number of statutory exceptions and regulatory safe harbors under the federal anti-kickback statute protecting certain common manufacturer business arrangements and activities from prosecution, the exceptions and safe harbors are drawn narrowly and an arrangement must meet all of the conditions specified in order to be fully protected from scrutiny under the federal anti-kickback statute. We seek to comply with the exceptions and safe harbors whenever possible, but our practices, such as our patient assistance programs and prompt pay discounts with certain customers, may not in all cases meet all of the criteria for protection from anti-kickback liability and may be subject to scrutiny.

The federal false claims laws, including the federal False Claims Act, prohibit any person or entity from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Additionally, the civil monetary penalties statute imposes penalties against any person or entity that, among other things, is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. Many pharmaceutical and other health care companies have been investigated and have reached substantial financial settlements with the federal government under the federal False Claims Act for a variety of alleged marketing activities, including providing free product to customers with the expectation that the customers would bill federal programs for the product; providing consulting fees, grants, free travel, and other benefits to physicians to induce them to prescribe the company’s products; and inflating prices reported to private price publication services, which may be used by states to set drug payment rates under government health care programs. Companies have been prosecuted for causing false claims to be submitted because of the marketing of their products for unapproved uses. Pharmaceutical and other health care companies have also been prosecuted on other legal theories of Medicare and Medicaid fraud.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. It is not clear 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 any Retrophin products, 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, as well as subject Retrophin to more stringent product labeling and post-marketing testing and other requirements.

We also could become subject to government investigations and related subpoenas. Such subpoenas are often associated with previously filed qui tam actions, or lawsuits filed under seal under the federal False Claims Act. Qui tam actions are brought by private plaintiffs suing on behalf of the federal government for alleged violations of the federal False Claims Act. The time and expense associated with responding to such subpoenas, and any related qui tam or other actions, may be extensive, and we cannot predict the results of our review of the responsive documents and underlying facts or the results of such actions. Responding to government investigations, defending any claims raised, and any resulting fines, restitution, damages and penalties, settlement payments or administrative actions, as well as any related actions brought by stockholders or other third parties, could have a material impact on our reputation, business and financial condition and divert the attention of our management from operating our business.

The number and complexity of both federal and state laws continues to increase, and additional governmental resources are being added to enforce these laws and to prosecute companies and individuals who are believed to be violating them. In particular, the PPACA includes a number of provisions aimed at strengthening the government’s ability to pursue anti-kickback and false claims cases against pharmaceutical manufacturers and other healthcare entities, including substantially increased funding for healthcare fraud enforcement activities, enhanced investigative powers, amendments to the federal False Claims Act that make it easier for the government and whistleblowers to pursue cases for alleged kickback and false claim violations and, for payments made on or after August 1, 2013, public reporting of payments by pharmaceutical manufacturers to physicians and teaching hospitals nationwide. We anticipate that government scrutiny of pharmaceutical sales and marketing practices will continue for the foreseeable future and subject us to the risk of further government investigations and enforcement actions. Responding to a government investigation or enforcement action would be expensive and time-consuming, and could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

The U.S. Foreign Corrupt Practices Act, and similar worldwide anti-bribery laws generally prohibit companies and their intermediaries from making improper payments to government officials for the purpose of obtaining or retaining business. Our policies mandate compliance with these anti-bribery laws. We operate in parts of the world that have experienced governmental corruption to some degree and in certain circumstances, strict compliance with antibribery laws may conflict with local customs and practices or may require us to interact with doctors and hospitals, some of which may be state controlled, in a manner that is different than in the United States. We cannot assure that our internal control policies and

procedures will protect us from reckless or criminal acts committed by our employees or agents. Violations of these laws, or allegations of such violations, could disrupt our business and result in criminal or civil penalties or remedial measures, any of which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common stock to decline.

The federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), created new federal criminal statutes that prohibit, among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payers, and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Like the federal anti-kickback statute, the PPACA amended the intent standard for certain healthcare fraud provisions under HIPAA such that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

Additionally, the federal Physician Payments Sunshine Act within the PPACA, and its implementing regulations, require that certain manufacturers of drugs, devices, biologicals and medical supplies to report annually information related to certain payments or other transfers of value made or distributed to physicians and teaching hospitals, or to entities or individuals at the request of, or designated on behalf of, physicians and teaching hospitals and to report annually certain ownership and investment interests held by physicians and their immediate family members. Moreover, the Drug Supply Chain Security Act imposes new obligations on manufacturers of pharmaceutical products related to product tracking and tracing. We are not sure whether additional legislative changes will be enacted, or whether the current regulations, guidance or interpretations will be changed, or what the impact of such changes on our business, if any, may be.

Also, many states have similar fraud and abuse statutes or regulations, including state anti-kickback and false claims laws, that apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payer. Further, certain states require implementation of commercial compliance programs and marketing codes, compliance with the pharmaceutical industry's voluntary compliance guidelines, and compliance with the applicable compliance guidance promulgated by the federal government. Other various state level requirements include restricting payments or the provision of other items of value that may be made to healthcare providers and other potential referral sources; restricting various marketing practices; requiring prescription drug companies to report expenses relating to the marketing and promotion of drug products; requiring the posting of information relating to clinical studies and their outcomes; requiring the registration of sales representatives; requiring the reporting of certain information related to drug pricing; and requiring drug manufacturers to track and report information related to payments, gifts, compensation, and other items of value to physicians and other healthcare providers.

In addition, we may be subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and their respective implementing regulations, imposes specified requirements relating to the privacy, security and transmission of individually identifiable health information. Among other things, HITECH, through its implementing regulations, makes certain of HIPAA's privacy and security standards directly applicable to business associates, defined as a person or organization, other than a member of a covered entity's workforce, that creates, receives, maintains or transmits protected health information for or on behalf of a covered entity for a function or activity regulated by HIPAA. International data protection laws also impose strict obligations on the ability to process health related and other personal information of citizens of member states, including in relation to collection, analysis and transfer. The EU General Data Protection Regulation was officially adopted in April 2016 and has been in effect since May 2018. The EU General Data Protection Regulation introduced new data protection requirements in the European Union, as well as substantial fines for breaches of the data protection rules. The EU General Data Protection Regulation will increase our responsibility and liability in relation to personal data that we process, and we may be required to put in place additional mechanisms to ensure compliance with the new EU data protection rules. Additionally, California recently enacted legislation known as the California Consumer Privacy Act (the "CCPA"), which creates new individual privacy rights for consumers (as that word is broadly defined in the law) and places increased privacy and security obligations on entities handling personal data of consumers or households. When it goes into effect on January 1, 2020, the CCPA will require covered companies to provide new disclosures to California consumers, provide such consumers new ways to opt-out of certain sales of personal information, and allow for a new cause of action for data breaches. Legislators have stated that amendments will be proposed to the CCPA before it goes into effect, but it remains unclear what, if any, modifications will be made to this legislation or how it will be interpreted. As currently written, the CCPA will likely impact (possibly significantly) our business activities and exemplifies the vulnerability of our business to not only cyber threats but also the evolving regulatory environment related to personal data and protected health information.

If we or any of our partners fail to comply with applicable regulatory requirements, we or they could be subject to a range of regulatory actions that could affect our or our partners' ability to commercialize our products and could harm or prevent sales of the affected products, or could substantially increase the costs and expenses of commercializing and marketing our products. Any threatened or actual government enforcement action could also generate adverse publicity and require that we devote substantial resources that could otherwise be used in other aspects of our business. Compliance with applicable federal and state laws is difficult and time consuming, and companies that violate them may face substantial penalties. The potential sanctions include criminal fines, civil monetary penalties, administrative penalties, disgorgement, exclusion from participation in federal health care programs, individual imprisonment, injunctions, recall or seizure of products, total or partial suspension of production, reputational harm, administrative burdens, additional oversight and reporting obligations if we become subject to a corporate integrity agreement or similar agreement to resolve allegation of non-compliance with these laws, diminished profits and future earnings, and the curtailment or restructuring of our operations, and other sanctions. Because of the breadth of these laws, it is possible that some of our business activities could be subject to challenge under one or more of these laws. Such a challenge, irrespective of the underlying merits of the challenge or the ultimate outcome of the matter, could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

**If we are not able to obtain and maintain required regulatory approvals, we will not be able to commercialize our products, and our ability to generate revenue will be materially impaired.**

Our product candidates, once approved, and the activities associated with their manufacture, marketing, distribution, and sales are subject to extensive regulation by the FDA and other regulatory agencies in the United States and by comparable authorities in other countries. Failure to adhere to regulations set out by these bodies for one or more of our commercial products could prevent us from commercializing the product candidate in the jurisdiction of the regulatory authority. We have only limited experience in meeting the regulatory requirements incumbent on the sale of drugs in the United States and elsewhere, and expect to rely on third-parties to assist us in these processes. If these third parties fail to adequately adhere to the regulations governing drug distribution and promotion we may be unable to sell our products, which could have a material effect on our ability to generate revenue.

Our product candidates and the activities associated with their development and commercialization, including testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale and distribution, are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States and by comparable authorities in other countries. Failure to obtain regulatory approval for a product candidate will prevent us from commercializing the product candidate in the jurisdiction of the regulatory authority. We have only limited experience in filing and prosecuting the applications necessary to obtain regulatory approvals and expect to rely on third-party contract research organizations to assist us in this process.

Securing FDA approval requires the submission of extensive preclinical and clinical data and supporting information to the FDA for each therapeutic indication to establish the product candidate's safety and efficacy. Securing FDA approval also requires the submission of information about the product manufacturing process to, and successful inspection of manufacturing facilities by, the FDA. Our future products may not be effective, may be only moderately effective or may prove to have undesirable or unintended side effects, toxicities or other characteristics that may preclude our obtaining regulatory approval or prevent or limit commercial use.

Our product candidates may fail to obtain regulatory approval for many reasons, including:

- our failure to demonstrate to the satisfaction of the FDA or comparable regulatory authorities that a product candidate is safe and effective for a particular indication;
- the results of clinical trials may not meet the level of statistical significance required by the FDA or comparable regulatory authorities for approval;
- our inability to demonstrate that a product candidate's benefits outweigh its risks;
- our inability to demonstrate that the product candidate presents an advantage over existing therapies;
- the FDA's or comparable regulatory authorities' disagreement with the manner in which we interpret the data from preclinical studies or clinical trials;
- failure of the third-party manufacturers with which we contract for clinical or commercial supplies to satisfactorily complete an FDA pre-approval inspection of the facility or facilities at which the product is manufactured to assess compliance with the FDA's cGMP regulations to assure that the facilities, methods and controls are adequate to preserve the drug's identity, strength, quality and purity; and
- a change in the approval policies or regulations of the FDA or comparable regulatory authorities or a change in the laws governing the approval process.

The process of obtaining regulatory approvals is expensive, often takes many years, if approval is obtained at all, and can vary substantially based upon a variety of factors, including the type, complexity and novelty of the product candidates involved. Changes in regulatory approval policies during the development period, changes in or the enactment of additional statutes or regulations, or changes in regulatory review for each submitted product application may cause delays in the approval or rejection of an application. The FDA and non-United States regulatory authorities have substantial discretion in the approval process and may refuse to accept any application or may decide that our data is insufficient for approval and require additional preclinical, clinical or other studies. In addition, varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent regulatory approval of a product candidate. Any regulatory approval we ultimately obtain may be limited or subject to restrictions or post approval commitments that render the approved product not commercially viable. Any FDA or other regulatory approval of our product candidates, once obtained, may be withdrawn, including for failure to comply with regulatory requirements or if clinical or manufacturing problems follow initial marketing.

**Our internal computer systems, or those of our CROs or other contractors and vendors who host our applications or consultants, may fail or suffer security breaches, which could result in a material disruption of our product development programs.**

Despite the implementation of security measures, our internal computer systems and those of our CROs and other contractors or vendors who host our applications and those of our consultants are vulnerable to damage or disruption from computer viruses, software bugs, unauthorized access including cyber-attack, natural disasters, terrorism, war, and telecommunication, equipment and electrical failures. While we have not, to our knowledge, experienced any significant system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our programs. For example, the loss of clinical trial data from completed or ongoing clinical trials for any of our product candidates could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss of or damage to our data or applications, or inappropriate

disclosure or theft of confidential or proprietary information, we could incur liability, the further development of our product candidates could be delayed, our competitive position could be compromised, or our business reputation could be harmed.

**\* Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition or results of operations.**

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could affect the tax treatment of our domestic and foreign earnings. Any new taxes could adversely affect our domestic and international business operations, and our business and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, on December 22, 2017, U.S. federal income tax legislation was signed into law (H.R. 1, “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018”), informally titled the Tax Cuts and Jobs Act, that significantly revised the Internal Revenue Code of 1986, as amended. The Tax Cuts and Jobs Act, among other things, contains significant changes to corporate taxation, including reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, limitation of the tax deduction for interest expense to 30% of adjusted taxable income (except for certain small businesses), limitation of the deduction for net operating losses generated in taxable years beginning after December 31, 2017 to 80% of current year taxable income, and elimination of most carrybacks of net operating losses arising in taxable years ending after December 31, 2017, one-time taxation of offshore earnings at reduced rates regardless of whether they are repatriated, elimination of U.S. tax on foreign earnings (subject to certain important exceptions), immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits including reducing the business tax credit for certain clinical testing expenses incurred in the testing of certain drugs for rare diseases or conditions.

Notwithstanding the reduction in the corporate income tax rate, the overall impact of the Tax Cuts and Jobs Act is uncertain and our business and financial condition could be adversely affected. In addition, it is unknown if and to what extent various states will conform to the Tax Cuts and Jobs Act. The impact of the Tax Cuts and Jobs Act on holders of our common stock is likewise uncertain and could be adverse. We urge our stockholders to consult with their legal and tax advisors with respect to the Tax Cuts and Jobs Act and the potential tax consequences of investing in or holding our common stock.

**Our effective tax rate may fluctuate, and we may incur obligations in tax jurisdictions in excess of accrued amounts.**

Our effective tax rate is derived from a combination of applicable tax rates in the various places that we operate. In preparing our financial statements, we estimate the amount of tax that will become payable in each of such places. Nevertheless, our effective tax rate may be different than experienced in the past due to numerous factors, including passage of the Tax Cuts and Jobs Act, changes in the mix of our profitability from state to state, the results of examinations and audits of our tax filings, our inability to secure or sustain acceptable agreements with tax authorities, changes in accounting for income taxes and changes in tax laws. Any of these factors could cause us to experience an effective tax rate significantly different from previous periods or our current expectations and may result in tax obligations in excess of amounts accrued in our financial statements.

**Our ability to use net operating losses to offset future taxable income may be subject to limitations.**

As of December 31, 2018, we had federal net operating loss, or NOL, carryforwards of \$36.5 million. Our federal NOL carryforwards generated in tax years ending on or prior to December 31, 2017, are only permitted to be carried forward for 20 years under applicable U.S. tax law. Under the Tax Cuts and Jobs Act, our federal NOLs generated in tax years ending after December 31, 2017, may be carried forward indefinitely, but the deductibility of such federal NOLs generated in tax years beginning after December 31, 2017, is limited. It is uncertain if and to what extent various states will conform to the Tax Cuts and Jobs Act. In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, 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 NOL carryforwards and other pre-change U.S. tax attributes (such as research tax credits) to offset its post-change income or taxes may be limited. It is possible that we have experienced an ownership change limitation in the past. In addition, we may experience ownership changes in the future as a result of subsequent shifts in our stock ownership, some of which may be outside of our control.

As a result, our pre-2018 NOL carryforwards may expire prior to being used, and our NOL carryforwards generated in 2018 and thereafter will be subject to a percentage limitation. In addition, it is possible that we have in the past undergone, and in the future may undergo, additional ownership changes that could limit our ability to use all of our pre-change NOLs and other pre-change tax attributes (such as research tax credits) to offset our post-change income or taxes. Similar provisions of state tax law may also apply to limit our use of accumulated state tax attributes. In addition, at the state level, there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed. As a result, we may be unable to use all or a material portion of our NOLs and other tax attributes, which would harm our future operating results by effectively increasing our future tax obligations.

**We are dependent on information technology systems, infrastructure and data, which exposes us to data security risks.**

We are dependent upon our own or third-party information technology systems, infrastructure and data, including mobile technologies, to operate our business. The multitude and complexity of our computer systems may make them vulnerable to service interruption or destruction, disruption of data integrity, malicious intrusion, or random attacks. Likewise, data privacy or security incidents or breaches by employees or others may pose a risk that sensitive data, including our intellectual property, trade secrets or personal information of our employees, patients, customers or other business partners may be exposed to unauthorized persons or to the public. Cyber-attacks are increasing in their frequency, sophistication and intensity. Cyber-attacks could include the deployment of harmful malware, denial-of-service, social engineering and other means to affect service reliability and threaten data confidentiality, integrity and availability. Our business partners face similar risks and any security breach of their systems



could adversely affect our security posture. A security breach or privacy violation that leads to disclosure or modification of or prevents access to patient information, including personally identifiable information or protected health information, could harm our reputation, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, require us to verify the correctness of database contents and otherwise subject us to litigation or other liability under laws and regulations that protect personal data, any of which could disrupt our business and/or result in increased costs or loss of revenue. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have invested, and continue to invest, in the protection of our data and information technology infrastructure, there can be no assurance that our efforts will prevent service interruptions, or identify breaches in our systems, that could adversely affect our business and operations and/or result in the loss of critical or sensitive information, which could result in financial, legal, business or reputational harm to us. In addition, our liability insurance may not be sufficient in type or amount to cover us against claims related to security breaches, cyber-attacks and other related breaches.

## Risks Related to our Indebtedness and Investments

### \* Our indebtedness could adversely affect our financial condition.

As of June 30, 2019, we had approximately \$276 million of total debt outstanding, classified as long term. As a result of our indebtedness, a portion of our cash flow will be required to pay interest and principal on the 2025 Notes if the notes are not converted to shares of common stock prior to maturity. We may not generate sufficient cash flow from operations or have future borrowings available to enable us to repay our indebtedness or to fund other liquidity needs.

Our indebtedness pursuant to the 2025 Notes could have important consequences. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to any other debt we may incur in the future;
- increase our vulnerability to general adverse economic and industry conditions;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness and related interest, thereby reducing the availability of our cash flow to fund working capital, capital expenditures and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- increase our cost of borrowing;
- place us at a competitive disadvantage compared to our competitors that may have less debt; and
- limit our ability to obtain additional financing for working capital, capital expenditures, acquisitions, debt service requirements or general corporate purposes.

We expect to use cash flow from operations and outside financings to meet our current and future financial obligations, including funding our operations, debt service and capital expenditures. Our ability to make these payments depends on our future performance, which will be affected by financial, business, economic and other factors, many of which we cannot control. Our business may not generate sufficient cash flow from operations in the future, which could result in our being unable to repay indebtedness, or to fund other liquidity needs. If we do not generate sufficient cash from operations, we may be forced to reduce or delay our business activities and capital expenditures, sell assets, obtain additional debt or equity capital or restructure or refinance all or a portion of our debt, including the 2025 Notes, on or before maturity. We cannot make any assurances that we will be able to accomplish any of these alternatives on terms acceptable to us, or at all. In addition, the terms of existing or future indebtedness may limit our ability to pursue any of these alternatives.

### **We may be unable to raise the funds necessary to repurchase the 2025 Notes for cash following a fundamental change, or to pay any cash amounts due upon conversion, and our future indebtedness may limit our ability to repurchase the 2025 Notes or pay cash upon their conversion.**

Noteholders may require us to repurchase their 2025 Notes following a fundamental change at a cash repurchase price generally equal to the principal amount of the 2025 Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. In addition, upon conversion, we will satisfy part or all of our conversion obligation in cash unless we elect to settle conversions solely in shares of our common stock.

We may not have enough available cash or be able to obtain financing at the time we are required to repurchase the 2025 Notes or pay the cash amounts due upon conversion of the 2025 Notes. In addition, applicable law, regulatory authorities and the agreements governing our future indebtedness may restrict our ability to repurchase the 2025 Notes or pay the cash amounts due upon conversion of the 2025 Notes. Our failure to repurchase the 2025 Notes or to pay the cash amounts due upon conversion of the 2025 Notes when required will constitute a default under the base and supplemental indentures that will govern the 2025 Notes, which we refer to collectively as the “indenture.” We may not have sufficient funds to satisfy all amounts due under the other indebtedness and the 2025 Notes.

### **A default under the 2025 Notes may have a material adverse effect on our financial condition.**

If an event of default under the 2025 Notes occurs, the principal amount of the 2025 Notes, plus accrued and unpaid interest (including additional interest, if any) may be declared immediately due and payable, subject to certain conditions set forth in the indenture governing such notes. Events of default include, but are not limited to:

- failure to pay (for more than 30 days) interest when due;
- failure to pay principal when due;
- failure to deliver shares of common stock upon conversion of a 2025 Notes;
- failure to provide notice of a fundamental change;
- acceleration on our other indebtedness in excess of \$10 million (other than indebtedness that is non-recourse to us); or
- certain types of bankruptcy or insolvency involving us.

Accordingly, the occurrence of a default under the 2025 Notes, unless cured or waived, may have a material adverse effect on our results of operations.

**Provisions of the 2025 Notes could discourage an acquisition of us by a third party.**

Certain provisions of the 2025 Notes could make it more difficult or more expensive for or prevent a third party to acquire us. Upon the occurrence of certain transactions constituting a fundamental change, holders of the 2025 Notes will have the right, at their option, to require us to repurchase all of their 2025 Notes or any portion of the principal amount of such Notes in integral multiples of \$1,000. We may also be required to increase the conversion rate for conversions in connection with certain fundamental changes.

**Conversion of the Notes may dilute the ownership interest of existing stockholders, including holders who had previously converted their 2025 Notes.**

To the extent we issue shares of common stock upon conversion of the 2025 Notes, the conversion of some or all of the 2025 Notes will dilute the ownership interests of existing stockholders. Any sales in the public market of shares of the common stock issuable upon such conversion could adversely affect prevailing market prices of shares of our common stock. In addition, the existence of the 2025 Notes may encourage short selling by market participants because the conversion of the 2025 Notes could depress the price of shares of our common stock.

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

None.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

None.

## Item 6. Exhibits

### (a) Exhibits

- 3.1 [Certificate of Incorporation of the Company \(incorporated by reference to Exhibit 3.1 to Amendment No. 2 to the Company's General Form for Registration of Securities on Form 10-12G, filed with the SEC on October 28, 2010\).](#)
- 3.2 [Certificate of Amendment of Certificate of Incorporation of the Company \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the SEC on June 11, 2015\).](#)
- 3.3 [Amended and Restated Bylaws of the Company \(incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K, filed with the SEC on June 11, 2015\).](#)
- 4.1 [Form of Note Purchase Agreement for principal senior convertible notes with an interest rate of 4.50% due 2019 \("2019 Notes"\), dated May 29, 2014, by and among the Company and the investors identified therein \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the SEC on June 4, 2014\).](#)
- 4.2 [Form of Indenture for 2019 Notes, dated May 30, 2014 \(incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the SEC on June 4, 2014\).](#)
- 4.3 [Form of Note for 2019 Notes, dated May 30, 2014 \(incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K, filed with the SEC on June 4, 2014\).](#)
- 4.4 [Base Indenture, dated September 10, 2018, between the Company and U.S. Bank National Association, as Trustee \(incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed with the SEC on September 10, 2018\).](#)
- 4.5 [First Supplemental Indenture, dated September 10, 2018, between the Company and U.S. Bank National Association, as Trustee \(including the form of 2.50% Convertible Senior Note due 2025\) \(incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K, filed with the SEC on September 10, 2018\).](#)
- 10.1 [Separation Agreement, dated April 19, 2019, between the Company and Neil McFarlane \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the SEC on April 19, 2019\).](#)
- 10.2 [Office Lease, effective April 12, 2019, between the Company and Kilroy Realty, L.P.](#)
- 10.3 [Retrophin, Inc. 2018 Equity Incentive Plan, as amended, and, Form of Stock Option Grant Notice, Option Agreement and Exercise Notice, Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Award Agreement for use thereunder \(incorporated by reference to Exhibit 99.1 to the Company's Registration Statement on Form S-8 \(File No. 333-232857\), filed with the SEC on July 26, 2019\).](#)
- 10.4 [Form of Stock Option Grant Notice, Option Agreement and Notice of Exercise for Inducement Grant Outside of 2018 Equity Incentive Plan, as amended \(incorporated by reference to Exhibit 99.2 to the Company's Registration Statement on Form S-8 \(File No. 333-232857\), filed with the SEC on July 26, 2019\).](#)
- 10.5 [Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Award Agreement for Inducement Grant Outside of 2018 Equity Incentive Plan, as amended \(incorporated by reference to Exhibit 99.3 to the Company's Registration Statement on Form S-8 \(File No. 333-232857\), filed with the SEC on July 26, 2019\).](#)
- 31.1 [Chief Executive Officer's Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 31.2 [Chief Financial Officer's Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.1 [Chief Executive Officer's Certification pursuant to Section 906 of the Sarbanes Oxley Act of 2002](#)
- 32.2 [Chief Financial Officer's Certification pursuant to Section 906 of the Sarbanes Oxley Act of 2002](#)
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema Document
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF XBRL Taxonomy Extension Definition Linkbase Document
- 101.LAB XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE Taxonomy Extension Presentation Linkbase Document

## SIGNATURES

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

Date: August 6, 2019

**RETROPHIN, INC.**

By: /s/ Eric M. Dube

Name: Eric M. Dube

Title: Chief Executive Officer

By: /s/ Laura Clague

Name: Laura Clague

Title: Chief Financial Officer

**KILROY CENTRE DEL MAR****OFFICE LEASE**

This Office Lease (the "**Lease**"), dated as of the date set forth in Section 1 of the Summary of Basic Lease Information (the "**Summary**"), below, is made by and between KILROY REALTY, L.P., a Delaware limited partnership ("**Landlord**"), and RETROPHIN, INC., a Delaware corporation ("**Tenant**").

**SUMMARY OF BASIC LEASE INFORMATION**

| <u>TERMS OF LEASE</u>                 | <u>DESCRIPTION</u>   |
|---------------------------------------|--|
| 1.Date:                               | April 12, 2019.  |
| 2.Premises:<br>( <u>Article 1</u> )   |  |
| 2.1Building:                          | That certain building (the " <b>Building</b> ") located at 3611 Valley Centre Drive, San Diego, California 92130, which Building contains 132,426 rentable square feet of space.   |
| 2.2Premises:                          | 77,242 rentable (73,418 usable) square feet of space consisting of (i) 24,409 rentable square feet of space comprising the entirety of the second (2 <sup>nd</sup> ) floor of the Building, (ii) 26,463 rentable square feet of space comprising the entirety of the third (3 <sup>rd</sup> ) floor of the Building, and (iii) 26,370 rentable square feet of space comprising the entirety of the fourth (4 <sup>th</sup> ) floor of the Building, as further depicted on <b>Exhibit A</b> to the Office Lease. |
| 2.3Project:                           | The Building is part of an office project known as " <b>Kilroy Centre Del Mar</b> ," as further set forth in <u>Section 1.1.2</u> of this Lease.   |
| 3.Lease Term<br>( <u>Article 2</u> ): |  |
| 3.1Length of Term:                    | Approximately seven (7) years and seven (7) months.  |
| 3.2Lease Commencement Date:           | The earlier to occur of (i) the date upon which Tenant first commences to conduct business in the Premises, and (ii) the date which is 150 days (as such 150 day period may be extended in the event of "Landlord Delay" as that term is defined in Section 5.7 of the Work Letter) following Landlord's delivery of possession of the Premises to Tenant (in no event deemed to occur earlier than April 1, 2020), which Lease Commencement Date is anticipated to be October 1, 2020.                          |
| 3.3Lease Expiration Date:             | The last day of the ninety-first (91 <sup>st</sup> ) full calendar month of the Lease Term.  |
| 3.4Option Term:                       | One (1) five (5)-year option to renew, as more particularly set forth in <u>Section 2.2</u> of this Lease.   |

4. Base Rent (Article 3)◇◇:

| <u>Period During Lease Term</u>                | <u>Annual Base Rent*</u> | <u>Monthly Installment of Base Rent*</u> | <u>Monthly Rental Rate per Rentable Square Foot**</u> |
|--|--------------------------|--|---|
| Lease Commencement Date through Lease Month 12 | \$4,356,448.80◇          | \$363,037.40◇                            | \$4.70  |
| Lease Month 13 through Lease Month 24          | \$4,487,142.24           | \$373,928.52                             | \$4.84  |
| Lease Month 25 through Lease Month 36          | \$4,621,756.56           | \$385,146.38                             | \$4.99  |
| Lease Month 37 through Lease Month 48          | \$4,760,409.24           | \$396,700.77                             | \$5.14  |
| Lease Month 49 through Lease Month 60          | \$4,903,221.48           | \$408,601.79                             | \$5.29  |
| Lease Month 61 through Lease Month 72          | \$5,050,318.08           | \$420,859.84                             | \$5.45  |
| Lease Month 73 through Lease Month 84          | \$5,201,827.68           | \$433,485.64                             | \$5.61  |
| Lease Month 85 through Lease Expiration Date   | \$5,357,882.52           | \$446,490.21                             | \$5.78  |

\*The initial Monthly Installment of Base Rent amount was calculated by multiplying the initial Monthly Rental Rate per Rentable Square Foot amount by the number of rentable square feet of space in the Premises, and the initial Annual Base Rent amount was calculated by multiplying the initial Monthly Installment of Base Rent amount by twelve (12). In all subsequent Base Rent payment periods during the Lease Term commencing on the first (1st) day of the full calendar month that is Lease Month 13, the calculation of each Monthly Installment of Base Rent amount reflects an annual increase of three percent (3%) and each Annual Base Rent amount was calculated by multiplying the corresponding Monthly Installment of Base Rent amount by twelve (12).

◇Subject to the terms set forth in Section 3.2 below, the Base Rent attributable to the seven (7) month period commencing on the first (1st) day of the second (2nd) full calendar month of the Lease Term and ending on the last day of the eighth (8th) full calendar month of the Lease Term shall be abated.

\*\*The amounts identified in the column entitled "Monthly Rental Rate per Rentable Square Foot" are rounded amounts and are provided for informational purposes only.

◇◇The foregoing Base Rent schedule shall apply unless Tenant elects to continue to lease its currently existing premises prior to the Lease Commencement Date hereunder, pursuant to Section 1.4 below.

5. Base Year (Article 4):

Calendar year 2021; provided, however, electricity is separately metered and directly paid by Tenant to the applicable utility provider or, at Landlord's option, to Landlord.

6. Tenant's Share (Article 4):

Approximately 58.3284%.

7. Permitted Use (Article 5):

Tenant shall use the Premises solely for general office use and uses incidental thereto (the "Permitted Use"); provided, however, that notwithstanding anything to the contrary set forth hereinabove, and as more particularly set forth in the Lease, Tenant shall be responsible for operating and maintaining the Premises pursuant to, and in no event may Tenant's Permitted Use violate, (A) Landlord's "Rules and Regulations," as that term is set forth in Section 5.2 of this Lease, (B) all "Applicable Laws," as that term is set forth in Article 24 of this Lease, (C) all applicable zoning, building codes and the "CC&Rs," as that term is set forth in Section 5.3 of this Lease, and (D) first-class office standards in the market in which the Project is located.

\$446,490.21.

8. Security Deposit (Article 21):

9. Parking Pass Ratio (Article 28):

Four (4) unreserved parking passes for every 1,000 rentable square feet of the Premises (for a total of 308 parking spaces with respect to the initial Premises), of which up to six (6) passes may be converted to the reserved parking passes.

10. Address of Tenant  
(Section 29.18):

Retrophin, Inc.  
3721 Valley Centre Drive  
Suite 200  
San Diego, CA 92130  
Attention: Laura Clague  
Telephone Number: (760) 237-4124  
(Prior to Lease Commencement Date)

Retrophin, Inc.  
  
3611 Valley Centre Drive  
  
Suite 400  
  
San Diego, CA 92130  
  
Attention: Laura Clague  
  
Telephone Number: (760) 237-4124  
  
(After Lease Commencement Date)]

With a copy to:

Cooley LLP  
4401 Eastgate Mall  
San Diego, California 92121  
Attn: Samantha M. LaPine

11. Address of Landlord  
(Section 29.18):

Kilroy Realty Corporation

12200 West Olympic Boulevard

Suite 200

Los Angeles, California 90064

Attention: Legal Department

with copies to:

Kilroy Realty Corporation  
12200 West Olympic Boulevard, Suite 200  
Los Angeles, California 90064  
Attention: Mr. John Fucci

and

Kilroy Realty Corporation  
3661 Valley Centre Drive, Suite 250  
San Diego, California 92130  
Attention: Mr. Nelson Ackerly

and

Allen Matkins Leck Gamble Mallory & Natsis LLP  
1901 Avenue of the Stars, Suite 1800  
Los Angeles, California 90067  
Attention: Anton N. Natsis, Esq.

12. Brokers

(Section 29.24):

*Representing Tenant:*  
Cushman & Wakefield

*Representing Landlord:*  
CBRE, Inc.

\$75.00 per rentable square foot of the Premises for a total of \$5,793,150.00.

13. Improvement Allowance

(Section 2 of **Exhibit B**):



## ARTICLE 1

### PREMISES, BUILDING, PROJECT, AND COMMON AREAS

#### 1.1 Premises, Building, Project and Common Areas.

1.1.1 **The Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Section 2.2 of the Summary (the "**Premises**"). The outline of the Premises is set forth in Exhibit A attached hereto and the Premises has the number of rentable square feet as set forth in Section 2.2 of the Summary. The parties hereto agree that the lease of the Premises is upon and subject to the terms, covenants and conditions (the "**TCCs**") herein set forth, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such TCCs by it to be kept and performed and that this Lease is made upon the condition of such performance. The parties hereto hereby acknowledge that the purpose of Exhibit A is to show the approximate location of the Premises in the "Building," as that term is defined in Section 1.1.2, below, only, and such Exhibit is not meant to constitute an agreement, representation or warranty as to the construction of the Premises, the precise area thereof or the specific location of the "Common Areas," as that term is defined in Section 1.1.3, below, or the elements thereof or of the accessways to the Premises or the "Project," as that term is defined in Section 1.1.2, below. Except as specifically set forth in this Lease and in the Work Letter attached hereto as Exhibit B (the "**Work Letter**"), Tenant shall accept the Premises in its existing "as-is" condition and Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises. Tenant also acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the Building or the Project or with respect to the suitability of any of the foregoing for the conduct of Tenant's business, except as specifically set forth in this Lease and the Work Letter. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in good and sanitary order, condition and repair. Landlord agrees to deliver possession of the Premises to Tenant promptly following the vacation of the Premises by the existing tenant.

1.1.2 **The Building and the Project.** The Premises is a part of the building set forth in Section 2.1 of the Summary (the "**Building**"). The Building is part of an office project known as "**Kilroy Centre Del Mar**." The term "**Project**," as used in this Lease, shall mean (i) the Building and the Common Areas, (ii) the land (which is improved with landscaping, parking structures and/or facilities and other improvements) upon which the Building and the Common Areas are located, (iii) the other office buildings located adjacent to the Building and the land upon which such adjacent office buildings are located, and (iv) at Landlord's discretion, any additional real property, areas, land, buildings or other improvements added thereto.

1.1.3 **Common Areas.** Tenant shall have the non-exclusive right to use in common with other tenants in the Project, and subject to the rules and regulations referred to in Article 5 of this Lease, those portions of the Project which are provided, from time to time, for use in common by Landlord, Tenant and any other tenants of the Project (such areas, together with such other portions of the Project designated by Landlord, in its discretion, including certain areas designated for the exclusive use of certain tenants, or to be shared by Landlord and certain tenants, are collectively referred to herein as the "**Common Areas**"). The Common Areas shall consist of the "Project Common Areas" and the "Building Common Areas" (as both of those terms are defined below). The term "**Project Common Areas**," as used in this Lease, shall mean the portion of the Project designated as such by Landlord. The term "**Building Common Areas**," as used in this Lease, shall mean the portions of the Common Areas located within the Building designated as such by Landlord. The manner in which the Common Areas are maintained and operated shall be at the sole discretion of Landlord and the use thereof shall be subject to such reasonable rules, regulations and restrictions as Landlord may make from time to time, provided that such rules, regulations and restrictions do not unreasonably interfere with the rights granted to Tenant under this Lease and the Permitted Use. Landlord reserves the right to close temporarily, make alterations or additions to, or change the location of elements of the Project and the Common Areas; provided that no such changes shall be permitted which materially reduce Tenant's rights or access hereunder. Except when and where Tenant's right of access is specifically excluded in this Lease, Tenant shall have the right of access to the Premises, the Building, and the Project parking facility twenty-four (24) hours per day, seven (7) days per week during the "Lease Term," as that term is defined in Section 2.1, below.

1.2 **Stipulation of Rentable Square Feet of Premises and Building.** For purposes of this Lease, "rentable square feet" of the Premises shall be deemed as set forth in Section 2.2 of the Summary and the rentable square feet of the Building shall be deemed as set forth in Section 2.1 of the Summary, and is not subject to remeasurement by either party during the initial Lease Term.

1.3 **Right of First Offer.** Landlord hereby grants to the named Tenant in this Lease (the "**Original Tenant**") and its "Permitted Transferee Assignee," as that term is set forth in Section 14.8 of this Lease, a one-time right of first offer with respect to all of the rentable space in the Project (the "**First Offer Space**"). Notwithstanding the foregoing, such first offer right of Tenant shall commence only following the expiration or earlier termination of the existing leases of the First Offer Space (including renewals of any such lease, irrespective of whether any such renewal is currently set forth in such lease or is subsequently granted or agreed upon, and regardless of whether such renewal is consummated pursuant to a lease amendment or a new lease), and Landlord shall use commercially reasonable efforts to notify Tenant following its receipt of notification of non-renewal of the lease(s) of the existing tenant(s). Such right of first offer shall be subordinate to all rights of other tenants of the Project, which rights relate to the First Offer Space and are set forth in leases of space in the Project existing as of the date hereof, including, without limitation, any expansion, first offer, first refusal, first negotiation and other rights, regardless of whether such rights are executed strictly in accordance with their respective terms or pursuant to a lease amendment or a new lease (the "**Superior Rights**"). Notwithstanding any contrary provision in the lease of any Superior Right Holder, such rights of

any Superior Right Holder shall continue to be Superior Rights in the event that such Superior Right Holder's lease is renewed or otherwise modified (and irrespective of whether any such renewal is currently set forth in such lease or is subsequently granted or agreed upon, and regardless of whether such renewal is consummated pursuant to a lease amendment or a new lease). All such tenants of the First Offer Space, and all such third party tenants in the Project holding Superior Rights, are collectively referred to as the "**Superior Right Holders**". Landlord covenants to Tenant that all Superior Right Holders are listed in **Exhibit J** attached hereto. Notwithstanding anything in this Section 1.3 to the contrary, Landlord acknowledges and agrees that (i) any future rights granted to existing tenants of the Project after the date of this Lease and (ii) rights granted to future tenants of the Project from and after the date of this Lease, shall not be considered Superior Rights. Tenant's right of first offer shall be on the terms and conditions set forth in this Section 1.3.

1.3.1 **Procedure for Offer.** Subject to the terms of this Section 1.3, Landlord shall notify Tenant (the "**First Offer Notice**") from time to time when the First Offer Space or any portion thereof will become available for lease to third parties, subject to the rights of any Superior Right Holder. Pursuant to such First Offer Notice, Landlord shall offer to lease to Tenant the then available First Offer Space. The First Offer Notice shall describe the space so offered to Tenant the "First Offer Rent" (as that term is defined in Section 1.3.3 below), and other fundamental material economic terms upon which Landlord is willing to lease such space to Tenant. In no event shall Landlord have the obligation to deliver a First Offer Notice (and Tenant shall have no right to exercise its right under this Section 1.3) to the extent that the "First Offer Commencement Date," as that term is defined in Section 1.3.5 below, is anticipated by Landlord to occur on a date when less than two (2) full calendar years remain in the Lease Term (the "**ROFO Expiration**").

1.3.2 **Procedure for Acceptance.** If Tenant wishes to exercise Tenant's right of first offer with respect to the space described in the First Offer Notice, then within ten (10) business days of delivery of the First Offer Notice to Tenant, Tenant shall deliver notice to Landlord (the "**First Offer Exercise Notice**") of Tenant's election to exercise its right of first offer with respect to the entire space described in the First Offer Notice on the terms contained in such notice. If Tenant does not so notify Landlord within such ten (10) business day period, then Landlord shall be free to lease the space described in the First Offer Notice to anyone to whom Landlord desires on any terms Landlord desires. Notwithstanding anything to the contrary contained herein, Tenant must elect to exercise its right of first offer, if at all, with respect to all of the space offered by Landlord to Tenant at any particular time, and Tenant may not elect to lease only a portion thereof. Notwithstanding anything to the contrary, in connection with any First Offer Notice where the "First Offer Commencement Date," as that term is defined in Section 1.3.5 below, is anticipated by Landlord to occur on a date when less than two (2) full calendar years remain in the Lease Term, Tenant shall have no right to exercise its right under this Section 1.3, unless, and to the extent, Tenant, concurrently and timely delivers the "Exercise Notice," as that term is defined in Section 2.2.3 below, electing to extend the initial Lease Term, pursuant to Section 2.2.3 below.

1.3.3 **First Offer Space Rent.** The "Rent," as that term is defined in Section 4.1 of this Lease, payable by Tenant for the First Offer Space (the "**First Offer Rent**") shall be equal to the lesser of (i) the "Market Rent," as that term is defined in, and determined pursuant to, **Exhibit H** attached hereto, for the First Offer Space, and (ii) the Monthly Rental Rate per rentable square foot of the Premises set forth in the Base Rent schedule in Section 4 of the Summary at the time of the First Offer Commencement Date multiplied by the rentable square feet of the First Offer Space, and such First Offer Rent shall increase by three percent (3%) annually. Notwithstanding the foregoing, and regardless of otherwise applicable Market Rents, with respect to the 20,751 rentable square feet of premises on the fifth (5<sup>th</sup>) floor of the Building (the "**Fifth Floor First Offer Space**"), the Rent payable by Tenant for the Fifth Floor First Offer space shall equal the then applicable Monthly Rental Rate per rentable square foot of the Premises, with all scheduled increases, as set forth in the Rent Schedule in Section 4 of the Summary at the time of the First Offer Commencement Date multiplied by the rentable square feet of the Fifth Floor First Offer Space. If Tenant exercises the right of first offer in accordance with Section 1.4.2 above, but concurrently with such exercise, in good faith objects to Landlord's determination of the First Offer Rent, then Landlord and Tenant shall, within thirty (30) days after Landlord's receipt of Tenant's exercise notice, meet and attempt to agree upon the First Offer Rent (the "**First Offer Meeting**"). If Landlord and Tenant do not reach agreement as to the First Offer Rent, within thirty (30) days after the First Offer Meeting (the "**First Offer Rent Outside Agreement Date**"), then each party shall, within ten (10) business days following the First Offer Rent Outside Agreement Date, make a separate determination of the First Offer Rent and such determinations shall be submitted to arbitration in accordance with Sections 2.2.4.1 through 2.2.4.4, below.

1.3.4 **Construction In First Offer Space.** Tenant shall take the First Offer Space in its "as is" condition, and the construction of improvements in the First Offer Space shall comply with the terms of Article 8 of this Lease. Any improvement allowance to which Tenant may be entitled shall be as set forth in the First Offer Notice.

1.3.5 **Amendment to Lease.** If Tenant timely exercises Tenant's right to lease the First Offer Space as set forth herein, then Landlord and Tenant shall within thirty (30) days thereafter execute an amendment to the Lease for such First Offer Space upon the terms and conditions as set forth in the First Offer Notice and this Section 1.3. The rentable square footage of any First Offer Space leased by Tenant shall be determined by Landlord in accordance with Landlord's then current standard of measurement for the Building. Tenant shall commence payment of rent for the First Offer Space, and the term of Tenant's lease of the First Offer Space shall commence, upon the date of delivery of the First Offer Space to Tenant (the "**First Offer Commencement Date**") and shall terminate coterminously with the end of the Lease Term, as the same may be extended pursuant to the terms of Section 2.2, below.

1.3.6 **Termination of Right of First Offer.** Tenant's rights under this Section 1.3 shall be personal to the Original Tenant and any Permitted Transferee Assignee, and may only be exercised by the Original Tenant or any such Permitted Transferee Assignee (and not any other assignee, sublessee or other transferee of the Original Tenant's interest in the Lease) if the Original Tenant or any Permitted Transferee Assignee

occupies the entire Premises. The right of first offer granted herein shall terminate as to particular First Offer Space upon Tenant's failure to timely exercise its right of first offer with respect to such particular First Offer Space. Tenant shall not have the right to lease First Offer Space, as provided in this [Section 1.3](#), if, as of the date of the attempted exercise of any right of first offer by Tenant, or, at Landlord's option, as of the scheduled date of delivery of such First Offer Space to Tenant, Tenant is in monetary or material non-monetary default under the Lease (beyond the applicable notice and cure periods), or Tenant has previously been in default under the Lease (beyond the expiration of any applicable notice and cure period set forth in the Lease).

1.4 **Existing Premises Continuation Option.** Landlord and Tenant are parties to that certain Office Lease dated July 27, 2016, (as amended, the "**Existing Lease**"), whereby Tenant leases from Landlord and Landlord leases to Tenant certain space, as more particularly described in the Existing Lease and defined thereunder as the Existing Premises and the Swing Space Premises. Pursuant to the Existing Lease, the lease for the Existing Premises and the Swing Space is scheduled to expire on the date immediately preceding the date hereunder. Pursuant to the Second Amendment to Office Lease, Tenant can elect to continue to lease all or a portion of the Existing Premises. In the event Tenant fails to timely elect to continue to lease the Existing Premises, the Base Rent schedule set forth in [Section 4](#) of the Summary of this Lease shall apply. In the event Tenant timely elects to continue to lease a portion of the Existing Premises, the Base Rent schedule in [Section 4](#) of the Summary of this Lease shall be deleted and replaced with the Alternative Base Rent Schedule attached as [Exhibit I-1](#) to this Lease. In the event Tenant timely elects to continue to lease the entirety of the Existing Premises, the Base Rent schedule in [Section 4](#) of the Summary of this Lease shall be deleted and replaced with the Alternative Base Rent Schedule attached as [Exhibit I-2](#) to this Lease.

## ARTICLE 2

### LEASE TERM; OPTION TERM

2.1 **Initial Lease Term.** The TCCs and provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease (the "**Lease Term**") shall be as set forth in [Section 3.1](#) of the Summary, shall commence on the date set forth in [Section 3.2](#) of the Summary (the "**Lease Commencement Date**"), and shall terminate on the date set forth in [Section 3.3](#) of the Summary (the "**Lease Expiration Date**") unless this Lease is sooner terminated as hereinafter provided or extended pursuant to the terms of Section 2.2 below. For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) calendar month period during the Lease Term; provided, however, that the first Lease Year shall commence on the Lease Commencement Date and end on the last day of the month in which the first anniversary of the Lease Commencement Date occurs (or if the Lease Commencement Date is the first day of a calendar month, then the first Lease Year shall commence on the Lease Commencement Date and end on the day immediately preceding the first anniversary of the Lease Commencement Date), and the second and each succeeding Lease Year shall commence on the first day of the next calendar month; and further provided that the last Lease Year shall end on the Lease Expiration Date. For purposes of this Lease, the term "**Lease Month**" shall mean each succeeding calendar month during the Lease Term; provided that the first Lease Month shall commence on the Lease Commencement Date and shall end on the last day of the first (1<sup>st</sup>) full calendar month of the Lease Term and that the last Lease Month shall expire on the Lease Expiration Date. At any time during the Lease Term, Landlord may deliver to Tenant a notice in the form as set forth in [Exhibit C](#), attached hereto, as a confirmation only of the information set forth therein, which Tenant shall execute and return to Landlord within five (5) days of receipt thereof.

#### 2.2 **Option Term.**

2.2.1 **Option Right.** Landlord hereby grants the Original Tenant and its Permitted Transferee Assignee, one (1) option to extend the Lease Term for the entire Premises by a period of five (5) years (the "**Option Term**"). Such option shall be exercisable only by "Notice" (as that term is defined in [Section 29.18](#) of this Lease) delivered by Tenant to Landlord as provided below, provided that, as of the date of delivery of such Notice, (i) Tenant is not then in default under this Lease (beyond the applicable notice and cure periods), (ii) Tenant has not been in default under this Lease (beyond the applicable notice and cure periods) more than once during the prior twelve (12) month period, and (iii) Tenant has not been in default under this Lease (beyond the applicable notice and cure periods) more than twice during the prior Lease Term. Upon the proper exercise of such option to extend, and provided that, at Landlord's election, as of the end of the Lease Term, (A) Tenant is not in default under this Lease (beyond the applicable notice and cure periods), (B) Tenant has not been in default under this Lease (beyond the applicable notice and cure periods) more than once during the prior twelve (12) month period, and (C) Tenant has not been in default under this Lease (beyond the applicable notice and cure periods) more than twice during the prior Lease Term, then the Lease Term, as it applies to the entire Premises, shall be extended for a period of five (5) years. The rights contained in this [Section 2.2](#) shall only be exercised by the Original Tenant or its Permitted Transferee Assignee (and not any other assignee, sublessee or other transferee of the Original Tenant's interest in this Lease) if Original Tenant and/or its Permitted Transferee Assignee is in occupancy of the entire then-existing Premises.

2.2.2 **Option Rent.** The Rent payable by Tenant during the Option Term (the "**Option Rent**") shall be equal to the Market Rent; provided, however, that the Market Rent for each Lease Year during the Option Term, shall be equal to the amount set forth on a "Market Rate Schedule," as that term is defined below. The "**Market Rate Schedule**" shall be derived from the Market Rent for the Option Term as determined pursuant to [Exhibit H](#), attached hereto, as follows: (i) the Market Rent for the first Lease Year of the Option Term shall be equal to the sum of (a) the Market Rent, as determined pursuant to [Exhibit H](#), (b) the amount of Direct Expenses applicable to the Premises, as reasonably determined by Landlord, for the calendar year in which the Option Term commences, and (c) an amount equal to the monthly amortization reimbursement payment for the

"Renewal Allowance" (as defined in Section 3 of Exhibit H to this Lease) to be paid by Landlord in connection with Tenant's lease of the Premises for the Option Term, with such Renewal Allowance being amortized at a reasonable rate of return to Landlord based on the rates of return then being received by the landlords of the "Comparable Buildings" as that term is set forth in Section 4 of Exhibit H attached hereto, in connection with improvement allowances then be granted by such landlords, and (ii) the Market Rent for each subsequent Lease Year shall be equal to one hundred three percent (103%) of the prior Lease Year's Market Rent. The calculation of the Market Rent shall be derived from a review of, and comparison to, the "Net Equivalent Lease Rates" of the "Comparable Transactions," as provided for in Exhibit H.

**2.2.3 Exercise of Option.** The option contained in this Section 2.2 shall be exercised by Tenant, if at all, only in the manner set forth in this Section 2.2. Tenant shall deliver notice (the "**Exercise Notice**") to Landlord not more than fifteen (15) months (unless in connection with Tenant's earlier delivery of a First Offer Exercise Notice pursuant to Section 1.3.2 above) nor less than twelve (12) months prior to the expiration of the initial Lease Term, stating that Tenant is exercising its option. Concurrently with such Exercise Notice, Tenant shall deliver to Landlord Tenant's calculation of the Market Rent (the "**Tenant's Preliminary Option Rent Calculation**"). Landlord shall deliver notice (the "**Landlord Preliminary Response Notice**") to Tenant on or before the date which is thirty (30) days after Landlord's receipt of the Exercise Notice and Tenant's Option Rent Calculation, stating that (A) Landlord is accepting Tenant's Option Rent Calculation as the Market Rent, or (B) rejecting Tenant's Option Rent Calculation and setting forth Landlord's calculation of the Market Rent (the "**Landlord's Option Rent Calculation**"). Within ten (10) business days of its receipt of the Landlord Response Notice, Tenant may, at its option, accept the Market Rent contained in the Landlord's Option Rent Calculation. If Tenant does not affirmatively accept or Tenant rejects the Market Rent specified in the Landlord's Option Rent Calculation, the parties shall follow the procedure set forth in Section 2.2.4 below, and the Market Rent shall be determined in accordance with the terms of Section 2.2.4 below.

**2.2.4 Determination of Market Rent.** In the event Tenant timely and appropriately exercises its option to extend the Lease but rejects the Option Rent set forth in Landlord's Preliminary Option Rent Calculation pursuant to Section 2.2.3, above, then Landlord and Tenant shall attempt to agree upon the Option Rent using their best good-faith efforts. If Landlord and Tenant fail to reach agreement within thirty (30) days following Tenant's objection or deemed objection to the Landlord's Preliminary Option Rent Calculation, then Landlord and Tenant shall each deliver to one another updated option rent calculations (alternatively, the "**Landlord's Final Option Rent Calculation**" and the "**Tenant's Final Option Rent Calculation**") within five (5) business days following the expiration of such thirty (30) day period; provided, however, to the extent either party fails to timely deliver such Landlord's Final Option Rent Calculation or Tenant's Final Option Rent Calculation, as the case may be, then the same shall be deemed to equal the previously submitted Landlord's Preliminary Option Rent Calculation or Tenant's Preliminary Option Rent Calculation, as applicable. If Landlord and Tenant fail to reach agreement within five (5) business days following the delivery (or deemed delivery) of the Landlord's Final Option Rent Calculation and Tenant's Final Option Rent Calculation to each other (the "**Outside Agreement Date**"), then Landlord's Final Option Rent Calculation and Tenant's Final Option Rent Calculation, each as previously delivered to the other party, shall be submitted to the arbitrators pursuant to the TCCs of this Section 2.2.4. The submittals of the Landlord's Option Rent Calculation and Tenant's Option Rent Calculation shall be made concurrently with the selection of the arbitrators pursuant to this Section 2.2.4 and shall be submitted to arbitration in accordance with Section 2.2.4.1 through 2.2.4.7 of this Lease, but subject to the conditions, when appropriate, of Section 2.2.3.

**2.2.4.1** Landlord and Tenant shall each appoint one arbitrator who shall by profession be an MAI commercial real estate appraiser whom shall have been active over the five (5) year period ending on the date of such appointment in the appraisal of first class office in the Comparable Area. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's Final Option Rent Calculation or Tenant's Final Option Rent Calculation is the closest to the actual Market Rent as determined by the arbitrators, taking into account the requirements of Section 2.2.2 of this Lease. Each such arbitrator shall be appointed within fifteen (15) days after the Outside Agreement Date. Landlord and Tenant may consult with their selected arbitrators prior to appointment and may select an arbitrator who is favorable to their respective positions. The arbitrators so selected by Landlord and Tenant shall be deemed ("**Advocate Arbitrators**").

**2.2.4.2** The two Advocate Arbitrators so appointed shall be specifically required pursuant to an engagement letter within ten (10) days of the date of the appointment of the last appointed Advocate Arbitrator to agree upon and appoint a neutral third arbitrator ("**Neutral Arbitrator**") who shall be qualified under the same criteria set forth hereinabove for qualification of the two Advocate Arbitrators except that neither the Landlord or Tenant or either party's Advocate Arbitrator may, directly or indirectly, consult with the Neutral Arbitrator prior to subsequent to his or her appearance. The Neutral Arbitrator shall be retained via an engagement letter jointly prepared by Landlord's counsel and Tenant's counsel.

**2.2.4.3** The three arbitrators shall within thirty (30) days of the appointment of the Neutral Arbitrator reach a decision as to Market Rent and determine whether the Landlord's Final Option Rent Calculation or Tenant's Final Option Rent Calculation, as submitted pursuant to this Section 2.2.4, is closest to Market Rent as determined by the arbitrators and simultaneously publish a ruling ("**Award**") indicating whether Landlord's Final Option Rent Calculation or Tenant's Final Option Rent Calculation is closest to the Market Rent as determined by the arbitrators. Following notification of the Award, the Landlord's Final Option Rent Calculation or Tenant's Final Option Rent Calculation, whichever is selected by the arbitrators as being closest to Market Rent, shall become the then applicable Market Rent.

**2.2.4.4** The Award issued by the majority of the three arbitrators shall, subject to the TCCs of Section 2.2.5, below, be binding upon Landlord and Tenant.

**2.2.4.5** If either Landlord or Tenant fail to appoint an Advocate Arbitrator within fifteen (15) days after the Outside Agreement Date, either party may petition the presiding judge of the Superior Court of San Diego County to appoint such Advocate Arbitrator subject

to the criteria in Section 2.2.4.1 of this Lease, or if he or she refuses to act, either party may petition any judge having jurisdiction over the parties to appoint such Advocate Arbitrator.

2.2.4.6 If the two Advocate Arbitrators fail to agree upon and appoint the Neutral Arbitrator, then either party may petition the presiding judge of the Superior Court of San Diego County to appoint the Neutral Arbitrator, subject to criteria in Section 2.2.4.1 of this Lease, or if he or she refuses to act, either party may petition any judge having jurisdiction over the parties to appoint such arbitrator.

2.2.4.7 Each party shall pay the cost of its Advocate Arbitrator and the cost of the Neutral Arbitrator shall be paid by Landlord and Tenant equally.

2.2.4.1 In the event that the Option Rent shall not have been determined pursuant to the terms hereof prior to the commencement of the Option Term, Tenant shall continue to pay the Base Rent applicable as of the end of the Lease Term, and upon the final determination of the Option Rent, the payments made by Tenant shall be reconciled with the actual amounts due, and the appropriate party shall make any corresponding payment to the other party.

### ARTICLE 3

#### BASE RENT

3.1 **In General.** Tenant shall pay, without prior notice or demand, to Landlord or Landlord's agent at the management office of the Project, or, at Landlord's option, at such other place as Landlord may from time to time designate in writing, by a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, base rent ("**Base Rent**") as set forth in Section 4 of the Summary, payable in equal monthly installments as set forth in Section 4 of the Summary in advance on or before the first day of each and every calendar month during the Lease Term, without any setoff or deduction whatsoever. In accordance with Section 4 of the Summary, any increases in Base Rent shall occur on the first day of the applicable Lease Month. The parties acknowledge, however, that Tenant shall pay Base Rent for each "calendar month" of the Lease Term (or a prorated portion of a "calendar month", as applicable), even though the first "Lease Month" may pertain to a period longer than one (1) calendar month. The Base Rent for the first full month of the Lease Term which occurs after the expiration of any free rent period shall be paid at the time of Tenant's execution of this Lease. If any payment of Rent is for a period which is shorter than one month, the Rent for any such fractional month shall accrue on a daily basis during such fractional month and shall total an amount equal to the product of (i) a fraction, the numerator of which is the number of days in such fractional month and the denominator of which is the actual number of days occurring in such calendar month, and (ii) the then-applicable Monthly Installment of Base Rent. All other payments or adjustments required to be made under the TCCs of this Lease that require proration on a time basis shall be prorated on the same basis.

3.2 **Base Rent Abatement.** Provided that no event of default is occurring during the seven (7) month period commencing on the first (1st) day of the second (2<sup>nd</sup>) full calendar month of the Lease Term and ending on the last day of the eighth (8<sup>th</sup>) full calendar month of the Lease Term (the "**Base Rent Abatement Period**"), Tenant shall not be obligated to pay any Base Rent otherwise attributable to the Premises during such Base Rent Abatement Period (the "**Base Rent Abatement**"). Landlord and Tenant acknowledge that the aggregate amount of the Base Rent Abatement equals \$2,541,261.80 (*i.e.*, \$363,037.40 per month), which amount is subject to decrease in the event Tenant keeps a portion of its existing premises as provided in Section 1.4 above. Tenant acknowledges and agrees that during such Base Rent Abatement Period, such abatement of Base Rent for the Premises shall have no effect on the calculation of any future increases in Base Rent or Direct Expenses payable by Tenant pursuant to the terms of this Lease, which increases shall be calculated without regard to such Base Rent Abatement. Additionally, Tenant shall be obligated to pay all "Additional Rent" (as that term is defined in Section 4.1 of this Lease) during the Base Rent Abatement Period. Tenant acknowledges and agrees that the foregoing Base Rent Abatement has been granted to Tenant as additional consideration for entering into this Lease, and for agreeing to pay the Base Rent and perform the terms and conditions otherwise required under this Lease. If Tenant shall be in default under this Lease prior to or during such Base Rent Abatement Period and shall fail to cure such default within the notice and cure period, if any, permitted for cure pursuant to this Lease, or if this Lease, is terminated for any reason other than Landlord's breach of this Lease, then the dollar amount of the unapplied portion of the Base Rent Abatement as of the date of such default or termination, as the case may be, shall be converted to a credit to be applied to the Base Rent applicable at the end of the Lease Term and Tenant shall immediately be obligated to begin paying Base Rent for the Premises in full. The foregoing Base Rent Abatement right set forth in this Section 3.2 shall be personal to the Original Tenant and shall only apply to the extent that the Original Tenant (and not any assignee, or any sublessee or other transferee of the Original Tenant's interest in this Lease) is the Tenant under this Lease during such Base Rent Abatement Period.

## ARTICLE 4

### ADDITIONAL RENT

4.1 **In General.** In addition to paying the Base Rent specified in Article 3 of this Lease, Tenant shall pay "Tenant's Share" of the annual "Direct Expenses," as those terms are defined in Sections 4.2.6 and 4.2.2, respectively, of this Lease, which are in excess of the amount of Direct Expenses applicable to the "Base Year," as that term is defined in Section 4.2.1, below; provided, however, that in no event shall any decrease in Direct Expenses for any "Expense Year" (as that term is defined in Section 4.2.3, below) below Direct Expenses for the Base Year entitle Tenant to any decrease in Base Rent or any credit against sums due under this Lease. Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord pursuant to the TCCs of this Lease, are hereinafter collectively referred to as the "**Additional Rent**," and the Base Rent and the Additional Rent are herein collectively referred to as "**Rent**." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner as the Base Rent; provided, however, the parties hereby acknowledge that the first monthly installment of Tenant's Share of any "Estimated Excess," as that term is set forth in, and pursuant to the terms and conditions of, Section 4.4.2 of this Lease, shall first be due and payable for the calendar month occurring immediately following the expiration of the Base Year. Without limitation on other obligations of Tenant which survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article 4 shall survive the expiration of the Lease Term.

4.2 **Definitions of Key Terms Relating to Additional Rent.** As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 "**Base Year**" shall mean the period set forth in Section 5 of the Summary.

4.2.2 "**Direct Expenses**" shall mean "Operating Expenses" and "Tax Expenses."

4.2.3 "**Expense Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires, provided that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Direct Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.2.4 "**Operating Expenses**" shall mean all expenses, costs and amounts of every kind and nature which Landlord pays or accrues during any Expense Year because of or in connection with the ownership, management, maintenance, security, repair, replacement, renovation, restoration or operation of the Project, or any portion thereof, in accordance with sound real estate management and accounting practices, consistently applied. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities (but excluding the cost of electricity services consumed in the Premises and the premises of other tenants of the Building and any other buildings in the Project (since Tenant is separately paying for the cost of electricity services pursuant to Section 6.1.2 of the Lease)), the cost of operating, repairing, replacing, maintaining, renovating and restoring the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting any governmental enactments which may affect Operating Expenses, and the costs incurred in connection with a governmentally mandated transportation system management program or similar program; (iii) the cost of all insurance carried by Landlord in connection with the Project; (iv) the cost of landscaping, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) costs incurred in connection with the parking areas servicing the Project; (vi) fees and other costs, including management fees, consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance, replacement, renovation, repair and restoration of the Project; (vii) payments under any equipment rental agreements and the fair rental value of any management office space; (viii) wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons (other than persons generally considered to be higher in rank than the position of "Senior Asset Manager") engaged in the operation, maintenance and security of the Project; (ix) costs under any instrument pertaining to the sharing of costs by the Project; (x) operation, repair, maintenance, renovation, replacement and restoration of all systems and equipment and components thereof of the Project; (xi) the cost of janitorial, alarm, security and other services, replacement, renovation, restoration and repair of wall and floor coverings, ceiling tiles and fixtures in common areas, maintenance, replacement, renovation, repair and restoration of curbs and walkways, repair to roofs and re-roofing; (xii) amortization of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof (which amortization calculation shall include interest at the "Interest Rate," as that term is set forth in Article 25 of this Lease, but not to exceed 8%); (xiii) the cost of capital improvements or other costs incurred in connection with the Project (A) which are reasonably anticipated by Landlord to effect economies in the operation or maintenance of the Project, or any portion thereof, or reduce current or future Operating Expenses (but only to the extent of reasonably anticipated savings in Operating Expenses on a net basis), (B) that are required to comply with present mandatory conservation programs, (C) which are replacements or modifications of nonstructural items located in the Common Areas required to keep the Common Areas in good order or condition, (D) that are required under any governmental law or regulation by a federal, state or local governmental agency, except for capital repairs, replacements or other improvements to remedy a condition existing prior to the Lease Commencement Date which an applicable governmental authority, if it had knowledge of such condition prior to the Lease Commencement Date, would have then required to be remedied pursuant to then-current governmental laws or regulations in their form existing as of the Lease Commencement Date and pursuant to the then-current interpretation of such governmental laws or regulations by the applicable governmental authority

as of the Lease Commencement Date, (E) which are required in order for the Project, or any portion thereof, to obtain or maintain a certification under the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED"), or other applicable certification agency in connection with Landlord's sustainability practices for the Project (as such sustainability practices are to be determined by Landlord, in its sole and absolute discretion, from time to time), or (F) that relate to the safety or security of the Project; provided, however, that any capital expenditure shall be amortized with interest at the Interest Rate (but not to exceed 8%) over its useful life as Landlord shall reasonably determine in accordance with sound real estate management and accounting practices, consistently applied, or with respect to those items included under item (A) above, their recovery/payback period as Landlord shall reasonably determine in accordance with sound real estate management and accounting practices, consistently applied; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services which do not constitute "Tax Expenses" as that term is defined in Section 4.2.5, below; (xv) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Project and (xvi) costs of any additional services not provided to the Project as of the Lease Commencement Date but which are thereafter provided by Landlord in connection with its prudent management of the Project. Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall not, however, include:

(a) costs, including marketing costs, legal fees, space planners' fees, advertising and promotional expenses, and brokerage fees incurred in connection with the original construction or development, or original or future leasing of the Project, and costs, including permit, license and inspection costs, incurred with respect to the installation of improvements made for new tenants initially occupying space in the Project after the Lease Commencement Date or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Project (excluding, however, such costs relating to any common areas of the Project or parking facilities);

(b) except as set forth in items (xii), and (xiii) above, depreciation, interest and principal payments on mortgages and other debt costs, if any, penalties and interest;

(c) costs for which the Landlord is reimbursed by any tenant or occupant of the Project or by insurance by its carrier or any tenant's carrier or by anyone else (except to the extent of deductibles), and electric power costs for which any tenant directly contracts with the local public service company;

(d) any bad debt loss, rent loss, or reserves for bad debts or rent loss;

(e) costs associated with the operation of the business of the partnership or entity which constitutes the Landlord, as the same are distinguished from the costs of operation of the Project (which shall specifically include, but not be limited to, accounting costs associated with the operation of the Project). Costs associated with the operation of the business of the partnership or entity which constitutes the Landlord include costs of partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of the Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of the Landlord's interest in the Project, and costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Project management, or between Landlord and other tenants or occupants, and Landlord's general corporate overhead and general and administrative expenses;

(f) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-a-vis time spent on matters unrelated to operating and managing the Project; provided, that in no event shall Operating Expenses for purposes of this Lease include wages and/or benefits attributable to personnel above the level of Senior Asset Manager;

(g) amount paid as ground rental for the Project by the Landlord;

(h) overhead and profit increment paid to the Landlord or to subsidiaries or affiliates of the Landlord for services in the Project to the extent the same exceeds the costs of such services rendered by qualified, first-class unaffiliated third parties on a competitive basis;

(i) any compensation paid to clerks, attendants or other persons in commercial concessions operated by the Landlord, provided that any compensation paid to any concierge or parking attendants at the Project shall be includable as an Operating Expense;

(j) rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment which if purchased the cost of which would be excluded from Operating Expenses as a capital cost, except equipment not affixed to the Project which is used in providing janitorial or similar services and, further excepting from this exclusion such equipment rented or leased to remedy or ameliorate an emergency condition in the Project ;

(k) all items and services for which Tenant or any other tenant in the Project reimburses Landlord or which Landlord provides selectively to one or more tenants (other than Tenant) without reimbursement;

(l) costs, other than those incurred in ordinary maintenance and repair, for sculpture, paintings, fountains or other objects of art;

(m) any costs expressly excluded from Operating Expenses elsewhere in this Lease;

(n) rent for any office space occupied by Project management personnel to the extent the size or rental rate of such office space exceeds the size or fair market rental value of office space occupied by management personnel of the "Comparable Buildings," as that term is defined in Section 4 of Exhibit H to this Lease, with adjustment where appropriate for the size of the applicable project;

(o) costs to the extent arising from the gross negligence or willful misconduct of Landlord or its agents, employees, vendors, contractors, or providers of materials or services;

(p) costs incurred to comply with laws relating to the removal of hazardous material or substance (as defined under applicable law) which was in existence in the Building or on the Project prior to the Lease Commencement Date, to the extent the same was of such a nature that a federal, state, local or municipal governmental authority, if it had then had knowledge of the presence of such hazardous material or substance, in the state, and under the conditions that it then existed in the Building or on the Project, would have then required the removal of such hazardous material or substance or other remedial or containment action with respect thereto; and costs incurred to remove, remedy, contain, or treat hazardous material or substance, which hazardous material or substance is brought into the Building or onto the Project after the date hereof by Landlord or any other tenant of the Project and is of such a nature, at that time, that a federal, state, local or municipal governmental authority, if and to the extent it had then had knowledge of the presence of such hazardous material or substance, in the state, and under the conditions, that it then exists in the Building or on the Project, would have then required the removal of such hazardous material or substance or other remedial or containment action with respect thereto;

(q) costs incurred to comply with Applicable Laws for violations in existence in the Building or on the Project prior to the Lease Commencement Date, to the extent the same was of such a nature that a federal, state, local or municipal governmental authority, if it had then had knowledge of the presence of such violation in the Building or on the Project, would have then required the remedy thereof;

(r) capital expenditures other than those expressly permitted pursuant to item (xiii) of Section 4.2.7 above;

(s) advertising and promotional expenses; and

(t) any profit related to the excess collection of Operating Expenses or collection of Operating Expenses in excess of 100% of the actual Operating Expenses.

If Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would be included in Operating Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant. If the Project is not at least ninety-five percent (95%) occupied during all or a portion of the Base Year or any Expense Year, Landlord shall make an appropriate adjustment to the components of Operating Expenses for such year to determine the amount of Operating Expenses that would have been incurred had the Project been ninety-five percent (95%) occupied; and the amount so determined shall be deemed to have been the amount of Operating Expenses for such year. Operating Expenses for the Base Year shall not include market-wide cost increases (including utility rate increases) due to extraordinary circumstances, including, but not limited to, Force Majeure, boycotts, strikes, conservation surcharges, embargoes or shortages, or amortized costs. In no event shall each of the components of Direct Expenses for any Expense Year related to utility costs, Tax Expenses, Project services costs or Project insurance costs be less than each of the corresponding components of Direct Expenses related to such utility costs, Tax Expenses, Project services costs and Project insurance costs in the Base Year. Landlord shall not (i) make a profit by charging items to Operating Expenses that are otherwise also charged separately to others and (ii) subject to Landlord's right to adjust the components of Operating Expenses described above in this paragraph, collect Operating Expenses from Tenant and all other tenants in the Building in an amount in excess of what Landlord incurs for the items included in Operating Expenses.

#### 4.2.5 Taxes.

4.2.5.1 "**Tax Expenses**" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Project, or any portion thereof), which shall be paid or accrued during any Expense Year (without regard to any different fiscal year used by such governmental or municipal authority) because of or in connection with the ownership, leasing and operation of the Project, or any portion thereof (including, without limitation, the land upon which the Building and the parking facility adjacent to the Building are located).

4.2.5.2 Tax Expenses shall include, without limitation: (i) Any tax on the rent, right to rent or other income from the Project, or any portion thereof, or as against the business of leasing the Project, or any portion thereof; (ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax,



it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election ("**Proposition 13**") and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Tax Expenses shall also include any governmental or private assessments or the Project's contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies; (iii) Any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any business or gross income tax or excise tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; (iv) Any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and (v) all of the real estate taxes and assessments imposed upon or with respect to the Building and all of the real estate taxes and assessments imposed on the land and improvements comprising the Project.

4.2.5.3 Any costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year such expenses are paid. Landlord agrees that such challenges of Tax Expenses shall be made in good faith. Except as set forth in Section 4.2.5.4, below, refunds of Tax Expenses shall be credited against Tax Expenses and refunded to Tenant regardless of when received, based on the Expense Year to which the refund is applicable, provided that in no event shall the amount to be refunded to Tenant for any such Expense Year exceed the total amount paid by Tenant as an increase in Tax Expenses under this Article 4 for such Expense Year. If Tax Expenses for any period during the Lease Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Share of any such increased Tax Expenses included by Landlord as Building Tax Expenses pursuant to the TCCs of this Lease. Notwithstanding anything to the contrary contained in this Section 4.2.5 (except as set forth in Section 4.2.5.2, above), there shall be excluded from Tax Expenses (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items included as Operating Expenses, (iii) any items paid by Tenant under Section 4.5 of this Lease, and (iv) any fees, penalties, interest or other expenses incurred as a result of the late payment of any Tax Expense (unless due to the actions or omissions of Tenant). Notwithstanding anything to the contrary set forth in this Lease, only Landlord may institute proceedings to reduce Tax Expenses and the filing of any such proceeding by Tenant without Landlord's consent shall constitute an event of default by Tenant under this Lease. Notwithstanding the foregoing, Landlord shall not be obligated to file any application or institute any proceeding seeking a reduction in Tax Expenses.

4.2.5.4 Notwithstanding anything to the contrary set forth in this Lease, the amount of Tax Expenses for the Base Year and any Expense Year shall be calculated without taking into account any decreases in real estate taxes obtained in connection with Proposition 8, and, therefore, the Tax Expenses in the Base Year and/or an Expense Year may be greater than those actually incurred by Landlord, but shall, nonetheless, be the Tax Expenses due under this Lease; provided that (i) any costs and expenses incurred by Landlord in securing any Proposition 8 reduction shall not be included in Direct Expenses for purposes of this Lease, and (ii) tax refunds under Proposition 8 shall not be deducted from Tax Expenses, but rather shall be the sole property of Landlord. Landlord and Tenant acknowledge that this Section 4.2.5.4 is not intended to in any way affect (A) the inclusion in Tax Expenses of the statutory two percent (2.0%) annual maximum allowable increase in Tax Expenses (as such statutory increase may be modified by subsequent legislation), or (B) the inclusion or exclusion of Tax Expenses pursuant to the terms of Proposition 13, which shall be governed pursuant to the terms of Sections 4.2.5.1 through 4.2.5.3, above.

4.2.6 "**Tenant's Share**" shall mean the percentage set forth in Section 6 of the Summary.

#### 4.3 Allocation of Direct Expenses.

4.3.1 Method of Allocation. The parties acknowledge that the Building is a part of a multi-building project and that the costs and expenses incurred in connection with the Project (i.e. the Direct Expenses) should be shared between the tenants of the Building and the tenants of the other buildings in the Project. Accordingly, as set forth in Section 4.2 above, Direct Expenses (which consists of Operating Expenses and Tax Expenses) are determined annually for the Project as a whole, and a portion of the Direct Expenses, which portion shall be reasonably determined by Landlord on an equitable basis, shall be allocated to the tenants of the Building (as opposed to the tenants of any other buildings in the Project) and such portion shall be the Direct Expenses for purposes of this Lease. Such portion of Direct Expenses allocated to the tenants of the Building shall include all Direct Expenses attributable solely to the Building and an equitable portion of the Direct Expenses attributable to the Project as a whole.

4.3.1 Cost Pools. Landlord shall have the right, from time to time, to equitably allocate some or all of the Direct Expenses for the Project among different portions or occupants of the Project (the "**Cost Pools**"), in Landlord's discretion. Such Cost Pools may include, but shall not be limited to, the office space tenants of a building of the Project or of the Project, and the retail space tenants of a building of the Project or of the Project. The Direct Expenses within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool in an equitable manner.

4.4 Calculation and Payment of Additional Rent. If for any Expense Year ending or commencing within the Lease Term, Tenant's Share of Direct Expenses for such Expense Year exceeds Tenant's Share of Direct Expenses applicable to the Base Year, then Tenant shall pay to Landlord, in the manner set forth in Section 4.4.1, below, and as Additional Rent, an amount equal to the excess (the "**Excess**").

4.4.1 **Statement of Actual Direct Expenses and Payment by Tenant.** Landlord shall give to Tenant following the end of each Expense Year, a statement (the "**Statement**") which shall state in general major categories the Direct Expenses incurred or accrued for the particular Expense Year, and which shall indicate the amount of the Excess. Landlord shall use commercially reasonable efforts to deliver such Statement to Tenant on or before May 1 following the end of the Expense Year to which such Statement relates. Upon receipt of the Statement for each Expense Year commencing or ending during the Lease Term, if an Excess is present, Tenant shall pay, within thirty (30) days after receipt of the Statement, the full amount of the Excess for such Expense Year, less the amounts, if any, paid during such Expense Year as "Estimated Excess," as that term is defined in Section 4.4.2, below, and if Tenant paid more as Estimated Excess than the actual Excess, Tenant shall receive a credit in the amount of Tenant's overpayment against Rent next due under this Lease. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord or Tenant from enforcing its rights under this Article 4. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Direct Expenses for the Expense Year in which this Lease terminates, if an Excess is present, Tenant shall, within thirty (30) days after receipt of the Statement, pay to Landlord such amount, and if Tenant paid more as Estimated Excess than the actual Excess, Landlord shall, within thirty (30) days, deliver a check payable to Tenant in the amount of the overpayment. The provisions of this Section 4.4.1 shall survive the expiration or earlier termination of the Lease Term. Notwithstanding the immediately preceding sentence, Tenant shall not be responsible for Tenant's Share of any Direct Expenses attributable to any Expense Year which are first billed to Tenant more than eighteen (18) calendar months after the Lease Expiration Date, provided that in any event Tenant shall be responsible for Tenant's Share of Direct Expenses which (x) were levied by any governmental authority or by any public utility companies, and (y) Landlord had not previously received an invoice therefor and which are currently due and owing (i.e., costs invoiced for the first time regardless of the date when the work or service relating to this Lease was performed), at any time following the Lease Expiration Date which are attributable to any Expense Year.

4.4.2 **Statement of Estimated Direct Expenses.** In addition, Landlord shall endeavor to give Tenant a yearly expense estimate statement (the "**Estimate Statement**") which shall set forth in general major categories Landlord's reasonable estimate (the "**Estimate**") of what the total amount of Direct Expenses for the then-current Expense Year shall be and the estimated excess (the "**Estimated Excess**") as calculated by comparing the Direct Expenses for such Expense Year, which shall be based upon the Estimate, to the amount of Direct Expenses for the Base Year. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights to collect any Additional Rent under this Article 4, nor shall Landlord be prohibited from revising any Estimate Statement or Estimated Excess theretofore delivered to the extent necessary. Thereafter, Tenant shall pay, within thirty (30) days after receipt of the Estimate Statement, a fraction of the Estimated Excess for the then-current Expense Year (reduced by any amounts paid pursuant to the second to last sentence of this Section 4.4.2). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year, including the month of such payment, and twelve (12) as its denominator. Until a new Estimate Statement is furnished (which Landlord shall have the right to deliver to Tenant at any time), Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Excess set forth in the previous Estimate Statement delivered by Landlord to Tenant. Throughout the Lease Term Landlord shall maintain records with respect to Direct Expenses in accordance with sound real estate management and accounting practices, consistently applied.

#### 4.5 **Taxes and Other Charges for Which Tenant Is Directly Responsible.**

4.5.1 Tenant shall be liable for and shall pay ten (10) days before delinquency, taxes levied against Tenant's equipment, furniture, fixtures and any other personal property located in or about the Premises. If any such taxes on Tenant's equipment, furniture, fixtures and any other personal property are levied against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such equipment, furniture, fixtures or any other personal property and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

4.5.2 If the improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which improvements conforming to Landlord's "building standard" in other space in the Building are assessed, then the Tax Expenses levied against Landlord or the property by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of Section 4.5.1, above.

4.5.3 Notwithstanding any contrary provision herein, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the rent or services herein or otherwise respecting this Lease, (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Project, including the Project parking facility; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

4.6 **Landlord's Records.** Upon Tenant's written request given not more than ninety (90) days after Tenant's receipt of a Statement for a particular Expense Year, and provided that Tenant is not then in default under this Lease beyond the applicable notice and cure period provided in this Lease, specifically including, but not limited to, the timely payment of Additional Rent (whether or not a component thereof is the subject of the audit contemplated herein), Landlord shall furnish Tenant with such reasonable supporting documentation pertaining to the calculation of the Excess set forth in the Statement as Tenant may reasonably request. Landlord shall provide said documentation pertaining to the relevant Excess to Tenant within thirty (30) days after Tenant's written request therefor. Within one hundred eighty (180) days after receipt of a Statement by Tenant (the "**Audit**")

**Period**"), Tenant shall have the right, within the Audit Period, after reasonable notice to Landlord and at reasonable times, to cause an independent certified public accountant which is not paid on a contingency basis and which is mutually approved by Landlord and Tenant (the "**Accountant**") to complete an audit of Landlord's records with respect to the Excess set forth in the Statement at Landlord's corporate offices, provided that (i) Tenant is not then in default under this Lease (beyond the applicable notice and cure periods provided under this Lease), (ii) Tenant has paid all amounts required to be paid under the applicable Estimate Statement and Statement (however, Tenant may pay such amounts under protest), and (iii) a copy of the audit agreement between Tenant and its particular certified public accounting firm has been delivered to Landlord prior to the commencement of the audit. Such audit by the Accountant shall be final and binding upon Landlord and Tenant. If Landlord and Tenant cannot mutually agree as to the identity of the Accountant within thirty (30) days after Tenant notifies Landlord that Tenant desires an audit to be performed, then the Accountant shall be one of the "Big 4" accounting firms or other national or regional accounting firm, which is not paid on a contingency basis and which is selected by Tenant and reasonably approved by Landlord. In connection with such audit, Tenant and the Accountant must agree in advance to follow Landlord's reasonable rules and procedures regarding an audit of the aforementioned Landlord records, and shall execute a commercially reasonable confidentiality agreement regarding such audit. Any audit report prepared by the Accountant shall be delivered concurrently to Landlord and Tenant within the Audit Period. Tenant's failure to audit the any Expenses set forth in a Statement within the Audit Period shall be deemed to be Tenant's approval of such Statement and Tenant, thereafter, waives the right or ability to audit the amounts set forth in such Statement. If such audit reveals that Landlord has over-charged Tenant, then within thirty (30) days after the results of such audit are made available to Landlord, Landlord shall reimburse to Tenant the amount of such over-charge. If the audit reveals that the Tenant was under-charged, then within thirty (30) days after the results of such audit are made available to Tenant, Tenant shall reimburse to Landlord the amount of such under-charge. Tenant agrees to pay the cost of such audit unless it is subsequently determined that Landlord's original Statement which was the subject of such audit was in error to Tenant's disadvantage by five percent (5%) or more of the total Operating Expenses which was the subject of such audit. The payment by Tenant of any amounts pursuant to this Section 4 shall not preclude Tenant from questioning the correctness of any Statement provided by Landlord at any time during the Audit Period, but the failure of Tenant to object thereto and commence its inspection and have the Accountant commence the audit as described above prior to the expiration of the Audit Period shall be conclusively deemed Tenant's approval of the Statement in question and the amount of Direct Expenses shown thereon. Tenant hereby acknowledges that Tenant's sole right to audit Landlord's records and to contest the amount of Direct Expenses payable by Tenant shall be as set forth in this Section 4.6, and Tenant hereby waives any and all other rights pursuant to applicable law to audit such records and/or to contest the amount of Direct Expenses payable by Tenant.

## ARTICLE 5

### USE OF PREMISES

5.1 **Permitted Use.** Tenant shall use the Premises solely for the Permitted Use set forth in Section 7 of the Summary and Tenant shall not use or permit the Premises or the Project to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion.

5.2 **Prohibited Uses.** The uses prohibited under this Lease shall include, without limitation, use of the Premises or a portion thereof for (i) offices of any agency or bureau of the United States or any state or political subdivision thereof; (ii) offices or agencies of any foreign governmental or political subdivision thereof; (iii) offices of any health care professionals or service organization; (iv) schools or other training facilities which are not ancillary to corporate, executive or professional office use; (v) retail or restaurant uses; or (vi) communications firms such as radio and/or television stations. Tenant's use shall not result in an occupancy density for the Premises which is greater than five (5) persons per 1,000 rentable square feet of the Premises. Tenant further covenants and agrees that it shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the rules and regulations promulgated by Landlord from time to time ("**Rules and Regulations**"), the current set of which (as of the date of this Lease) is attached to this Lease as **Exhibit D**; or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Project, including, without limitation, any such laws, ordinances, regulations or requirements relating to hazardous materials or substances, as those terms are defined by applicable laws now or hereafter in effect; provided, however, Landlord shall not enforce, change or modify the Rules and Regulations in a discriminatory manner and Landlord agrees that the Rules and Regulations shall not be unreasonably modified or enforced in a manner which will unreasonably interfere with the normal and customary conduct of Tenant's business. Tenant shall not do or permit anything to be done in or about the Premises which, in Landlord's reasonable discretion, will in any way damage the reputation of the Project or unreasonably obstruct or interfere with the rights of other tenants or occupants of the Building, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises.

5.3 **CC&Rs.** Tenant shall comply with all recorded covenants, conditions, and restrictions currently affecting the Project. Additionally, Tenant acknowledges that the Project may be subject to any future covenants, conditions, and restrictions (the "**CC&Rs**") which Landlord, in Landlord's discretion, deems reasonably necessary or desirable, and Tenant agrees that this Lease shall be subject and subordinate to such CC&Rs. Landlord shall have the right to require Tenant to execute and acknowledge, within fifteen (15) business days of a request by Landlord, a "Recognition of Covenants, Conditions, and Restriction," in a form substantially similar to that attached hereto as **Exhibit E**, agreeing to and acknowledging the CC&Rs. Notwithstanding anything to the contrary herein, Tenant shall only be required to abide by, and have this Lease subject to, any such future CC&Rs to the extent such future CC&Rs do not (i) adversely affect Tenant's rights under this Lease, (ii) adversely affect Tenant's use of the Premises for the Permitted Use, or (iii) increase Tenant's monetary obligations under this Lease, in more than a de minimis manner.

## ARTICLE 6

### SERVICES AND UTILITIES

6.1 **Standard Tenant Services.** Landlord shall provide the following services on all days (unless otherwise stated below) during the Lease Term.

6.1.1 Subject to reasonable changes implemented by Landlord and all governmental rules, regulations and guidelines applicable thereto, Landlord shall provide heating, ventilation and air conditioning ("**HVAC**") when necessary for normal comfort for normal office use in the Premises from 7:00 A.M. to 6:00 P.M. Monday through Friday, and 9:00 A.M. to 1:00 P.M. on Saturday (collectively, the "**Building Hours**"), except for the date of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and, at Landlord's discretion, other locally or nationally recognized holidays (collectively, the "**Holidays**").

6.1.2 Landlord shall provide adequate electrical wiring and facilities and power for normal general office use as reasonably determined by Landlord. Notwithstanding any provision to the contrary contained in this Lease, Tenant shall pay directly to the utility company pursuant to the utility company's separate meters (or to Landlord in the event Landlord provides submeters instead of the utility company's meters), the cost of all electricity, gas, water and sewer services provided to and/or consumed in the Premises (including normal and excess consumption and including the cost of electricity to operate the HVAC air handlers), which electricity, gas, water and sewer services shall be separately metered (as described above or otherwise equitably allocated and directly charged by Landlord to Tenant and other tenants of the Building). Tenant shall pay such cost (including the cost of such meters or submeters) within ten (10) days after demand and as Additional Rent under this Lease (and not as part of the Operating Expenses). Landlord shall designate the utility provider from time to time.

6.1.3 As part of Operating Expenses, Landlord shall replace lamps, starters and ballasts for Building standard lighting fixtures within the Premises. In addition, Tenant shall bear the cost of replacement of lamps, starters and ballasts for non-Building standard lighting fixtures within the Premises.

6.1.4 Landlord shall provide city water from the regular Building outlets for drinking, lavatory and toilet purposes in the Building Common Areas.

6.1.5 Landlord shall provide janitorial services to the Premises, except the date of observation of the Holidays, in and about the Premises and window washing services in a manner consistent with other Comparable Buildings.

6.1.6 Landlord shall provide nonexclusive, non-attended automatic passenger elevator service during the Building Hours, and shall have at least one elevator available at all other times. Landlord shall provide nonexclusive freight elevator service subject to scheduling by Landlord.

Tenant shall cooperate fully with Landlord at all times and abide by all regulations and requirements that Landlord may reasonably prescribe for the proper functioning and protection of the HVAC, electrical, mechanical and plumbing systems.

6.2 **Overstandard Tenant Use.** Tenant shall not, without Landlord's prior written consent, use heat-generating machines, machines other than normal fractional horsepower office machines, or equipment or lighting other than Building standard lights in the Premises, which may substantially affect the temperature otherwise maintained by the air conditioning system or increase the water normally furnished for the Premises by Landlord pursuant to the terms of Section 6.1 of this Lease. If such consent is given, Landlord shall have the right to require installation of supplementary air conditioning units or other facilities in the Premises, including supplementary or additional metering devices, and the cost thereof, including the cost of installation, operation and maintenance, increased wear and tear on existing equipment and other similar charges, shall be paid by Tenant to Landlord upon billing by Landlord. If Tenant uses water, electricity, heat or air conditioning in excess of that supplied by Landlord pursuant to Section 6.1 of this Lease, Tenant shall pay to Landlord, upon billing, the cost of such excess consumption, the cost of the installation, operation, and maintenance of equipment which is installed in order to supply such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such excess consumption; and Landlord may install devices to separately meter any increased use and in such event Tenant shall pay the increased cost directly to Landlord, including the cost of such additional metering devices. Tenant's use of electricity shall never exceed the capacity of the feeders to the Project or the risers or wiring installation, and subject to the terms of Section 29.32, below, and as otherwise consistent with specifically identified elements of the Improvements (e.g., server rooms and ancillary electrical and HVAC equipment relating thereto) contained on the "Approved Working Drawings" (as that term is defined in the Work Letter), Tenant shall not otherwise install or use or permit the installation or use of any computer or electronic data processing equipment in the Premises (other than typical desk top computers and ancillary equipment (as opposed to computer servers or similar equipment), without the prior written consent of Landlord. If Tenant desires to use heat, ventilation or air conditioning during hours other than those for which Landlord is obligated to supply such utilities pursuant to the terms of Section 6.1 of this Lease, Tenant shall give Landlord such prior notice, if any, as Landlord shall from time to time establish as appropriate, of Tenant's desired use in order to supply such utilities, and Landlord shall supply such utilities to Tenant at the "Actual Cost" (defined below) thereof (which shall be treated as Additional Rent) as Landlord shall from time to time establish; which Actual Cost as of the date hereof is \$50.00 per hour. For the purpose of this Section 6.2, "**Actual Cost**" shall mean the actual

cost, including reasonable depreciation (attributable to such after-hours usage) and administrative charges (to the extent not duplicative of Operating Expenses), incurred, and as reasonably determined, by Landlord without charge for overhead or profit, provided that, notwithstanding the foregoing, any amount actually charged to Landlord by any third party unaffiliated with Landlord for the supply of such utilities to Tenant shall be deemed part of Landlord's "Actual Cost".

6.3 **Interruption of Use.** Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease, except as otherwise provided in Section 6.4, Article 11 or Article 13 below. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article 6.

6.4 **Abatement Event.** If (i) Landlord fails to perform the obligations required of Landlord under the TCCs of this Lease, (ii) such failure causes all or a portion of the Premises to be untenantable and unusable by Tenant, and (iii) such failure relates to (A) the nonfunctioning of the heat, ventilation, and air conditioning system in the Premises, the electricity in the Premises, the nonfunctioning of the elevator service to the Premises, or (B) a failure to provide access to the Premises, Tenant shall give Landlord notice (the "**Initial Notice**"), specifying such failure to perform by Landlord (the "**Abatement Event**"). If Landlord has not cured such Abatement Event within three (3) business days after the receipt of the Initial Notice, Tenant may deliver an additional notice to Landlord (the "**Additional Notice**"), specifying such Abatement Event and Tenant's intention to abate the payment of Rent under this Lease. If Landlord does not cure such Abatement Event within three (3) business days of receipt of the Additional Notice, Tenant may, upon written notice to Landlord, immediately abate Rent payable under this Lease for that portion of the Premises rendered untenantable and not used by Tenant, for the period beginning on the date three (3) business days after the Initial Notice to the earlier of the date Landlord cures such Abatement Event or the date Tenant recommences the use of such portion of the Premises. Such right to abate Rent shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event. Except as provided in this Section 6.4, nothing contained herein shall be interpreted to mean that Tenant is excused from paying Rent due hereunder.

## ARTICLE 7

### REPAIRS

Landlord shall maintain in good condition and operating order and keep in good repair and condition the structural portions of the Building, including the foundation, floor/ceiling slabs, roof structure (as opposed to roof membrane), curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, stairwells, elevator cab, men's and women's washrooms, Building mechanical, electrical and telephone closets, and all common and public areas servicing the Building, including the parking areas, landscaping and exterior Project signage (collectively, "**Building Structure**") and the Base Building mechanical, electrical, life safety, plumbing, sprinkler systems and HVAC systems which were not constructed by Tenant Parties (collectively, the "**Building Systems**") and the Project Common Areas. Notwithstanding anything in this Lease to the contrary, Tenant shall be required to repair the Building Structure and/or the Building Systems to the extent caused due to Tenant's use of the Premises for other than normal and customary business office operations, unless and to the extent such damage is covered by insurance carried or required to be carried by Landlord pursuant to Article 10 and to which the waiver of subrogation is applicable (such obligation to the extent applicable to Tenant as qualified and conditioned will hereinafter be defined as the "**BS/BS Exception**"). Tenant shall, at Tenant's own expense, keep the Premises, including all improvements, fixtures, equipment, interior window coverings, and furnishings therein, and the floor or floors of the Building on which the Premises is located, in good order, repair and condition at all times during the Lease Term, but such obligation shall not extend to the Building Structure and the Building Systems except pursuant to the BS/BS Exception. In addition, Tenant shall, at Tenant's own expense, but under the supervision and subject to the prior approval of Landlord for any repairs reasonably expected to cost more than \$5,000 or reasonably expected to impact the Building Structure or Building Systems, and within any reasonable period of time specified by Landlord, promptly and adequately repair all damage to the Premises and replace or repair all damaged, broken, or worn fixtures and appurtenances, but such obligation shall not extend to the Building Structure and the Building Systems except pursuant to the BS/BS Exception, except for damage caused by ordinary wear and tear or beyond the reasonable control of Tenant; provided however, that, at Landlord's option, or if Tenant fails to make such repairs, Landlord may, after written notice to Tenant and Tenant's failure to repair within five (5) days thereafter, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, including a percentage of the cost thereof (to be uniformly established for the Building and/or the Project, but not in excess of ten percent (10%) per annum) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements forthwith upon being billed for same. Landlord may, but shall not be required to, enter the Premises at all reasonable times (in accordance with the terms of Article 27 below) to make such repairs, alterations, improvements or additions to the Premises or to the Project or to any equipment located in the Project as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree; provided, however, except for (i) emergencies, (ii) repairs, alterations, improvements or additions required by governmental or quasi-governmental authorities or court order or decree, or (iii) repairs which are the obligation of Tenant hereunder, any such entry into the Premises

by Landlord shall be performed in a manner so as not to materially interfere with Tenant's use of, or access to, the Premises; provided that, with respect to items (ii) and (iii) above, Landlord shall use commercially reasonable efforts to not materially interfere with Tenant's use of, or access to, the Premises. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect. For the avoidance of doubt, if a particular Building System is beyond its useful life such that it is inoperative or otherwise requires ongoing repairs materially in excess of normal and customary maintenance, Landlord shall replace such Building System (regardless of whether such Building System is shared or exclusively serves the Premises and regardless of whether such Building System was modified as part of the Improvements), and the cost of such replacement shall be included in Operating Expenses (to the extent allowed by Article 4 of this Lease) and amortized pursuant to Section 4.2.4(xiii) of this Lease, subject to the BS/BS Exception.

## ARTICLE 8

### ADDITIONS AND ALTERATIONS

8.1 **Landlord's Consent to Alterations.** Tenant may not make any improvements, alterations, additions or changes to the Premises or any mechanical, plumbing or HVAC facilities or systems pertaining to the Premises (collectively, the "**Alterations**") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than fifteen (15) business days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Landlord, provided it shall be deemed reasonable for Landlord to withhold its consent to any Alteration which adversely affects the structural portions or the systems or equipment of the Building or is visible from the exterior of the Building. Notwithstanding the foregoing, Tenant shall be permitted to make Alterations following ten (10) business days' notice to Landlord, but without Landlord's prior consent, to the extent that such Alterations do not (i) adversely affect the systems and equipment of the Building, exterior appearance of the Building, or structural aspects of the Building, (ii) adversely affect the value of the Premises or Building, (iii) require a building or construction permit, or (iv) cost more than Three Hundred Thousand and 00/100 Dollars (\$300,000.00) for a particular job of work (the "**Cosmetic Alterations**"). The construction of the initial improvements to the Premises shall be governed by the terms of the Work Letter and not the terms of this Article 8.

8.2 **Manner of Construction.** Landlord may impose, as a condition of its consent to any and all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable, including, but not limited to, the requirement that Tenant utilize for such purposes only contractors reasonably approved by Landlord, and any removal and/or restoration obligations required to be performed pursuant to the TCCs of Section 8.5 of this Lease. If Landlord shall give its consent, the consent shall be deemed conditioned upon Tenant acquiring a permit to do the work from appropriate governmental agencies, the furnishing of a copy of such permit to Landlord prior to the commencement of the work, and the compliance by Tenant with all conditions of said permit in a prompt and expeditious manner. If such Alterations will involve the use of or disturb hazardous materials or substances existing in the Premises, Tenant shall notify Landlord prior to performing such Alterations and comply with Landlord's rules and regulations concerning such hazardous materials or substances. Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all applicable federal, state, county, local or municipal laws, ordinances, rules and regulations and pursuant to a valid building permit, issued by the city in which the Building is located (or other applicable governmental authority), all in conformance with Landlord's construction rules and regulations; provided, however, that prior to commencing to construct any Alteration, Tenant shall meet with Landlord to discuss Landlord's design parameters and code compliance issues. In the event Tenant performs any Alterations in the Premises which require or give rise to governmentally required changes to the "Base Building," as that term is defined below, then Landlord shall, at Tenant's expense, make such changes to the Base Building. Since all or a portion of the Project is or may become in the future certified under the LEED rating system (or other applicable certification standard) (all in Landlord's sole and absolute discretion), Tenant expressly acknowledges and agrees that without limitation as to other grounds for Landlord withholding its consent to any proposed Alteration, Landlord shall have the right to withhold its consent to any proposed Alteration in the event that such Alteration is not compatible with such certification or recertification of the Project under such LEED rating system (or other applicable certification standard). The "**Base Building**" shall include the structural portions of the Building, and the public restrooms, elevators, exit stairwells and the systems and equipment located in the internal core of the Building on the floor or floors on which the Premises is located. In performing the work of any such Alterations, Tenant shall have the work performed in such manner so as not to obstruct access to the Project or any portion thereof, by any other tenant of the Project, and so as not to obstruct the business of Landlord or other tenants in the Project. Tenant shall retain any union trades to the extent designated by Landlord. Further, Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of San Diego in accordance with Section 8182 of the Civil Code of the State of California or any successor statute, and as a condition precedent to the enforceability and validity of Landlord's consent, Tenant shall deliver to the management office for the Project a reproducible copy of the "as built" and CAD drawings of the Alterations, to the extent applicable, as well as all permits, approvals and other documents issued by any governmental agency in connection with the Alterations.

8.3 **Payment for Improvements.** With respect to payments to be made to Tenant's contractors for any Alterations, Tenant shall (i) comply with Landlord's requirements for final lien releases and waivers in connection with Tenant's payment for work to contractors, and (ii) sign Landlord's standard contractor's rules and regulations. In addition, in connection with all Alterations, Tenant shall pay Landlord an oversight fee equal to five percent (5%) of the cost of the work, and reimburse Landlord for Landlord's reasonable, actual, out-of-pocket costs and expenses actually incurred

in connection with Landlord's review of such work, provided Landlord agrees the foregoing oversight fee shall not apply to or be charged in connection with Cosmetic Alterations.

8.4 **Construction Insurance.** In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any Alterations, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant carries "Builder's Risk" insurance in an amount reasonably approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may reasonably require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 10 of this Lease immediately upon completion thereof. In addition, Landlord may, in its reasonable discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee.

8.5 **Landlord's Property.** Landlord and Tenant hereby acknowledge and agree that (i) all Alterations, improvements, fixtures, equipment and/or appurtenances which may be installed or placed in or about the Premises (excluding Tenant's removable trade fixtures, furniture or non-affixed office equipment), from time to time, shall be at the sole cost of Tenant and shall be and become part of the Premises and the property of Landlord, and (ii) the "Improvements" (as that term is defined in Section 2.1 of the Work Letter) to be constructed in the Premises pursuant to the TCCs of the Work Letter shall, upon completion of the same, be and become a part of the Premises and the property of Landlord. Furthermore, Landlord may, by written notice to Tenant (x) with respect to Improvements, concurrently with Landlord's approval of the same in accordance with Section 3.4 of the Work Letter, (y) with respect to any Alterations, concurrent with Landlord's approval thereof, and (z) with respect to any Cosmetic Alterations, within ten (10) business days following Tenant's notice of such Cosmetic Alterations as required by Section 10.1 above (with any non-response by Landlord within such ten (10) business day period deemed Landlord's election to not require removal of such Cosmetic Alterations), require Tenant, at Tenant's expense, to remove any Alterations or improvements in the Premises (including, without limitation, the Improvements), and to repair any damage to the Premises and Building caused by such removal and return the affected portion of the Premises to a building standard improved condition as reasonably determined by Landlord prior to the end of the Lease Term; provided, however, Landlord hereby agrees that Tenant shall only be required to remove to remove any Alterations or improvements in the Premises which are "Specialty Improvements" (defined hereinbelow). "**Specialty Improvements**" means any Alterations or Improvements other than normal and customary general office improvements. Notwithstanding the foregoing, "**Specialty Improvements**" (1) shall not include conference rooms but (2) shall include (a) any Alterations or Tenant Improvements which affect the Base Building, (b) any showers, restrooms, washrooms or similar facilities in the Premises that are not part of the Base Building, (c) any raised floors, racking systems, classrooms, internal stairwells, high density filing systems, and (d) any "Lines" (as that term is defined in Section 29.26 below). If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any Alterations or improvements in the Premises, and/or to return the affected portion of the Premises to a building standard improved condition as determined by Landlord, then at Landlord's option, either (A) Tenant shall be deemed to be holding over in the Premises and Rent shall continue to accrue in accordance with the terms of Article 16, below, until such work shall be completed, and/or (B) Landlord may do so and may charge the cost thereof to Tenant. Tenant hereby protects, defends, indemnifies and holds Landlord harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such Alterations, improvements, fixtures and/or equipment in, on or about the Premises, which obligations of Tenant shall survive the expiration or earlier termination of this Lease.

## ARTICLE 9

### COVENANT AGAINST LIENS

Tenant shall keep the Project and Premises free from any liens or encumbrances arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any such work on the Premises (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any such lien or encumbrance by bond or otherwise within five (5) days after notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Building or Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Building or Premises arising in connection with any such work or respecting the Premises not performed by or at the request of Landlord shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Project, Building and Premises.

## ARTICLE 10

### INDEMNIFICATION AND INSURANCE

10.1 **Indemnification and Waiver.** Except to the extent arising from the negligence or willful misconduct of the Landlord or the "Landlord Parties" (as that term is defined below), Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever and agrees that Landlord, its partners, subpartners and their respective officers, agents, and employees (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant. Except to the extent arising from the negligence or willful misconduct of the Landlord or the Landlord Parties, Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from and against any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from: (a) any causes in, or on the Premises; (b) the use or occupancy of the Premises by Tenant or any person claiming under Tenant; (c) any activity, work, or thing done, or permitted or suffered by Tenant in or about the Premises; (d) any acts, omission, or negligence of Tenant or any person claiming under Tenant, or the contractors, agents, employees, invitees, or visitors of Tenant or any such person, in, on or about the Project (collectively, "**Tenant Parties**"); (e) any breach, violation, or non-performance by Tenant or any person claiming under Tenant or the employees, agents, contractors, invitees, or visitors of Tenant or any such person of any term, covenant, or provision of this Lease or any law, ordinance, or governmental requirement of any kind; (f) any injury or damage to the person, property, or business of Tenant, its employees, agents, contractors, invitees, visitors, or any other person entering upon the Premises under the express or implied invitation of Tenant; or (g) the placement of any personal property or other items within the Premises. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees. Subject to Tenant's indemnification obligations set forth above and the waiver of subrogation provided below, Landlord shall indemnify, defend, protect, and hold harmless Tenant from any and all loss, cost, damage, expense, and liability (including, without limitation, court costs and reasonable attorneys' fees) to the extent arising from the gross negligence or willful misconduct of Landlord or the Landlord Parties in, on or about the Project either prior to or during the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Tenant. Notwithstanding anything to the contrary set forth in this Lease, either party's agreement to defend and indemnify the other party as set forth in this Section 10.1 shall be ineffective to the extent the matters for which such party agreed to defend and indemnify the other party are covered by insurance required to be carried by the non-indemnifying party pursuant to this Lease. Further, Tenant's agreement to indemnify Landlord and Landlord's agreement to indemnify Tenant, each pursuant to this Section 10.1 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease, to the extent such policies cover the matters subject to Tenant's indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

10.2 **Tenant's Compliance With Landlord's Fire and Casualty Insurance.** Tenant shall, at Tenant's expense, comply with Landlord's insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 **Tenant's Insurance.** Throughout the Lease Term, Tenant shall maintain the following coverages in the following amounts. The required evidence of coverage must be delivered to Landlord on or before the date required under Section 10.4(I) sub-sections (x) and (y), or Section 10.4(II) below (as applicable). Such policies shall be for a term of at least one (1) year, or the length of the remaining term of this Lease, whichever is less.

10.3.1 Commercial General Liability Insurance, including Broad Form contractual liability covering the insured against claims of bodily injury, personal injury and property damage (including loss of use thereof) based upon or arising out of Tenant's operations, occupancy or maintenance of the Project and all areas appurtenant thereto. Such insurance shall be written on an "occurrence" basis. Landlord and any other party the Landlord so specifies that has a material financial interest in the Project, including Landlord's managing agent, ground lessor and/or lender, if any, shall be named as additional insureds as their interests may appear using Insurance Service Organization's form CG2011 or a comparable form approved by Landlord. Tenant shall provide an endorsement or policy excerpt showing that Tenant's coverage is primary and any insurance carried by Landlord shall be excess and non-contributing. The coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. This policy shall include coverage for all liabilities assumed under this Lease as an insured contract for the performance of all of Tenant's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. Limits of liability insurance shall not be less than the following; provided, however, such limits may be achieved through the use of an Umbrella/Excess Policy:



|  |                             |
|--|-----------------------------|
| Bodily Injury and<br>Property Damage Liability             | \$5,000,000 each occurrence |
| Personal Injury and Advertising Liability                  | \$5,000,000 each occurrence |
| Tenant Legal Liability/Damage to Rented Premises Liability | \$2,000,000.00              |

10.3.2 Property Insurance covering (i) all office furniture, personal property, business and trade fixtures, office equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's business personal property on the Premises installed by, for, or at the expense of Tenant, (ii) the Improvements, and any other improvements which exist in the Premises as of the Lease Commencement Date (excluding the Base Building) (the "**Original Improvements**"), and (iii) all Alterations performed in the Premises. Such insurance shall be written on a Special Form basis, for the full replacement cost value (subject to reasonable deductible amounts), without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for (a) all perils included in the CP 10 30 04 02 Coverage Special Form, (b) water damage from any cause whatsoever, including, but not limited to, sprinkler leakage, bursting, leaking or stoppage of any pipes, explosion, and backup or overflow from sewers or drains, and (c) terrorism (to the extent such terrorism insurance is available as a result of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297, 116 Stat. 2322), the Terrorism Risk Insurance Program Reauthorization Act of 2005 (Pub. L. 109-144), and the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110-160, 121 Stat. 183), any successor statute or regulation, or is otherwise available at commercially reasonable rates).

10.3.2.1 **Increase in Project's Property Insurance.** Tenant shall pay for any increase in the premiums for the property insurance of the Project if said increase is caused by Tenant's acts, omissions, use or occupancy of the Premises.

10.3.2.2 **Property Damage.** Tenant shall use the proceeds from any such insurance for the replacement of personal property, trade fixtures, Improvements, Original Improvements and Alterations.

10.3.2.3 **No Representation of Adequate Coverage.** Landlord makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Tenant's property, business operations or obligations under this Lease.

10.3.2.4 **Property Insurance Subrogation.** Landlord and Tenant intend that their respective property loss risks shall be borne by insurance carriers to the extent above provided (and, in the case of Tenant, by an insurance carrier satisfying the requirements of Section 10.4(i) below), and Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder. The parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers. Landlord and Tenant hereby represent and warrant that their respective "all risk" property insurance policies include a waiver of (i) subrogation by the insurers, and (ii) all rights based upon an assignment from its insured, against Landlord and/or any of the Landlord Parties or Tenant and/or any of the Tenant Parties (as the case may be) in connection with any property loss risk thereby insured against. Tenant will cause all subtenants and licensees of the Premises claiming by, under, or through Tenant to execute and deliver to Landlord a waiver of claims similar to the waiver in this Section 10.3.2.4 and to obtain such waiver of subrogation rights endorsements. If either party hereto fails to maintain the waivers set forth in items (i) and (ii) above, the party not maintaining the requisite waivers shall indemnify, defend, protect, and hold harmless the other party for, from and against any and all claims, losses, costs, damages, expenses and liabilities (including, without limitation, court costs and reasonable attorneys' fees) arising out of, resulting from, or relating to, such failure.

10.3.3 Business Income Interruption for one year (1) plus Extra Expense insurance in such amounts as will reimburse Tenant for actual direct or indirect loss of earnings attributable to the risks outlined in Section 10.3.2 above.

10.3.4 Worker's Compensation or other similar insurance pursuant to all applicable state and local statutes and regulations, and Employer's Liability with minimum limits of not less than \$1,000,000 each accident/employee/disease.

10.3.5 Commercial Automobile Liability Insurance covering all Owned (if any), Hired, or Non-owned vehicles with limits not less than \$1,000,000 combined single limit for bodily injury and property damage.

10.4 **Form of Policies.** The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) be issued by an insurance company having an AM Best rating of not less than A-X (or to the extent AM Best ratings are no longer available, then a similar rating from another comparable rating agency), or which is otherwise acceptable to Landlord and licensed to do business in the State of California, (ii) be in form and content reasonably acceptable to Landlord and complying with the requirements of Section 10.3 (including, Sections 10.3.1 through 10.3.5), (iii) Tenant shall not do or permit to be done anything which invalidates the required insurance policies, and (iv) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord, the identity of whom has been provided to Tenant in writing. Tenant shall deliver said policy or policies or certificates thereof and applicable endorsements which meet the requirements of this Article 10 to Landlord on or before (I) the earlier to occur of: (x) the Lease Commencement Date, and (y) the date Tenant and/or its employees, contractors and/or agents first enter the

Premises for occupancy, construction of improvements, alterations, or any other move-in activities, and (II) five (5) business days after the renewal of such policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates and applicable endorsements, Landlord may, at its option, after written notice to Tenant and Tenant's failure to obtain such insurance within five (5) days thereafter, procure such policies for the account of Tenant and the sole benefit of Landlord, and the cost thereof shall be paid to Landlord after delivery to Tenant of bills therefor.

10.5 **Additional Insurance Obligations.** Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this [Article 10](#) and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord.

10.6 **Third-Party Contractors.** Tenant shall obtain and deliver to Landlord, Third Party Contractor's certificates of insurance and applicable endorsements at least seven (7) business days prior to the commencement of work in or about the Premises by any vendor or any other third-party contractor (collectively, a "**Third Party Contractor**"). All such insurance shall (a) name Landlord as an additional insured under such party's liability policies as required by [Section 10.3.1](#) above and this [Section 10.6](#), (b) provide a waiver of subrogation in favor of Landlord under such Third Party Contractor's commercial general liability insurance, (c) be primary and any insurance carried by Landlord shall be excess and non-contributing, and (d) comply with Landlord's minimum insurance requirements.

## ARTICLE 11

### DAMAGE AND DESTRUCTION

11.1 **Repair of Damage to Premises by Landlord.** If the Base Building or any Common Areas serving or providing access to the Premises shall be damaged by a fire or any other casualty (collectively, a "**Casualty**"), Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this [Article 11](#), restore the Base Building and such Common Areas (provided Landlord shall restore the Improvements to the extent Landlord delivers a "Landlord Repair Notice" as that term is defined below). Such restoration shall be to substantially the same condition of the Base Building and the Common Areas (and Improvements, to the extent applicable) prior to the Casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Building or Project or any other modifications to the Common Areas deemed desirable by Landlord, which are consistent with the character of the Project, provided that access to the Premises and any common restrooms serving the Premises shall not be materially impaired. Tenant shall promptly notify Landlord upon the occurrence of any damage to the Premises resulting from a Casualty, and Tenant shall promptly inform its insurance carrier of any such damage. Upon notice (the "**Landlord Repair Notice**") to Tenant from Landlord, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under items (ii) and (iii) of [Section 10.3.2](#) of this Lease, and Landlord shall repair any injury or damage to the Improvements and the Original Improvements installed in the Premises and shall return such Improvements and the Original Improvements to their original condition; provided that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repair of the damage. In the event that Landlord does not deliver the Landlord Repair Notice within sixty (60) days following the date the Casualty becomes known to Landlord, Tenant shall, at its sole cost and expense, repair any injury or damage to the Improvements and the Original Improvements installed in the Premises and shall return such Improvements and Original Improvements to their original condition, and in such event, Tenant shall not be required to assign Tenant's insurance proceeds under items (ii) and (iii) of [Section 10.3.2](#) of this Lease to Landlord. Whether or not Landlord delivers a Landlord Repair Notice, prior to the commencement of construction, Tenant shall submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Landlord shall select the contractors to perform such improvement work. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such Casualty shall have damaged the Premises or Common Areas necessary to Tenant's occupancy, and the Premises is not occupied by Tenant as a result thereof, then during the time and to the extent the Premises is unfit for occupancy, the Rent shall be abated in proportion to the ratio that the amount of rentable square feet of the Premises which is unfit for occupancy for the purposes permitted under this Lease bears to the total rentable square feet of the Premises. In the event that Landlord shall not deliver the Landlord Repair Notice, Tenant's right to rent abatement pursuant to the preceding sentence shall terminate as of the date which is reasonably determined by Landlord to be the date Tenant should have completed repairs to the Premises assuming Tenant used reasonable due diligence in connection therewith.

11.2 **Landlord's Option to Repair.** Notwithstanding the terms of [Section 11.1](#) of this Lease, Landlord may elect not to rebuild and/or restore the Premises, Building and/or Project, and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after the date of discovery of the damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises, but Landlord may so elect only if the Building or Project shall be damaged by Casualty, whether or not the Premises is affected, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within one hundred eighty (180) days after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums); (ii) the holder of any mortgage on the Building or Project or ground lessor with respect to the Building or Project shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, or shall terminate the ground lease, as the case may be; (iii) the damage is not fully covered by Landlord's insurance policies; (iv) Landlord decides to rebuild the Building or Common Areas so that they will be substantially different structurally or architecturally; (v) the damage occurs during the last twelve (12) months of the then-applicable Lease Term (i.e., to the extent Tenant has timely and validly exercised its option to

extend the Lease Term for the Option Term set forth in Section 2.2 above, this item (v) shall not be applicable until the last twelve (12) months of the Option Term); or (vi) any owner of any other portion of the Project, other than Landlord, does not intend to repair the damage to such portion of the Project; provided, however, that if the Premises and/or access thereto are materially damaged by Casualty, and Landlord does not elect to terminate this Lease pursuant to Landlord's termination right as provided above, and either the repairs cannot, in the reasonable opinion of Landlord, be completed within one hundred eighty (180) days after being commenced or the damage occurs during the last twelve (12) months of the Lease Term, Tenant may elect, no earlier than sixty (60) days after the date of the damage and not later than ninety (90) days after the date of such damage, to terminate this Lease by written notice to Landlord effective as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the date such notice is given by Tenant. Furthermore, if neither Landlord nor Tenant has terminated this Lease, and the repairs are not actually completed within sixty (60) days of the date that Landlord originally estimated for completion in "Landlord's Repair Estimate Notice" (as that term is defined hereinbelow), then Tenant shall have the right to terminate this Lease during the first five (5) business days of each calendar month following the end of such period until such time as the repairs are complete, by notice to Landlord (the "**Damage Termination Notice**"), effective as of a date set forth in the Damage Termination Notice (the "**Damage Termination Date**"), which Damage Termination Date shall not be less than ten (10) business days following the end of each such month. Notwithstanding the foregoing, if Tenant delivers a Damage Termination Notice to Landlord, then Landlord shall have the right to suspend the occurrence of the Damage Termination Date for a period ending thirty (30) days after the Damage Termination Date set forth in the Damage Termination Notice by delivering to Tenant, within five (5) business days of Landlord's receipt of the Damage Termination Notice, a certificate of Landlord's contractor responsible for the repair of the damage certifying that it is such contractor's good faith judgment that the repairs shall be substantially completed within thirty (30) days after the Damage Termination Date. If repairs shall be substantially completed prior to the expiration of such thirty-day period, then the Damage Termination Notice shall be of no force or effect, but if the repairs shall not be substantially completed within such thirty-day period, then this Lease shall terminate upon the expiration of such thirty-day period. At any time, from time to time, after the date occurring sixty (60) days after the date of the damage, Tenant may request that Landlord inform Tenant of Landlord's reasonable opinion of the date of completion of the repairs and Landlord shall respond to such request within five (5) business days ("**Landlord's Repair Estimate Notice**"). Notwithstanding the provisions of this Section 11.2, Tenant shall have the right to terminate this Lease under this Section 11.2 only if each of the following conditions is satisfied: (a) the damage to the Project by Casualty was not caused by the gross negligence or intentional act of Tenant or its partners or subpartners and their respective officers, agents, servants, employees, and independent contractors; (b) Tenant is not then in default under this Lease; (c) as a result of the damage, Tenant cannot reasonably conduct business from the Premises; and, (d) as a result of the damage to the Project, Tenant does not occupy or use the Premises at all. In the event this Lease is terminated in accordance with the terms of this Section 11.2, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under items (ii) and (iii) of Section 10.3.2 of this Lease.

11.3 **Waiver of Statutory Provisions.** The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or the Project, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or the Project.

## ARTICLE 12

### NONWAIVER

No provision of this Lease shall be deemed waived by either party hereto unless expressly waived in a writing signed thereby. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

## ARTICLE 13

### CONDEMNATION

If the whole or any part of the Premises, Building or Project shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use, reconstruction or remodeling of any part of the Premises, Building or Project, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. If more than twenty-five percent (25%) of the rentable square feet of the Premises is taken, or if access to the Premises is substantially impaired, in each case for a period in excess of one hundred eighty (180) days, Tenant shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. Tenant shall not because of such taking assert any claim against Landlord or the authority for any compensation because of such taking and Landlord shall be entitled to the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, and for moving expenses, so long as such claims do not diminish the award available to Landlord, its ground lessor with respect to the Building or Project or its mortgagee, and such claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure. Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

## ARTICLE 14

### ASSIGNMENT AND SUBLETTING

14.1 **Transfers.** Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person or entity to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) all of the terms of the proposed Transfer and the consideration therefor, including calculation of the "Transfer Premium", as that term is defined in Section 14.3 below, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing executed and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, provided that Landlord shall have the right to require Tenant to utilize Landlord's standard Transfer consent document in connection with any consent to such Transfer; further provided that Landlord, at Tenant or any Transferee's request, shall enter into a commercially reasonable confidentiality agreement with respect to such documents, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, business credit and personal references and history of the proposed Transferee and any other information required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space and (v) an executed estoppel certificate from Tenant substantially in the form attached hereto as Exhibit E. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord, within thirty (30) days after written request by Landlord, provided that such costs and expenses shall not exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) for the negotiation of Transfer related documentation in the ordinary course of business. Landlord and Tenant hereby agree that a proposed Transfer shall not be considered "in the ordinary course of business" if such particular proposed Transfer involves the review of documentation by Landlord on more than two (2) occasions for such specific Transfer.

14.2 **Landlord's Consent.** Landlord shall not unreasonably withhold or condition its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Landlord shall endeavor to provide notice of its determination regarding a Transfer Notice within thirty (30) days following receipt of the same. Without limitation as to other reasonable grounds for withholding consent, the parties hereby

agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee is, in Landlord's reasonable judgment, of a character or reputation or engaged in a business which is not consistent with the quality of the Building or the Project;

14.2.2 The Transferee intends to use the Subject Space for purposes which are not permitted under this Lease;

14.2.3 The Transferee is either a governmental agency or instrumentality thereof;

14.2.4 The Transferee does not have the financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested, in Landlord's reasonable judgment;

14.2.5 The proposed Transfer would cause a violation of another lease for space in the Project, or would give an occupant of the Project a right to cancel its lease;

14.2.6 The terms of the proposed Transfer will allow the Transferee to exercise a right of renewal, right of expansion, right of first offer, or other similar right held by Tenant (or will allow the Transferee to occupy space leased by Tenant pursuant to any such right); or

14.2.7 Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee, (i) occupies space in the Project at the time of the request for consent, or (ii) is actively negotiating with Landlord to lease space in the Project at such time, or (iii) has negotiated with Landlord during the twelve (12)-month period immediately preceding the Transfer Notice; provided, however, it shall only be deemed reasonable for Landlord to withhold its consent to a Transfer pursuant to this Section 14.2.7 to the extent Landlord has then-available space in the Project for such proposed Transferee.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2 (and does not exercise any recapture rights Landlord may have under Section 14.4 of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six (6)-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease, provided that if there are any material changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section 14.2, or (ii) which would cause the proposed Transfer to be more favorable to the Transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 14 (including Landlord's right of recapture, if any, under Section 14.4 of this Lease). Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under this Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a suit for contract damages or declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee. Tenant shall indemnify, defend and hold harmless Landlord from any and all liability, losses, claims, damages, costs, expenses, causes of action and proceedings involving any third party or parties (including without limitation Tenant's proposed subtenant or assignee) who claim they were damaged by Landlord's wrongful withholding or conditioning of Landlord's consent; provided, however, that the foregoing indemnity shall not apply to the extent that Landlord's withholding or conditioning of consent shall be adjudged by a court of competent jurisdictions to be wrongful.

14.3 **Transfer Premium.** If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any "Transfer Premium," as that term is defined in this Section 14.3, received by Tenant from such Transferee. "Transfer Premium" shall mean all rent, additional rent or other consideration payable by such Transferee in connection with the Transfer in excess of the Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred, after deducting the reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Premises in connection with the Transfer, (ii) any free base rent or other economic concessions reasonably provided to the Transferee, and (iii) any brokerage commissions in connection with the Transfer. "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer.

14.4 **Landlord's Option as to Subject Space.** Notwithstanding anything to the contrary contained in this Article 14, if at any time Tenant desires a determination as to whether or not Landlord intends to exercise its rights under this Section 14.4 in connection with a contemplated Transfer of all or a portion of the Premises for which Landlord's consent is required, then Tenant may give Landlord notice ("**Intention to Transfer Notice**") of such contemplated Transfer. The Intention to Transfer Notice shall specify the portion of and amount of rentable square feet of the Premises which Tenant intends to Transfer (the "**Contemplated Transfer Space**"), the contemplated date of commencement of the contemplated Transfer (the "**Contemplated Effective Date**"), and the contemplated length of the term of such contemplated Transfer, and shall specify that such Intention to Transfer Notice is delivered to Landlord pursuant to this Section 14.4 in order to allow Landlord to notify Tenant whether Landlord will elect to recapture the Contemplated Transfer Space for the term set forth in the Intention to Transfer Notice. In the event Tenant delivers an Intention to Transfer Notice

to Landlord and if such proposed Transfer would result in Tenant or a Permitted Transferee occupying less than seventy-five percent (75%) of the rentable square footage of the Premises following the consummation of such proposed Transfer for the then-remaining balance of the Term, Landlord shall have the option, by giving written notice (the "**Recapture Notice**") to Tenant within thirty (30) days after receipt of such Intention to Transfer Notice, to recapture the Contemplated Transfer Space. Such Recapture Notice shall cancel and terminate this Lease with respect to the Contemplated Transfer Space as of the effective date proposed in the Intention to Transfer Notice. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Contemplated Transfer Space, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. Notwithstanding the foregoing sentence, however, if Landlord delivers a Recapture Notice to Tenant, Tenant may, within ten (10) business days after Tenant's receipt of such Recapture Notice, deliver written notice to Landlord indicating that Tenant is rescinding its request for consent to the proposed Transfer, in which case such Transfer shall not be consummated and this Lease shall remain in full force and effect as to the portion of the Premises that was the subject of the proposed Transfer. If Landlord declines, or fails to elect in a timely manner to recapture the Contemplated Transfer Space under this Section 14.4, then, subject to the other terms of this Article 14, for a period of nine (9) months (the "**Nine Month Period**") commencing on the last day of such thirty (30) day period, Landlord shall not have any right to recapture the Contemplated Transfer Space with respect to any Transfer made during the Nine Month Period, provided that any such Transfer is substantially on the terms set forth in the Intention to Transfer Notice, and provided further that any such Transfer shall be subject to the remaining terms of this Article 14. If such a Transfer is not so consummated within the Nine Month Period (or if a Transfer is so consummated, then upon the expiration of the term of any Transfer of such Contemplated Transfer Space consummated within such Nine Month Period), Tenant shall again be required to submit a new Intention to Transfer Notice to Landlord with respect any contemplated Transfer, as provided above in this Section 14.4. The foregoing recapture right shall not be applicable with respect to a transfer to a Permitted Transferee, as that term is defined below in Section 14.8.

**14.5 Effect of Transfer.** If Landlord consents to a Transfer, (i) the TCCs of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease, including, without limitation, in connection with the Subject Space. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant, as transferee, relating to any Transfer. Prior to receiving any financial statements, Landlord shall execute and deliver to Tenant a commercially reasonable confidentiality agreement relating thereto. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than three percent (3%), Tenant shall pay Landlord's costs of such audit.

**14.6 Additional Transfers.** Subject to the terms of Section 14.8 below, for purposes of this Lease, the term "**Transfer**" shall also include (i) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of more than fifty percent (50%) or more of the partners, or transfer of more than fifty percent (50%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation (*i.e.*, whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant or (B) the sale or other transfer of an aggregate of more than fifty percent (50%) or more of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of an aggregate of more than fifty percent (50%) or more of the value of the unencumbered assets of Tenant within a twelve (12)-month period.

**14.7 Occurrence of Default.** Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as cancelled and repossess the Subject Space by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its landlord under any such Transfer. If Tenant shall be in default under this Lease (beyond the applicable notice and cure periods), Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

**14.8 Deemed Consent Transfers.** Notwithstanding anything to the contrary contained in this Lease, (A) an assignment or subletting of all or a portion of the Premises to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant as of the date of this Lease), (B) a sale of corporate shares of capital stock in Tenant in connection with an initial public offering of Tenant's stock on a nationally-recognized stock exchange, (C) an assignment of the Lease to an entity which acquires all or substantially all of the stock or assets of Tenant, or (D) an assignment of the Lease to an entity which is the resulting entity of a merger or consolidation of Tenant during the Lease Term, shall not be deemed a Transfer requiring Landlord's consent under this Article 14, or require the payment of any Transfer Premium pursuant to Section 14.3 above (any

such assignee or sublessee described in items (A) through (D) of this Section 14.8 hereinafter referred to as a "**Permitted Transferee**"), provided that (i) Tenant shall use commercially reasonable, diligent efforts to deliver to Landlord, at least fifteen (15) days prior to the effective date of any such assignment or sublease (or as soon as is thereafter practicable or legally permitted pursuant to applicable law and/or applicable disclosure restrictions imposed by the SEC or similar regulatory agency) and promptly supplies Landlord with any documents or information reasonably requested by Landlord regarding such Transfer or Permitted Transferee as set forth above, (ii) Tenant is not in default, beyond the applicable notice and cure period, and such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease, (iii) in connection with items (C) and (D) above only, such Permitted Transferee shall have a tangible net worth (not including goodwill as an asset) computed in accordance with generally accepted accounting principles ("**Net Worth**") at least equal to the Net Worth of Tenant on the day immediately preceding either the effective date of such assignment or sublease or such earlier date when components of the underlying transaction otherwise commenced or took effect, (v) no assignment or sublease relating to this Lease, whether with or without Landlord's consent, shall relieve Tenant from any liability under this Lease, and (vi) the liability of such Permitted Transferee under either an assignment or sublease shall be joint and several with Tenant. An assignee of Tenant's entire interest in this Lease who qualifies as a Permitted Transferee may also be referred to herein as a "**Permitted Transferee Assignee**." "**Control**," as used in this Section 14.8, shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity.

## ARTICLE 15

### SURRENDER OF PREMISES; OWNERSHIP AND

#### REMOVAL OF TRADE FIXTURES

15.1 **Surrender of Premises.** No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

15.2 **Removal of Tenant Property by Tenant.** Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in broom clean, good condition and repair as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, in addition to Tenant's obligations under Section 29.32, below, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, server and telephone equipment, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its reasonable discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

## ARTICLE 16

### HOLDING OVER

If Tenant holds over after the expiration of the Lease Term with the express written consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a monthly rate of (A) one hundred twenty-five percent (125%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease for the first two (2) months immediately following the expiration or earlier termination of this Lease, and (B) two hundred percent (200%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease thereafter. Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. If Tenant holds over after the expiration of the Lease Term without the express written consent of Landlord, such tenancy shall be a tenancy at sufferance, and shall not constitute a renewal hereof or an extension for any further term, and in such case daily damages in any action to recover possession of the Premises shall be calculated at a daily rate equal to (i) one hundred twenty-five percent (125%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease for the first two (2) months immediately following the expiration or earlier termination of this Lease, and (ii) two hundred percent (200%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease (calculated on a per diem basis) thereafter. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to vacate and deliver possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant holds over without Landlord's express written

consent, and tenders payment of rent for any period beyond the expiration of the Lease Term by way of check (whether directly to Landlord, its agents, or to a lock box) or wire transfer, Tenant acknowledges and agrees that the cashing of such check or acceptance of such wire shall be considered inadvertent and not be construed as creating a month-to-month tenancy, provided Landlord refunds such payment to Tenant promptly upon learning that such check has been cashed or wire transfer received. Tenant acknowledges that any holding over without Landlord's express written consent may compromise or otherwise affect Landlord's ability to enter into new leases with prospective tenants regarding the Premises. Therefore, if Tenant fails to vacate and deliver the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from and against all claims made by any succeeding tenant founded upon such failure to vacate and deliver, and any losses suffered by Landlord, including lost profits, resulting from such failure to vacate and deliver. Tenant agrees that any proceedings necessary to recover possession of the Premises, whether before or after expiration of the Lease Term, shall be considered an action to enforce the terms of this Lease for purposes of the awarding of any attorney's fees in connection therewith.

#### **ARTICLE 17**

#### **ESTOPPEL CERTIFICATES**

Within ten (10) business days following a request in writing by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of **Exhibit E**, attached hereto (or such other form as may be required by any prospective mortgagee or purchaser of the Project, or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee, provided that any such forms or requests do not materially modify the TCCs of this Lease. Any such certificate may be relied upon by any prospective mortgagee or purchaser of all or any portion of the Project. Tenant shall execute and deliver whatever other commercially reasonable instruments may be reasonably required for such purposes. At any time during the Lease Term (but not more than once in any calendar year unless in connection with the sale or proposed sale, or the financing/refinancing, of the Project or any portion thereof), Landlord may require Tenant to provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception.

#### **ARTICLE 18**

#### **SUBORDINATION**

As of the date of this Lease, there are no ground or underlying leases, nor any mortgage, trust deed or other like encumbrances in force against the Building or Project. This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Project and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Project or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (or if any ground lease is terminated), to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground lessor), if so requested to do so by such purchaser or lienholder or ground lessor, and to recognize such purchaser or lienholder or ground lessor as the lessor under this Lease, provided such lienholder or purchaser or ground lessor shall agree to accept this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the rent and observes and performs the TCCs of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within ten (10) business days of request by Landlord, execute such further commercially reasonable instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases; provided that any subordination agreement requested must include non-disturbance provisions consistent with this Article 18. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

#### **ARTICLE 19**

#### **DEFAULTS; REMEDIES**

19.1 **Events of Default.** The occurrence of any of the following shall constitute a default of this Lease by Tenant:



19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, when due unless such failure is cured within five (5) business days after notice; or

19.1.2 Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be a default by Tenant under this Section 19.1.2, any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default, but in no event exceeding a period of time in excess of sixty (60) days after written notice thereof from Landlord to Tenant; or

19.1.3 To the extent permitted by law, (i) Tenant or any guarantor of this Lease being placed into receivership or conservatorship, or becoming subject to similar proceedings under Federal or State law, or (ii) a general assignment by Tenant or any guarantor of this Lease for the benefit of creditors, or (iii) the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an insolvency or bankruptcy law, or (iv) the filing by or against Tenant or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of such a proceeding filed against Tenant or any guarantor the same is dismissed within sixty (60) days, or (v) the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within thirty (30) days, or (vi) any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days; or

19.1.4 Abandonment (as defined by Applicable Laws, including California Civil Code Section 1951.3 and any successor statute) of all or a substantial portion of the Premises by Tenant; or

19.1.5 The failure by Tenant to observe or perform according to the provisions of Articles 5, 14, 17 or 18 of this Lease where such failure continues for more than two (2) business days after notice from Landlord; or

19.1.6 Tenant's failure to occupy the Premises within sixty (60) days after the Lease Commencement Date, as the same may be extended by (i) delays in the permitting process in connection with the Improvements (but only to the extent such delays occurred *notwithstanding* Tenant's commercially reasonable efforts and Tenant's timely submittal and diligent efforts to receive the same), (ii) events of Force Majeure, and (iii) a "Landlord Delay" (as that term is defined in Section 5.7 of the Work Letter) (the resulting date, the "**Occupancy Outside Date**").

The notice periods provided herein are in lieu of, and not in addition to, any notice periods provided by law.

19.2 **Remedies Upon Default.** Upon the occurrence of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim for damages therefor; and Landlord may recover from Tenant the following:

- (a) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus
- (b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- (c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- (d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and
- (e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 19.2.1(a) and (b), above, the "worth at the time of award"

shall be computed by allowing interest at the Interest Rate. As used in Section 19.2.1(c), above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 **Subleases of Tenant.** Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.4 **Form of Payment After Default.** Following the occurrence of an event of default by Tenant, Landlord shall have the right to require that any or all subsequent amounts paid by Tenant to Landlord hereunder, whether to cure the default in question or otherwise, be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to Landlord, or by other means approved by Landlord, notwithstanding any prior practice of accepting payments in any different form.

19.5 **Efforts to Relet.** No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant. Tenant hereby irrevocably waives any right otherwise available under any law to redeem or reinstate this Lease.

19.6 **Landlord Default.** Notwithstanding anything to the contrary set forth in this Lease, Landlord shall be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease if Landlord fails to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any such default by Landlord under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary, exercise any of its rights provided at law or in equity. Any award from a court or arbitrator in favor of Tenant requiring payment by Landlord which is not paid by Landlord within the time period directed by such award, may be offset by Tenant from Rent next due and payable under this Lease; provided, however, Tenant may not deduct the amount of the award against more than fifty percent (50%) of Base Rent next due and owing (until such time as the entire amount of such judgment is deducted) to the extent following a foreclosure or a deed-in-lieu of foreclosure.

## ARTICLE 20

### COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other TCCs, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the TCCs, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

## ARTICLE 21

### SECURITY DEPOSIT

Prior to the later of (a) April 1, 2020, and (b) the date of Landlord's delivery of the Premises to Tenant, Tenant shall deposit with Landlord any necessary fund required to cause the security deposit (the "**Security Deposit**") to total the amount set forth in Section 8 of the Summary after application

of any "Excess Security Deposit," as defined in the Existing Lease, which total Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of its obligations under this Lease. If Tenant defaults with respect to any provisions of this Lease, including, but not limited to, the provisions relating to the payment of Rent, the removal of property and the repair of resultant damage, Landlord may, without notice to Tenant, but shall not be required to apply all or any part of the Security Deposit for the payment of any Rent or any other sum in default and Tenant shall, upon demand therefor, restore the Security Deposit to its original amount. Any unapplied portion of the Security Deposit shall be returned to Tenant, or, at Landlord's option, to the last assignee of Tenant's interest hereunder, within ninety-five (95) days following the expiration of the Lease Term (provided that if Landlord determines, in its reasonable business judgment, that Tenant does not pose a then present risk of being in default pursuant to Section 19.1.3 below, then Landlord shall use commercially reasonable efforts to return the Security Deposit within thirty (30) days following the expiration of the Lease Term). Tenant shall not be entitled to any interest on the Security Deposit. Tenant hereby irrevocably waives and relinquishes any and all rights, benefits, or protections, if any, Tenant now has, or in the future may have, under Section 1950.7 of the California Civil Code, any successor statute, and all other provisions of law, now or hereafter in effect, including, but not limited to, any provision of law which (i) establishes the time frame by which a landlord must refund a security deposit under a lease, or (ii) provides that a landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by a tenant, or to clean the subject premises. Tenant acknowledges and agrees that (A) any statutory time frames for the return of a security deposit are superseded by the express period identified in this Article 21, above, and (B) rather than be so limited, Landlord may claim from the Security Deposit (i) any and all sums expressly identified in this Article 21, above, and (ii) any additional sums reasonably necessary to compensate Landlord for any and all losses or damages caused by Tenant's default of this Lease, including, but not limited to, all damages or rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code.

## ARTICLE 22

### SUBSTITUTION OF OTHER PREMISES

Landlord shall have no express right to relocate Tenant during the Lease Term (or any Option Term).

## ARTICLE 23

### SIGNS

23.1 **Full Floors.** Subject to Landlord's prior written approval, in its sole discretion, and provided all signs are in keeping with the quality, design and style of the Building and Project, Tenant, if the Premises comprise an entire floor of the Building, at its sole cost and expense, may install identification signage anywhere in the Premises including in the elevator lobby of the Premises, provided that such signs must not be visible from the exterior of the Building.

23.2 **Multi-Tenant Floors.** If other tenants occupy space on the floor on which the Premises is located, Tenant's initial identifying signage (as opposed to any replacement identifying signage, which shall be at Tenant's sole cost) shall be provided by Landlord, at Landlord's cost, and such signage shall be comparable to that used by Landlord for other similar floors in the Building and shall comply with Landlord's Building standard signage program.

23.3 **Building Directory.** A building directory is located in the lobby of the Building. Tenant shall have the right, at Landlord's sole cost and expense as to Tenant's initial name strip, to designate one (1) name strip on such directory, and any subsequent changes to Tenant's name strip shall be at Tenant's sole cost and expense following Tenant's receipt of Landlord's consent thereto (which consent may be withheld in Landlord's sole and absolute discretion).

23.4 **Prohibited Signage and Other Items.** Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved by Landlord may be removed without notice by Landlord at the sole expense of Tenant. Tenant may not install any signs on the exterior or roof of the Project or the Common Areas. Any signs, window coverings, or blinds (even if the same are located behind the Landlord-approved window coverings for the Building), or other items visible from the exterior of the Premises or Building, shall be subject to the prior approval of Landlord, in its sole discretion.

23.5 **Tenant's Signage.** Tenant shall be entitled to install the following signage in connection with Tenant's lease of the Premises (collectively, the "Tenant's Signage"):

(a) Non-exclusive Building-top signage consisting of one (1) Building-top sign identifying Tenant's name or logo located in substantially the same location as the existing Acadia Pharmaceuticals Building-top sign on the Building as of the date of this Lease; and

(b) Tenant shall be entitled to install one (1) slot identifying Tenant's name or logo on the currently-existing monument serving the Building in one (1) location reasonably designated by Landlord.

23.5.1 **Tenant's Signage Specifications and Permits.** Tenant's Signage shall set forth Tenant's name or logo as determined by Tenant; provided, however, in no event shall Tenant's Signage include an "Objectionable Name or Logo," as that term is defined in Section 23.5.2, of this Lease. The graphics, materials, color, design, lettering, lighting, size, illumination, specifications and exact location of Tenant's Signage (collectively, the "**Sign Specifications**") shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be consistent and compatible with the quality and nature of the Project and the exterior Building signage of other tenants of the Building. In addition, Tenant's Signage shall be subject to Tenant's receipt of all required governmental permits and approvals and shall be subject to all Applicable Law and to any covenants, conditions and restrictions affecting the Project. Landlord shall use commercially reasonable efforts to assist Tenant in obtaining all necessary governmental permits and approvals for Tenant's Signage. Tenant hereby acknowledges that, notwithstanding Landlord's approval of Tenant's Signage, Landlord has made no representation or warranty to Tenant with respect to the probability of obtaining all necessary governmental approvals and permits for Tenant's Signage. In the event Tenant does not receive the necessary governmental approvals and permits for Tenant's Signage, Tenant's and Landlord's rights and obligations under the remaining TCCs of this Lease shall be unaffected. Moreover, with respect to the existing street monument serving the Building, Landlord shall have the right (i) to design and organize Tenant's monument signage (and the materials, design, script size, type face, colors and all other characteristics thereon) in such manner as it shall determine in its sole discretion, (ii) place such other names, business names, trade names or affiliate names representing such other tenants on such existing street monument as it shall determine in its sole discretion, (iii) make such modifications to such existing street monument as it shall desire from time to time, and (iv) place on such existing street monument the name of (and/or other identifying information for) the Building and/or Project as Landlord shall determine in its sole discretion.

23.5.2 **Objectionable Name or Logo.** In no event shall Tenant's Signage include, identify or otherwise refer to a name and/or logo which relates to an entity which is of a character or reputation, or is associated with a political faction or orientation, which is inconsistent with the quality of the Project, or which would otherwise reasonably offend a landlord of a Comparable Building (an "**Objectionable Name or Logo**"). The parties hereby agree that the name "Retrophin, Inc." or any reasonable derivation thereof, shall not be deemed an Objectionable Name or Logo.

23.5.3 **Termination of Right to Tenant's Signage.** The rights contained in this Section 23.5 may only be exercised by Original Tenant or its Permitted Transferee Assignee (and not any other assignee or any sublessee or other transferee of the Original Tenant's interest in this Lease) if the Original Tenant and/or its Permitted Transferee Assignee is in occupancy of the entire Premises. In no event shall Tenant have any right to Tenant's Signage upon the occurrence of a default by Tenant under this Lease beyond any applicable notice and cure period set forth in this Lease.

23.5.4 **Cost and Maintenance of Tenant's Signage.** The costs of the actual sign comprising Tenant's Signage and the installation, design, construction, and any and all other costs associated with Tenant's Signage, including, without limitation, utility charges and hook-up fees, permits, and maintenance and repairs, shall be the sole responsibility of Tenant, at Tenant's sole cost and expense. Should Tenant's Signage require repairs and/or maintenance, as determined in Landlord's reasonable judgment, Landlord shall cause such repairs and/or maintenance to be performed, and Tenant shall pay Landlord upon demand the cost of the same as Additional Rent. Upon the expiration or earlier termination of this Lease (or within five (5) business days following Tenant's receipt of written notice from Landlord that Tenant's rights to such Tenant's Signage have terminated as a result of a Tenant default under this Lease or Tenant's failure to satisfy the occupancy requirement, as set forth in Section 23.5.3 above), Tenant shall, at Tenant's sole cost and expense, cause Tenant's Signage to be removed and shall cause the area in which such Tenant's Signage was located to be restored to the condition existing immediately prior to the installation of such Tenant's Signage. If Tenant fails to timely remove such Tenant's Signage or to restore the areas in which such Tenant's Signage was located, as provided in the immediately preceding sentence, then Landlord may perform such work, and all costs incurred by Landlord in so performing shall be reimbursed by Tenant to Landlord within thirty (30) days after Tenant's receipt of an invoice therefor. The TCCs of this Section 23.5.4 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 24

### COMPLIANCE WITH LAW

Landlord shall comply with all Applicable Laws relating to the Base Building, provided that compliance with such Applicable Laws is not the responsibility of Tenant under this Lease, and provided further that Landlord's failure to comply therewith would prohibit Tenant from obtaining or maintaining a certificate of occupancy for the Premises, or would unreasonably and materially affect the safety of Tenant's employees or create a significant health hazard for Tenant's employees. Landlord shall be permitted to include in Operating Expenses any costs or expenses incurred by Landlord under this Article 24 to the extent not prohibited by the terms of Section 4.2.4 above. For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist (CASp). Tenant shall not do anything or suffer anything to be done in or about the Premises or the Project which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated, including, without limitation, any such governmental regulations related to disabled access (collectively, "**Applicable Laws**"). At its sole cost and expense, Tenant shall promptly comply with all Applicable Laws (including the making of any alterations to the Premises required by Applicable Laws) which relate to (i) Tenant's use of the Premises, (ii) the Alterations or the Improvements in the Premises, or (iii) the Base Building, but, as to the Base

Building, only to the extent such obligations are triggered by Tenant's Alterations, the Improvements, or use of the Premises for non-general office use. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

## ARTICLE 25

### LATE CHARGES

If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee when due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder; provided, however, with regard to the first such failure in any twelve (12) month period, Landlord will waive such late charge to the extent Tenant cures such failure within five (5) business days following Tenant's receipt of written notice from Landlord that the same was not received when due. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within ten (10) days after the date they are due shall bear interest from the date when due until paid at the "Interest Rate." For purposes of this Lease, the "Interest Rate" shall be an annual rate equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

## ARTICLE 26

### LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

26.1 **Landlord's Cure.** All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and such failure shall continue in excess of the time allowed under Section 19.1.2, above, unless a specific time period is otherwise stated in this Lease, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

26.2 **Tenant's Reimbursement.** Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, upon delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 26.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all legal fees and other amounts so expended. Tenant's obligations under this Section 26.2 shall survive the expiration or sooner termination of the Lease Term.

## ARTICLE 27

### ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times (during Building Hours with respect to items (i) and (ii) below) and upon at least twenty-four (24) hours prior notice to Tenant (except in the case of an emergency) to enter the Premises to (i) inspect them; (ii) show the Premises to prospective purchasers, or to current or prospective mortgagees, ground or underlying lessors or insurers, or during the last twelve (12) months of the Lease Term, to prospective tenants; (iii) post notices of nonresponsibility; or (iv) alter, improve or repair the Premises or the Building, or for structural alterations, repairs or improvements to the Building or the Building's systems and equipment. Notwithstanding anything to the contrary contained in this Article 27, Landlord may enter the Premises at any time to (A) perform services required of Landlord, including janitorial service; (B) take possession due to any breach of this Lease in the manner provided herein; and (C) perform any covenants of Tenant which Tenant fails to perform. Landlord may make any such entries without the abatement of Rent, except as otherwise provided in this Lease, and may take such reasonable steps as required to accomplish the stated purposes; provided, however, except for (x) emergencies, (y) repairs, alterations, improvements or additions required by governmental or quasi-governmental authorities or court order or decree, or (z) repairs which are the obligation of Tenant hereunder, any such entry shall be performed

in a manner so as not to unreasonably interfere with Tenant's use of the Premises and shall be performed after normal business hours if reasonably practical. With respect to items (y) and (z) above, Landlord shall use commercially reasonable efforts to not materially interfere with Tenant's use of, or access to, the Premises. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decorations except as otherwise expressly agreed to be performed by Landlord herein.

## ARTICLE 28

### TENANT PARKING

Tenant shall be entitled to use commencing on the Lease Commencement Date, (i) the amount of unreserved parking passes set forth in Section 9 of the Summary, and (ii) up to the amount of reserved parking passes set forth in Section 9 of the Summary (which reserved parking passes shall be deducted from the otherwise available unreserved parking passes in item (i) hereinabove), which parking passes shall pertain to the Project parking facilities, of which Tenant shall be entitled to Tenant's pro rata share of parking in the surface area and in the covered parking structure. Tenant, from time to time during the Lease Term, and upon not less than thirty (30) days' prior notice to Landlord, shall have the right to increase or decrease the number of reserved parking passes Tenant rents on a monthly basis from Landlord, provided that Tenant may in no event rent more than the maximum amount of reserved parking passes set forth in Section 9 of the Summary. Tenant shall pay to Landlord (or its designee) for the reserved and unreserved parking passes on a monthly basis at the prevailing rate charged from time to time at the location of such parking passes; provided, however, (a) the monthly rate for Tenant's reserved parking passes shall be One Hundred Fifty and 00/100 Dollars (\$150.00) per reserved parking pass throughout the initial Lease Term only, and (b) Tenant's unreserved parking passes shall be without charge for the initial Lease Term only (excepting only any parking taxes or other charges imposed by governmental authorities in connection with the use of such parking as more particularly contemplated below). In addition to any fees that may be charged to Tenant in connection with its parking of automobiles in the Project parking facilities, Tenant shall be responsible for the full amount of any taxes imposed by any governmental authority in connection with the renting of such parking passes by Tenant or the use of the parking facility by Tenant. Tenant's continued right to use the parking passes is conditioned upon Tenant abiding by all reasonable rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facility where the parking passes are located, including any sticker or other identification system established by Landlord, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations and Tenant not being in default under this Lease. Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Project parking facility at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, temporarily close-off or restrict access to the Project parking facility for purposes of permitting or facilitating any such construction, alteration or improvements; provided that, for any interruption in use of Tenant's parking spaces reasonably expected to exceed fifteen (15) business days, Landlord shall use commercially reasonable efforts to provide reasonable replacement parking. Landlord may, at any time, institute valet assisted parking, tandem parking stalls, "stack" parking, or other parking program within the Project parking facility, the cost of which shall be included in Operating Expenses. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Landlord. The parking passes rented by Tenant pursuant to this Article 28 are provided to Tenant solely for use by Tenant's own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval. Tenant may validate visitor parking by such method or methods as the Landlord may establish, at the validation rate from time to time generally applicable to visitor parking.

## ARTICLE 29

### MISCELLANEOUS PROVISIONS

29.1 **Terms; Captions.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 **Binding Effect.** Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 **No Air Rights.** No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises is temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Project, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

29.4 **Modification of Lease.** Should any current or prospective mortgagee or ground lessor for the Building or Project require a modification of this Lease, which modification will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant hereunder, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are reasonably required therefor and to deliver the same to Landlord within ten (10) days following a request therefor. At the request of Landlord or any mortgagee or ground lessor, Tenant agrees to execute a short form of Lease and deliver the same to Landlord within ten (10) days following the request therefor.

29.5 **Transfer of Landlord's Interest.** Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Project or Building and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease accruing from and after the date of such transfer and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Landlord, including the return of any Security Deposit, and Tenant shall attorn to such transferee. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

29.6 **Prohibition Against Recording or Publication.** Neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded or otherwise published by Tenant or by anyone acting through, under or on behalf of Tenant.

29.7 **Landlord's Title.** Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord.

29.8 **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

29.9 **Application of Payments.** Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

29.10 **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

29.11 **Partial Invalidity.** If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.12 **No Warranty.** In executing and delivering this Lease, Tenant has not relied on any representations, including, but not limited to, any representation as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto. Tenant agrees that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the physical condition of the Building, the Project, the land upon which the Building or the Project are located, or the Premises, or the expenses of operation of the Premises, the Building or the Project, or any other matter or thing affecting or related to the Premises, except as herein expressly set forth in the provisions of this Lease.

29.13 **Landlord Exculpation.** The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Premises shall be limited solely and exclusively to an amount which is equal to net the interest of Landlord in the Building (following payment of any outstanding liens and/or mortgages, whether attributable to sales or insurance proceeds or otherwise). Neither Landlord, nor any of the Landlord Parties 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. The limitations of liability contained in this [Section 29.13](#) shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

29.14 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease constitutes the parties' entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto (including, without limitation, any confidentiality agreement, letter of intent, request for proposal, or similar agreement previously entered into between Landlord and Tenant in anticipation of this Lease) or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

29.15 **Right to Lease.** Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building or Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Project.

29.16 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Articles 5 and 24 of this Lease (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

29.17 **Waiver of Redemption by Tenant.** Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

29.18 **Notices.** All notices, demands, statements or communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder shall be in writing, shall be (A) delivered by a nationally recognized overnight courier, or (B) delivered personally. Any such Notice shall be delivered (i) to Tenant at the appropriate address set forth in Section 10 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord; or (ii) to Landlord at the addresses set forth in Section 11 of the Summary, or to such other firm or to such other place as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given on the date of receipted delivery, of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no Notice was given. If Tenant is notified of the identity and address of Landlord's mortgagee or ground or underlying lessor, Tenant shall give to such mortgagee or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such mortgagee or ground or underlying lessor shall be given a reasonable opportunity to cure such default prior to Tenant's exercising any remedy available to Tenant. The party delivering Notice shall use commercially reasonable efforts to provide a courtesy copy of each such Notice to the receiving party via electronic mail.

29.19 **Joint and Several.** If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

29.20 **Authority.** If Tenant is a corporation, trust or partnership, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so.

29.21 **Attorneys' Fees.** In the event that either Landlord or Tenant should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

29.22 **Governing Law; WAIVER OF TRIAL BY JURY.** This Lease shall be construed and enforced in accordance with the laws of the State of California. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF CALIFORNIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF BASE RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

29.23 **Submission of Lease.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of, option for or option to lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.



29.24 **Brokers.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the real estate brokers or agents specified in Section 12 of the Summary (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Landlord shall pay the Brokers pursuant to the terms of separate commission agreements. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party.

29.25 **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

29.26 **Project or Building Name and Signage.** Landlord shall have the right at any time to change the name of the Project or Building and to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord.

29.27 **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease.

29.28 **Confidentiality.** Tenant acknowledges that the content of this Lease and any related documents are confidential information. Except as otherwise required by law, Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal, and space planning consultants, prospective purchasers, prospective lenders, investors, or any independent auditors, third parties designated to review Direct Expenses, its directors, officers, employees, attorneys, or proposed Transferees. Landlord acknowledges that the content of this Lease and any related documents (including financial statements provided by Tenant pursuant to Article 17 above) are confidential information. Landlord shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Landlord's financial, legal and space planning consultants, or its directors, officers, employees, attorneys, accountants, prospective lenders, prospective purchasers, and current and potential partners. Moreover, Landlord has advised Tenant that Landlord is obligated by law to regularly provide financial information concerning the Landlord and/or its affiliates (including Kilroy Realty Corporation, a public company whose shares of stock are listed on the New York Stock Exchange) to the shareholders of its affiliates, to the Federal Securities and Exchange Commission and other regulatory agencies, and to auditors and underwriters, which information may include the fact that Tenant is a tenant at the Project and summaries of financial information concerning leases, rents, costs and results of operations of its real estate business, including any rents or results of operations affected by this Lease. To the extent Tenant is a publicly traded corporation or as otherwise required by law, Tenant may be obligated to regularly provide financial information concerning Tenant and/or its affiliates to the shareholders of its affiliates, to the Federal Securities and Exchange Commission and other regulatory agencies, and to auditors and underwriters, which information may include summaries of financial information concerning leases, rents, costs, and results of operations of its business, including any financial obligations set forth in this Lease and copies of material contracts, such as this Lease. This provision shall survive the expiration or earlier termination of this Lease for one (1) year.

29.29 **Transportation Management.** Tenant shall fully comply with all present or future programs intended to manage parking, transportation or traffic in and around the Building, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

29.30 **Building Renovations.** It is specifically understood and agreed that Landlord has made no representation or warranty to Tenant and has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, Building, or any part thereof and that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant except as specifically set forth herein or in the Work Letter. However, Tenant hereby acknowledges that Landlord is currently renovating or may during the Lease Term renovate, improve, alter, or modify (collectively, the "**Renovations**") the Project, the Building and/or the Premises including without limitation the parking structure, common areas, systems and equipment, roof, and structural portions of the same, which Renovations may include, without limitation, (i) installing sprinklers in the Building common areas and tenant spaces, (ii) modifying the common areas and tenant spaces to comply with applicable laws and regulations, including regulations relating to the physically disabled, seismic conditions, and building safety and security, and (iii) installing new floor covering, lighting, and wall coverings in the Building common areas, and in connection with any Renovations, Landlord may, among other things, erect scaffolding or other necessary structures in the Building, limit or eliminate access to portions of the Project, including portions of the common areas, or perform work in the Building, which work may create noise, dust or leave debris in the Building. Tenant hereby agrees that such Renovations and Landlord's actions in connection with such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the Renovations or Landlord's actions in connection with such

Renovations, or for any inconvenience or annoyance occasioned by such Renovations or Landlord's actions. Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of, and access to, the Premises in connection with any Renovations undertaken by Landlord.

29.31 **No Violation.** Tenant hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Tenant to be in violation of any agreement, instrument, contract, law, rule or regulation by which Tenant is bound, and Tenant shall protect, defend, indemnify and hold Landlord harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from Tenant's breach of this warranty and representation.

29.32 **Communications and Computer Lines.** Tenant may install, maintain, replace, remove or use any communications or computer wires and cables (collectively, the "**Lines**") at the Project in or serving the Premises, provided that (i) Tenant shall obtain Landlord's prior written consent, use Landlord's designated contractor for provision of cabling and riser management services (or, if Landlord does not have a designated contractor, then an experienced and qualified contractor reasonably approved in writing by Landlord), and comply with all of the other provisions of **Articles 7 and 8** of this Lease, (ii) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Project, as determined in Landlord's reasonable opinion, (iii) the Lines therefor (including riser cables) shall be (x) appropriately insulated to prevent excessive electromagnetic fields or radiation, (y) surrounded by a protective conduit reasonably acceptable to Landlord, and (z) identified in accordance with the "Identification Requirements," as that term is set forth hereinbelow, (iv) any new or existing Lines servicing the Premises shall comply with all applicable governmental laws and regulations, (v) as a condition to permitting the installation of new Lines, Tenant shall remove existing Lines located in or serving the Premises and repair any damage in connection with such removal, and (vi) Tenant shall pay all costs in connection therewith. All Lines shall be clearly marked with adhesive plastic labels (or plastic tags attached to such Lines with wire) to show Tenant's name, suite number, telephone number and the name of the person to contact in the case of an emergency (A) every four feet (4') outside the Premises (specifically including, but not limited to, the electrical room risers and other Common Areas), and (B) at the Lines' termination point(s) (collectively, the "**Identification Requirements**"). Upon the expiration of the Lease Term, or immediately following any earlier termination of this Lease, Tenant shall, at Tenant's sole cost and expense, remove all Lines installed by Tenant, and repair any damage caused by such removal. In the event that Tenant fails to complete such removal and/or fails to repair any damage caused by the removal of any Lines, Landlord may do so and may charge the cost thereof to Tenant. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time (1) are in violation of any Applicable Laws, (2) are inconsistent with then-existing industry standards (such as the standards promulgated by the National Fire Protection Association (e.g., such organization's "2002 National Electrical Code")), or (3) otherwise represent a dangerous or potentially dangerous condition.

### 29.33 **Hazardous Substances.**

29.33.1 **Definitions.** For purposes of this Lease, the following definitions shall apply: "**Hazardous Material(s)**" shall mean any solid, liquid or gaseous substance or material that is described or characterized as a toxic or hazardous substance, waste, material, pollutant, contaminant or infectious waste, or any matter that in certain specified quantities would be injurious to the public health or welfare, or words of similar import, in any of the "Environmental Laws," as that term is defined below, or any other words which are intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity or reproductive toxicity and includes, without limitation, asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, nuclear or radioactive matter, medical waste, soot, vapors, fumes, acids, alkalis, chemicals, microbial matters (such as molds, fungi or other bacterial matters), biological agents and chemicals which may cause adverse health effects, including but not limited to, cancers and/or toxicity. "**Environmental Laws**" shall mean any and all federal, state, local or quasi-governmental laws (whether under common law, statute or otherwise), ordinances, decrees, codes, rulings, awards, rules, regulations or guidance or policy documents now or hereafter enacted or promulgated and as amended from time to time, in any way relating to (i) the protection of the environment, the health and safety of persons (including employees), property or the public welfare from actual or potential release, discharge, escape or emission (whether past or present) of any Hazardous Materials or (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Materials.

29.33.2 **Compliance with Environmental Laws.** Landlord covenants that during the Lease Term, Landlord shall comply with all Environmental Laws in accordance with, and as required by, the TCCs of **Article 24** of this Lease. Landlord represents and warrants that, to its actual knowledge, it has not received any notice of violation of Environmental Laws from the applicable governmental authority regarding any use, storage, treatment or transportation of Hazardous Materials in, on or about the Project, Building or Premises prior to the date of this Lease. Tenant represents and warrants that, except as herein set forth, it will not use, store or dispose of any Hazardous Materials in or on the Premises. However, notwithstanding the preceding sentence, Landlord agrees that Tenant may use, store and properly dispose of commonly available household cleaners and chemicals to maintain the Premises and Tenant's routine office operations (such as printer toner and copier toner) (hereinafter the "**Permitted Chemicals**"). Landlord and Tenant acknowledge that any or all of the Permitted Chemicals described in this paragraph may constitute Hazardous Materials. However, Tenant may use, store and dispose of same, provided that in doing so, Tenant fully complies with all Environmental Laws.

29.33.3 **Tenant Hazardous Materials.** Tenant will (i) obtain and maintain in full force and effect all Environmental Permits (as defined below) that may be required from time to time under any Environmental Laws applicable to Tenant or the Premises, and (ii) be and remain in compliance with all terms and conditions of all such Environmental Permits and with all other Environmental Laws. "**Environmental Permits**" means, collectively, any and all permits, consents, licenses, approvals and registrations of any nature at any time required pursuant to, or in order to comply with any Environmental Law. On or before the Lease Commencement Date and on each annual anniversary of the Commencement Date thereafter,

as well as at any other time following Tenant's receipt of a reasonable request from Landlord, Tenant agrees to deliver to Landlord a list of all Hazardous Materials anticipated to be used by Tenant in the Premises and the quantities thereof. At any time following Tenant's receipt of a request from Landlord, Tenant shall promptly complete an "environmental questionnaire" using the form then-provided by Landlord. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, the Building and the Project, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials, which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises, the Building, and/or the Project or any portion thereof by Tenant and/or any Tenant Parties (such obligation to survive the expiration or sooner termination of this Lease). Nothing in this Lease shall impose any liability on Tenant for any Hazardous Materials in existence on the Premises, Building or Project prior to the Lease Commencement Date or brought onto the Premises, Building or Project after the Lease Commencement Date by any third parties not under Tenant's control.

29.33.4 **Landlord's Right of Environmental Audit.** Landlord may, upon reasonable notice to Tenant, be granted access to and enter the Premises no more than once annually to perform or cause to have performed an environmental inspection, site assessment or audit. Such environmental inspector or auditor may be chosen by Landlord, in its sole discretion, and be performed at Landlord's sole expense. To the extent that the report prepared upon such inspection, assessment or audit, indicates the presence of Hazardous Materials in violation of Environmental Laws, or provides recommendations or suggestions to prohibit the release, discharge, escape or emission of any Hazardous Materials at, upon, under or within the Premises, or to comply with any Environmental Laws, Tenant shall promptly, at Tenant's sole expense, comply with such recommendations or suggestions, including, but not limited to performing such additional investigative or subsurface investigations or remediation(s) as recommended by such inspector or auditor. Notwithstanding the above, if at any time, Landlord has actual notice or reasonable cause to believe that Tenant has violated, or permitted any violations of any Environmental Law, then Landlord will be entitled to perform its environmental inspection, assessment or audit at any time, notwithstanding the above mentioned annual limitation, and Tenant must reimburse Landlord for the cost or fees incurred for such as Additional Rent.

29.33.5 **Indemnifications.** Landlord agrees to indemnify, defend, protect and hold harmless the Tenant Parties from and against any liability, obligation, damage or costs, including without limitation, attorneys' fees and costs, resulting directly or indirectly from any use, presence, removal or disposal of any Hazardous Materials to the extent such liability, obligation, damage or costs was a result of actions caused or knowingly permitted by Landlord or a Landlord Party. Tenant agrees to indemnify, defend, protect and hold harmless the Landlord Parties from and against any liability, obligation, damage or costs, including without limitation, attorneys' fees and costs, resulting directly or indirectly from any use, presence, removal or disposal of any Hazardous Materials or breach of any provision of this section, to the extent such liability, obligation, damage or costs was a result of actions caused or permitted by Tenant or a Tenant Party.

#### 29.34 **Development of the Project.**

29.34.1 **Subdivision.** Landlord reserves the right to further subdivide all or a portion of the Project. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents needed to conform this Lease to the circumstances resulting from such subdivision.

29.34.2 **The Other Improvements.** If portions of the Project or property adjacent to the Project (collectively, the "**Other Improvements**") are owned by an entity other than Landlord, Landlord, at its option, may enter into an agreement with the owner or owners of any or all of the Other Improvements to provide (i) for reciprocal rights of access and/or use of the Project and the Other Improvements, (ii) for the common management, operation, maintenance, improvement and/or repair of all or any portion of the Project and the Other Improvements, (iii) for the allocation of a portion of the Direct Expenses to the Other Improvements and the operating expenses and taxes for the Other Improvements to the Project, and (iv) for the use or improvement of the Other Improvements and/or the Project in connection with the improvement, construction, and/or excavation of the Other Improvements and/or the Project. Nothing contained herein shall be deemed or construed to limit or otherwise affect Landlord's right to convey all or any portion of the Project or any other of Landlord's rights described in this Lease.

29.34.3 **Construction of Project and Other Improvements.** Tenant acknowledges that portions of the Project and/or the Other Improvements may be under construction following Tenant's occupancy of the Premises, and that such construction may result in levels of noise, dust, obstruction of access, etc. which are in excess of that present in a fully constructed project. Tenant hereby waives any and all rent offsets or claims of constructive eviction which may arise in connection with such construction.

29.35 **Water Sensors.** Tenant shall, at Tenant's sole cost and expense (subject to application of the Improvement Allowance pursuant to [Section 2.4](#) of the Work Letter), be responsible for promptly installing web-enabled wireless water leak sensor devices designed to alert the Tenant on a twenty-four (24) hour seven (7) day per week basis if a water leak is occurring in the Premises (which water sensor device(s) located in the Premises shall be referred to herein as "**Water Sensors**"). The Water Sensors shall be installed in any areas in the Premises where water is utilized (such as sinks, pipes, faucets, water heaters, coffee machines, ice machines, water dispensers and water fountains), and in locations that may be designated from time to time by Landlord (the "**Sensor Areas**"). In connection with any Alterations affecting or relating to any Sensor Areas, Landlord may require Water Sensors to be installed or updated in Landlord's sole and absolute discretion. Notwithstanding the foregoing, Tenant shall not be responsible for the cost of installing Water Sensors in connection with the installation of plumbing fixtures not installed by or at the request of Tenant, in any Common Area, in any existing restroom or which existed prior to Tenant taking occupancy of the Premises. With respect to the installation of any such Water Sensors, Tenant shall obtain Landlord's prior written consent, use an experienced and qualified contractor reasonably designated by Landlord, and comply with all of the other provisions of [Article 8](#) of this Lease. Tenant shall, at Tenant's sole cost and expense, pursuant to [Article 7](#) of this Lease

keep any Water Sensors located in the Premises (whether installed by Tenant or someone else) in good working order, repair and condition at all times during the Lease Term and comply with all of the other provisions of Article 7 of this Lease. Notwithstanding any provision to the contrary contained herein, Landlord has neither an obligation to monitor, repair or otherwise maintain the Water Sensors, nor an obligation to respond to any alerts it may receive from the Water Sensors or which may be generated from the Water Sensors. Upon the expiration of the Lease Term, or immediately following any earlier termination of this Lease, Landlord reserves the right to require Tenant, at Tenant's sole cost and expense, to remove all Water Sensors installed by Tenant, and repair any damage caused by such removal; provided, however, if the Landlord does not require the Tenant to remove the Water Sensors as contemplated by the foregoing, then Tenant shall leave the Water Sensors in place together with all necessary user information such that the same may be used by a future occupant of the Premises (e.g., the Water Sensors shall be unblocked and ready for use by a third-party). If Tenant is required to remove the Water Sensors pursuant to the foregoing and Tenant fails to complete such removal and/or fails to repair any damage caused by the removal of any Water Sensors, Landlord may do so and may charge the cost thereof to Tenant.

29.36 **LEED Certification.** Landlord may, in Landlord's sole and absolute discretion, elect to apply to obtain or maintain a LEED certification for the Project (or portion thereof), or other applicable certification in connection with Landlord's sustainability practices for the Project (as such sustainability practices are to be determined by Landlord, in its sole and absolute discretion, from time to time). In the event that Landlord elects to pursue such an aforementioned certification, Tenant shall (to the extent it is at no more than a de minimis cost or expense to Tenant), promptly cooperate with the Landlord's efforts in connection therewith and provide Landlord with any documentation it may need in order to obtain or maintain the aforementioned certification (which cooperation may include, but shall not be limited to, Tenant complying with certain standards pertaining to the purchase of materials used in connection with any Alterations or improvements undertaken by the Tenant in the Project, the sharing of documentation pertaining to any Alterations or improvements undertaken by Tenant in the Project with Landlord, and the sharing of Tenant's billing information pertaining to trash removal and recycling related to Tenant's operations in the Project).

29.37 **Utility Billing Information.** In the event that the Tenant is permitted to contract directly for the provision of electricity, gas and/or water services to the Premises with the third-party provider thereof (all in Landlord's sole and absolute discretion), Tenant shall promptly, but in no event more than five (5) business days following its receipt of each and every invoice for such items from the applicable provider, provide Landlord with a copy of each such invoice. Tenant acknowledges that pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively the "**Energy Disclosure Requirements**"), Landlord may be required to disclose information concerning Tenant's energy usage at the Building to certain third parties, including, without limitation, prospective purchasers, lenders and tenants of the Building (the "**Tenant Energy Use Disclosure**"). Tenant hereby (A) consents to all such Tenant Energy Use Disclosures, and (B) acknowledges that Landlord shall not be required to notify Tenant of any Tenant Energy Use Disclosure. Further, Tenant hereby releases Landlord from any and all losses, costs, damages, expenses and liabilities relating to, arising out of and/or resulting from any Tenant Energy Use Disclosure. The terms of this Section 29.37 shall survive the expiration or earlier termination of this Lease.

29.38 **Green Cleaning/Recycling.** To the extent a "green cleaning program" and/or a recycling program is implemented by Landlord in the Building and/or Project (each in Landlord's sole and absolute discretion), Tenant shall, at Tenant's sole cost and expense, comply with the provisions of each of the foregoing programs (e.g., Tenant shall separate waste appropriately so that it can be efficiently processed by Landlord's particular recycling contractors). To the extent Tenant fails to comply with any of Landlord's recycling programs contemplated by the foregoing, Tenant shall be required to pay any contamination charges related to such non-compliance.

29.39 **Open-Ceiling Plan.** In the event that the Premises has an "open ceiling plan", then Landlord and third parties leasing or otherwise using/managing or servicing space on the floor immediately above the Premises shall have the right to install, maintain, repair and replace mechanical, electrical and plumbing fixtures, devices, piping, ductwork and all other improvements through the floor above the Premises (which may penetrate through the ceiling of the Premises and be visible within the Premises during the course of construction and upon completion thereof) (as applicable, the "**Penetrating Work**"), as Landlord may determine in Landlord's sole and absolute discretion and with no approval rights being afforded to Tenant with respect thereto. Moreover, there shall be no obligation by Landlord or any such third party to enclose or otherwise screen any of such Penetrating Work from view within the Premises, whether during the course of construction or upon completion thereof. Since Tenant is anticipated to be occupying the Premises at the time the Penetrating Work is being performed, Landlord agrees that it shall (and shall cause third parties to) use commercially reasonable efforts to perform the Penetrating Work in a manner so as to attempt to minimize interference with Tenant's use of the Premises; provided, however, such Penetrating Work may be performed during normal business hours, without any obligation to pay overtime or other premiums. Tenant hereby acknowledges that, notwithstanding Tenant's occupancy of the Premises during the performance of any such Penetrating Work, Tenant hereby agrees that the performance of such Penetrating Work shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of rent. Neither Landlord nor any of the Landlord Parties or any third parties performing the Penetrating Work shall be responsible for any direct or indirect injury to or interference with Tenant's business arising from the performance of such Penetrating Work, nor shall Tenant be entitled to any compensation or damages from Landlord or any of the Landlord Parties or any third parties performing the Penetrating Work for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the performance of the Penetrating Work, or for any inconvenience or annoyance occasioned by the Penetrating Work. In addition, Tenant hereby agrees to promptly and diligently cooperate with Landlord and any of the third parties performing the Penetrating Work in order to facilitate the applicable party's performance of the particular Penetrating Work in an efficient and timely manner.

29.40 **Prohibited Persons; Foreign Corrupt Practices Act and Anti-Money Laundering.** Neither Tenant nor any of its affiliates, nor any of their respective members, partners or, to Tenant's knowledge, other equity holders, and none of their respective officers, directors or managers is, nor prior to or during the Lease Term, will they become a person or entity with whom U.S. persons or entities are restricted from doing business under (a) the Patriot Act (as defined below), (b) any other requirements contained in the rules and regulations of the Office of Foreign Assets Control,

Department of the Treasury ("OFAC") (including any "blocked" person or entity listed in the Annex to Executive Order Nos. 12947, 13099 and 13224 and any modifications thereto or thereof or any other person or entity named on OFAC's Specially Designated Blocked Persons List) or (c) any other U.S. statute, Executive Order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action (collectively, "**Prohibited Persons**"). Prior to and during the Lease Term, Tenant, and to Tenant's knowledge, its employees and any person acting on its behalf have at all times fully complied with, and are currently in full compliance with, the Foreign Corrupt Practices Act of 1977 and any other applicable anti-bribery or anti-corruption laws. Tenant is not entering into this Lease, directly or indirectly, in violation of any laws relating to drug trafficking, money laundering or predicate crimes to money laundering. As used herein, "**Patriot Act**" shall mean the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) and all other statutes, orders, rules and regulations of the U.S. government and its various executive departments, agencies and offices interpreting and implementing the Patriot Act.

*[Signatures follow on next page]*

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

**"LANDLORD":**

KILROY REALTY, L.P.,

a Delaware limited partnership

By: Kilroy Realty Corporation,

a Maryland corporation

Its: General Partner

By: /s/ TRACY MURPHY

Name: Tracy Murphy

Its: Executive Vice President, Life Science

By: /s/ NELSON ACKERTY

Name: Nelson Ackerty

Its: Senior Vice President, San Diego

**"TENANT":**

RETROPHIN, INC.,

a Delaware corporation

By: /s/ LAURA CLAGUE

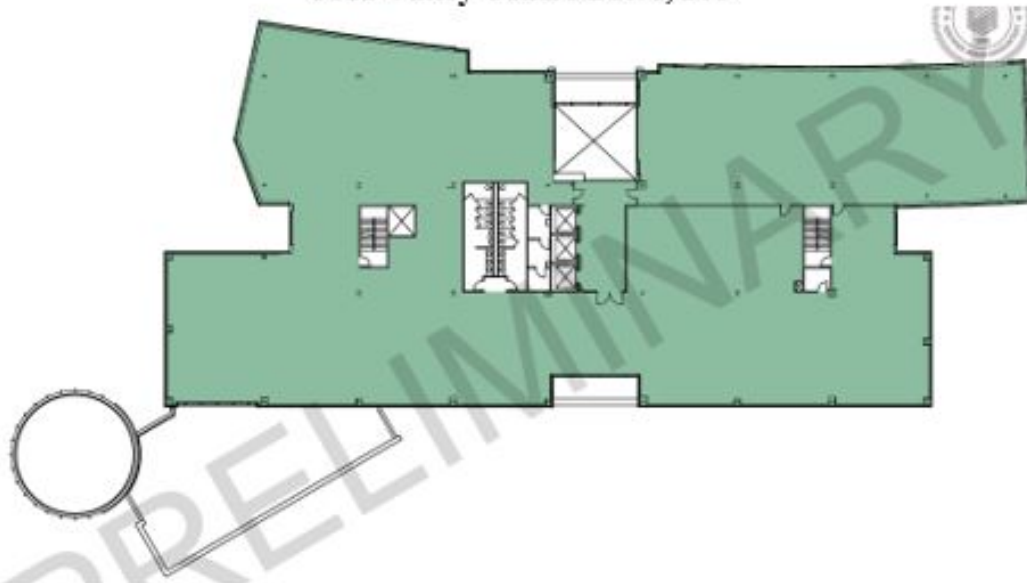
Name: Laura Clague

Its: Chief Financial Officer

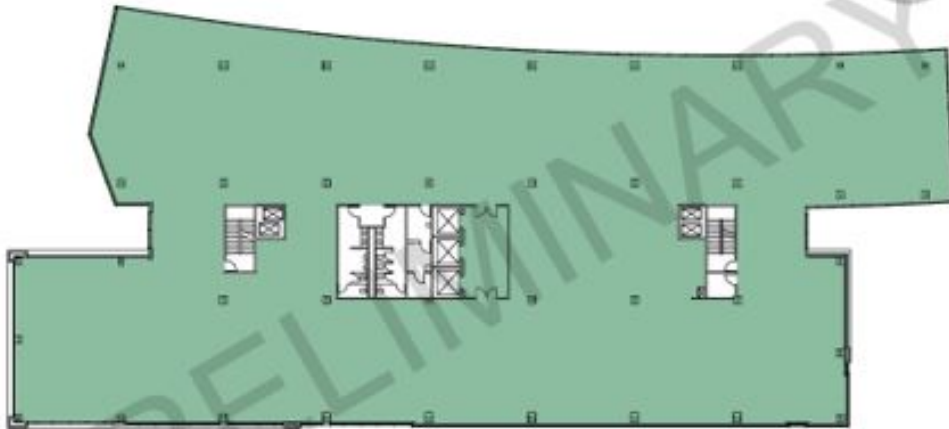
**EXHIBIT A**

**KILROY CENTRE DEL MAR**

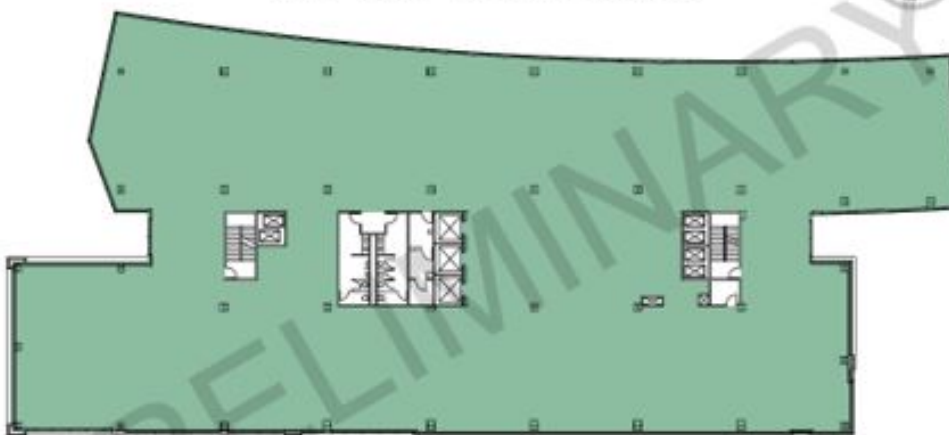
**OUTLINE OF PREMISES**  
**3611 Valley Centre Drive, 200**



**3611 Valley Centre Drive, 300**



**3611 Valley Centre Drive, 400**



## EXHIBIT B

### KILROY CENTRE DEL MAR

#### WORK LETTER

This Work Letter shall set forth the terms and conditions relating to the construction of the Premises. This Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Work Letter to Articles or Sections of "this Lease" shall mean the relevant portions of Articles 1 through 29 of the Office Lease to which this Work Letter is attached as Exhibit B and of which this Work Letter forms a part, and all references in this Work Letter to Sections of "this Work Letter" shall mean the relevant portion of Sections 1 through 5 of this Work Letter. Tenant acknowledges that Schedule 1 attached to this Work Letter sets forth a list of required "Tenant Deliverables," as that term is defined in Section 2.2.2 below, which Tenant is responsible to deliver on a timely basis to Landlord in accordance with the terms of this Work Letter.

#### SECTION 1

##### DELIVERY OF THE PREMISES

Tenant acknowledges that Tenant has thoroughly examined the Premises. Upon the full execution and delivery of this Lease by Landlord and Tenant, Landlord shall deliver the Premises and Tenant shall accept the Premises from Landlord in their presently existing, "as-is" condition as of the date of this Lease. Landlord agrees to deliver possession of the Premises to Tenant promptly following the full execution and delivery of this Lease by Landlord and Tenant.

#### SECTION 2

##### IMPROVEMENTS

2.1 Improvement Allowance. Tenant shall be entitled to a one-time improvement allowance (the "**Improvement Allowance**") in the amount of \$5,793,150.00 (i.e., \$75.00 per rentable square foot of the Premises) for the costs relating to the initial design and construction of the improvements, which are permanently affixed to the Premises (the "**Improvements**"). In no event shall Landlord be obligated to make disbursements pursuant to this Work Letter in the event that Tenant fails to timely pay any portion of the "Over-Allowance Amount," as defined in Section 4.2.1, as and when required by such Section 4.2.1, nor shall Landlord be obligated to pay a total amount which exceeds the Improvement Allowance. Notwithstanding the foregoing or any contrary provision of this Lease, all Improvements shall be deemed Landlord's property under the terms of this Lease. Subject to the "Construction Risk Alternatives," as that term is defined in Section 4.2.1 below, any unused portion of the Improvement Allowance remaining as of the date which is six (6) months following the Lease Commencement Date (subject to day-for-day extension to the extent of Landlord Delay, the "**Allowance Deadline**"), shall remain with Landlord and Tenant shall have no further right thereto. In addition to (and not as part of) the Improvement Allowance, Landlord shall pay directly to Hollander Design Group a space planning allowance for Tenant's preparation of an initial space plan for the Improvements in an amount not to exceed \$11,586.30 (i.e., \$0.15 per rentable square foot of the Premises).

##### 2.2 Disbursement of the Improvement Allowance.

2.2.1 Improvement Allowance Items. Except as otherwise set forth in this Work Letter, the Improvement Allowance shall be disbursed by Landlord (each of which disbursements shall be made pursuant to Landlord's disbursement process, including, without limitation, Landlord's receipt of invoices for all costs and fees described herein) only for the following items and costs (collectively the "**Improvement Allowance Items**"):

2.2.1.1 Payment of the fees of the "Architect" and the "Engineers," as those terms are defined in Section 3.1 of this Work Letter, which fees shall, notwithstanding anything to the contrary contained in this Work Letter, not exceed an aggregate amount equal to Five and 00/100 Dollars (\$5.00) per rentable square foot of the Premises, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the "Construction Drawings," as that term is defined in Section 3.1 of this Work Letter;

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Improvements;

2.2.1.3 The cost of construction of the Improvements, including, without limitation, testing and inspection costs, freight elevator usage, hoisting and trash removal costs, and contractors' fees and general conditions;

2.2.1.4 The cost of any changes in the Base Building (as contrasted with the Improvements) when such changes are required by the Construction Drawings, such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;



2.2.1.5 The cost of any changes to the Construction Drawings or Improvements required by all applicable building codes (the "**Code**");

2.2.1.6 The cost of the "Coordination Fee," as that term is defined in Section 4.2.2.1 of this Work Letter, together with any third-party costs reasonably incurred by Landlord to obtain Tenant Deliverables to the extent Tenant fails to timely satisfy its obligations related thereto in accordance with the terms of this Work Letter;

2.2.1.7 Sales and use taxes;

2.2.1.8 The costs incurred for reasonable moving expenses, the installation of exterior and interior signage in accordance with the Lease, the installation of Lines in the Premises, and other "soft costs" reasonably approved by Landlord, provided that the costs of the foregoing items in this Section 2.2.5 shall not exceed an aggregate of \$386,210.00 (i.e., \$5.00 per rentable square foot of the Premises);

2.2.1.9 The costs incurred by Tenant (but in no event for an amount in excess of One Hundred Seventy-Three Thousand Seven Hundred Ninety-Four and 50/100 Dollars (\$173,794.50) (i.e., \$2.25 per rentable square foot of the Premises)) for Tenant's retention of "Serbia Consulting Group" as Tenant's project management consultant; and

2.2.1.10 All other costs to be expended by Landlord in connection with the construction of the Improvements.

2.2.2 Disbursement of Improvement Allowance. Tenant acknowledges that Landlord is a publicly traded real estate investment trust ("**REIT**"), and due to such REIT status Landlord is required to satisfy certain tax and accounting requirements and related obligations in connection with the leases at the Building. In order to satisfy such requirements and obligations in connection with this Lease, Landlord requires various construction-related deliverables to be timely submitted by Tenant to Landlord ("**Tenant Deliverables**") at designated times prior to, during and immediately following the construction of the Improvements by Tenant, and Tenant hereby agrees to timely comply with all such Tenant Deliverable obligations. The Tenant Deliverables and related delivery deadlines are set forth in this Work Letter and in Schedule 1 attached to this Work Letter and incorporated herein by this reference. Notwithstanding any contrary provision of this Work Letter or Schedule 1 attached to this Work Letter, a complete set of all Tenant Deliverables shall be delivered to Landlord no later than forty-five (45) days following the Occupancy Outside Date.

Prior to the commencement of construction of the Improvements, Tenant shall deliver all of the Tenant Deliverables set forth in Section 1 of Schedule 1 attached to this Work Letter (i.e., the "Prior to Start of Construction" category of Tenant Deliverables) to Landlord. Certain of the Tenant Deliverables set forth in Section 1 of Schedule 1 attached to this Work Letter are further addressed with more specific provisions in this Work Letter.

Prior to and during the construction of the Improvements, Landlord shall make monthly disbursements of the Improvement Allowance for Improvement Allowance Items and shall authorize the release of monies as follows.

2.2.2.1 Monthly Disbursements. On or before the twenty-fifth (25<sup>th</sup>) day of each calendar month, during the construction of the Improvements (or such other date as Landlord may designate), Tenant shall deliver to Landlord: (i) a request for payment of the "Contractor," as that term is defined in Section 4.1.1 of this Work Letter, approved by Tenant, in a form to be provided by Landlord, showing the schedule, by trade, of percentage of completion of the Improvements in the Premises, detailing the portion of the work completed and the portion not completed; (ii) invoices from all of "Tenant's Agents," as that term is defined in Section 4.1.2 of this Work Letter, for labor rendered and materials delivered to the Premises; (iii) executed conditional mechanic's lien releases as to amounts subject to such draw, and unconditional mechanic's lien releases with respect to amounts previously paid no less than sixty (60) days prior to the date of such release, from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Sections 8132, 8134, 8136 and 8138; (iv) all of the Tenant Deliverables set forth in Sections 2 and 3 of Schedule 1 attached to this Work Letter, (i.e., the "Ongoing During Construction" and "Prior to Release of Any Funds" categories of Tenant Deliverables, respectively); (v) invoices for softs costs constituting Improvement Allowance Items, and (vi) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant's payment request. Thereafter, (i) with respect to payments due and owing to the Contractor, Landlord shall deliver a check to Tenant in payment of the lesser of: (A) the amounts so requested by Tenant, as set forth in this Section 2.2.2.1, above, less a ten percent (10%) retention (the aggregate amount of such retentions from the Contract amount to be known as the "**Final Retention**"), and (B) the balance of any remaining available portion of the Improvement Allowance (not including the Final Retention), provided that Landlord does not dispute any request for payment based on material non-compliance of any work with the "Approved Working Drawings," as that term is defined in Section 3.4 below, or due to any substandard work, or for any other reason, and (ii) with respect to payments due and owing on account of all Improvement Allowance Items other than payments to the Contractor, Landlord shall deliver a check to Tenant in payment of the lesser of: (A) the amounts so requested by Tenant, as set forth in this Section 2.2.2.1, above, and (B) the balance of any remaining available portion of the Improvement Allowance. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

2.2.2.2 Final Retention. Subject to the provisions of this Work Letter, with respect to payments due and owing to the Contractor, a check for the Final Retention payable to Tenant shall be delivered by Landlord to Tenant within thirty (30) days following the completion of construction of the Improvements, provided that (i) Tenant delivers to Landlord (a) paid invoices for all Improvements and related costs for which the Improvement Allowance is to be disbursed, (b) signed permits for all Improvements completed within the Premises, (c) properly executed unconditional

mechanics lien releases in compliance with both California Civil Code Section 8134 and either Section 8136 or Section 8138 from Tenant's contractor, subcontractors and material suppliers and any other party which has lien rights in connection with the construction of the Improvements, and (d) all of the Tenant Deliverables set forth in Section 4 of Schedule 1 attached to this Work Letter (i.e., the "Prior to Release of Final Payment" category of Tenant Deliverables), and (ii) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building, or any other tenant's use of such other tenant's leased premises in the Building, (iii) Architect delivers to Landlord a "Certificate of Substantial Completion", in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the Premises has been substantially completed, (iv) Tenant delivers to Landlord a "close-out package" in both paper and electronic forms (including, as-built drawings, and final record CADD files for the associated plans, warranties and guarantees from all contractors, subcontractors and material suppliers, and an independent air balance report); and (v) a certificate of occupancy, a temporary certificate of occupancy or its equivalent is issued to Tenant for the Premises.

2.2.2.3 Other Terms. Landlord shall only be obligated to make disbursements from the Improvement Allowance to the extent costs are incurred by Tenant for Improvement Allowance Items. All Improvement Allowance Items for which the Improvement Allowance has been made available shall be deemed Landlord's property under the terms of this Lease.

2.3 Building Standards. Landlord has established or may establish specifications for certain Building standard components to be used in the construction of the Improvements in the Premises. The quality of Improvements shall be equal to or of greater quality than the quality of such Building standards, provided that Landlord may, at Landlord's option, require the Improvements to comply with certain Building standards. Landlord may make reasonable changes to said specifications for Building standards from time to time. Removal requirements regarding the Improvements are addressed in Article 8 of this Lease.

2.4 Water Sensors. In connection with the construction of the Improvements pursuant to the terms of this Work Letter, Tenant shall, at Tenant's sole cost and expense (which may be deducted from the Improvement Allowance in accordance with the provisions of Section 2.2 of this Work Letter), install Water Sensors (as more particularly contemplated by the terms of Section 29.35 of this Lease). The Water Sensors so installed by Tenant shall be subject to the terms and conditions set forth in Section 29.35 of this Lease.

### SECTION 3

#### CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Tenant shall retain an architect/space planner reasonably approved by Landlord (the "**Architect**") to prepare the "Construction Drawings," as that term is defined in this Section 3.1. Notwithstanding the foregoing, Hollander Design Group is deemed an approved Architect. Tenant shall retain engineering consultants reasonably approved by Landlord (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work in the Premises, which work is not part of the Base Building. Notwithstanding the foregoing, Michael Wall Engineering and McParlane are deemed approved Engineers. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with commercially reasonable drawing format and specifications determined by Landlord and provided to Architect, and shall be subject to Landlord's approval. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the Base Building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings.

3.2 Final Space Plan. On or before the date set forth in Schedule 2 attached to this Work Letter, Tenant shall supply Landlord with four (4) hard copies signed by Tenant of its final space plan, along with other renderings or illustrations reasonably required by Landlord, to allow Landlord to understand Tenant's design intent, for the Premises before any architectural working drawings or engineering drawings have been commenced, and concurrently with Tenant's delivery of such hard copies, Tenant shall send to Landlord via electronic mail one (1) .pdf electronic copy of such final space plan. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require within five (5) business days of Tenant's receipt of Landlord's notice thereof. The foregoing process shall be continued until the Final Space Plan has been approved by Landlord and Tenant. Within fifteen (15) business days follows the parties' approval of the Final Space Plan, Tenant shall provide Landlord with a preliminary breakdown, by trade, of the anticipated costs to be incurred (or which have been incurred), as set forth more particularly in Sections 2.2.1.1 through 2.2.1.8, above, in connection with the design and construction of the Improvements to be performed by or at the direction of Tenant or the "Contractor," as that term is defined in Section 4.1 below (the "**Preliminary Budget**").

3.3 Final Working Drawings. Promptly after the Final Space Plan has been approved by Landlord and Tenant, Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the Premises, to enable the Engineers and the Architect to complete the "Final Working Drawings" (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall (i) promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, (ii) promptly cause the Architect to compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**"), and (iii) on or before the date set forth in **Schedule 2** attached to this Work Letter, submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) hard copies signed by Tenant of the Final Working Drawings, and concurrently with Tenant's delivery of such hard copies, Tenant shall send to Landlord via electronic mail one (1) .pdf electronic copy of such Final Working Drawings. Landlord shall advise Tenant within ten (10) business days after Landlord's receipt of the Final Working Drawings for the Premises if the same are unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall, within seven (7) business days of Tenant's receipt of Landlord's notice thereof, revise the Final Working Drawings in accordance with such review and any disapproval of Landlord in connection therewith. The foregoing process shall be continued until the Final Working Drawings have been approved by Landlord, provided that Tenant shall resubmit revised Final Working Drawings to Landlord within five (5) business days following receipt of Landlord's notice of deficiencies or other shortcomings, and Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the revised Final Working Drawings from Tenant if the same are unsatisfactory or incomplete in any additional respect. In addition, if the Final Working Drawings or any amendment thereof or supplement thereto shall require Base Building Work, and if Landlord in its sole and exclusive discretion agrees to any such alterations of the Base Building, and notifies Tenant of the need and cost for such Base Building Work, then Tenant shall pay the cost of such required Base Building Work in advance upon receipt of notice thereof. The cost for the Base Building Work shall include, without limitation, all direct architectural and/or engineering fees in connection therewith, plus ten percent (10%) of such direct costs for Landlord's servicing and overhead.

3.4 Approved Working Drawings. The Final Working Drawings shall be approved by Landlord (the "**Approved Working Drawings**") prior to the commencement of construction of the Premises by Tenant. After approval by Landlord of the Final Working Drawings, Tenant shall submit the same to the appropriate municipal authorities for all applicable building permits (the "**Permits**"). Tenant shall use commercially reasonable efforts to deliver the Permits to Landlord on or before the date set forth in **Schedule 2** attached to this Work Letter. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No material changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld.

3.5 Electronic Approvals. Notwithstanding any provision to the contrary contained in the Lease or this Work Letter, Landlord may, in Landlord's sole and absolute discretion, transmit or otherwise deliver any of the approvals required under this Work Letter via electronic mail to Tenant's representative identified in **Section 5.1** of this Work Letter, or by any of the other means identified in **Section 29.18** of this Lease.

## SECTION 4

### CONSTRUCTION OF THE IMPROVEMENTS

#### 4.1 Tenant's Selection of Contractors.

4.1.1 The Contractor. A general contractor shall be retained by Tenant to construct the Improvements. Such general contractor ("**Contractor**") shall be selected by Tenant from a list of general contractors supplied by Landlord, and Tenant shall deliver to Landlord notice of its selection of the Contractor upon such selection. Notwithstanding the foregoing, each of (a) Turner Construction Company, (b) BYCOR General Contractors, (c) Burger Construction, (d) DCT, (e) Johnson & Jennings, and (f) Pacific Building Group are deemed approved general contractors.

4.1.2 Tenant's Agents. All subcontractors, laborers, materialmen, and suppliers directly employed by Tenant, specifically including MEP subcontractors (whether or not directly employed by Tenant) (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas.

#### 4.2 Construction of Improvements by Tenant's Agents.

4.2.1 Construction Contract; Cost Budget. Tenant shall engage the Contractor under Landlord's form of Stipulated Sum Agreement or Guaranteed Maximum Price Contract, accompanied by Landlord's standard General Conditions, with such modifications by Tenant and/or Contractor as may be reasonably approved by Landlord (collectively, the "**Contract**"). Prior to the commencement of the construction of the Improvements, and after Tenant has accepted all bids for the Improvements, Tenant shall provide Landlord with (i) a copy of the Contract, (ii) Tenant's proposed construction schedule for the construction and completion of the Improvements (the "**Construction Schedule**"), and (iii) a detailed breakdown,

by trade, of the final costs to be incurred or which have been incurred, as set forth more particularly in Sections 2.2.1.1 through 2.2.1.8, above, in connection with the design and construction of the Improvements to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract (the "**Final Costs**"). Notwithstanding the foregoing, Tenant, upon Landlord's reasonable approval, may phase certain aspects of the construction of the Improvements prior to the foregoing (e.g. demolition) if Tenant obtains a permit for such portion of the Improvements (to the extent required by Applicable Laws), a Contract has been executed for such portion of the Improvements and the Final Costs for such portion of the Improvements has been determined. If Landlord reasonably determines that a "Construction Triggering Event" (as that term is defined hereinbelow) has occurred, then notwithstanding any contrary provision of this Work Letter, Landlord may elect by written notice to Tenant any of the Construction Risk Alternatives set forth below in order that Landlord may satisfy its REIT related obligations with respect to timely recognizing revenue from this Lease (as determined by Landlord in its sole discretion), and in such case the provisions of the applicable Construction Risk Alternative(s) shall automatically apply and be binding upon Tenant. The term "**Construction Triggering Event**" shall mean that at least one of the following circumstances applies: (A) the Improvements lend themselves to construction in separate phases, or (B) the aggregate Over-Allowance Amount exceeds (or is reasonably anticipated by Landlord to exceed) \$500,000.00 for post-first generation premises in an existing Building, or (C) the Construction Schedule will result in the substantial completion of the Improvements and the issuance of a certificate of occupancy (permanent or temporary) by the Lease Commencement Date, or (D) the "90% Threshold," as that term is defined in Section 4.2.1(a) below, will not be satisfied by the Lease Commencement Date.

The term "**Construction Risk Alternatives**" means that Landlord may elect, in Landlord's sole discretion, any one or more of the following alternatives:

(a) that Tenant shall bifurcate the Contract into two separate Contracts, with one Contract (the "**90% Contract**") covering a sufficient portion of the work to construct the Improvements in order that at least ninety percent (90%) of the initial Improvement Allowance (the "**90% Threshold**") shall be expended by the Lease Commencement Date, and with the other Contract (the "**Remaining Work Contract**") covering the remaining work to construct the Improvements (the "**Bifurcated Contract Alternative**"). In the event that Landlord elects the Bifurcated Contract Alternative, then notwithstanding any contrary provision of this Work Letter, at least ninety percent (90%) of the Improvement Allowance shall be used for the costs to design and construct the Improvements to be constructed pursuant to the 90% Contract (the "**90% Contract Improvements**"), and the lesser of (i) the remaining balance of the Improvement Allowance following substantial completion of the 90% Contract Improvements, and (ii) ten percent (10%) of the initial Improvement Allowance, shall be used for the Improvements to be constructed pursuant to the Remaining Work Contract (the "**Remaining Work Contract Improvements**") and any remaining work relating to the 90% Contract Improvements following the substantial completion of such 90% Contract Improvements. In no event shall Landlord be obligated to make disbursements from the Improvement Allowance for Remaining Work Contract Improvements until disbursements have been made from the Improvement Allowance for all of the work to design and substantially complete the 90% Contract Improvements. Notwithstanding any contrary provision of this Work Letter, any unused portion of the 90% Threshold remaining as of the Lease Commencement Date, shall remain with Landlord and Tenant shall have no further right thereto, and the Allowance Deadline set forth in Section 2.1 of this Work Letter shall only be applicable to the Remaining Work Contract Improvements; and/or

(b) that the Improvement Allowance (subject only to the Final Retention) shall be disbursed for the costs relating to the design and construction of any portion of the Improvements, as Landlord may elect in its sole discretion, prior to Landlord's disbursement of any Over-Allowance Amount (the "**Improvement Allowance Disbursement Alternative**").

Subject to Section 4.2.5 below, Landlord shall notify Tenant of its election ("**Landlord's Construction Risk Notice**") of any Construction Risk Alternatives no later than ten (10) business days following Landlord's receipt of the Contract and the Construction Schedule. If Landlord elects the Allowance Deadline Alternative, then Landlord's Construction Risk Notice shall include the new Allowance Deadline.

The difference between the amount of the Final Costs and the amount of the Improvement Allowance (less any portion thereof already disbursed by Landlord, or in the process of being disbursed by Landlord, on or before the commencement of construction of the Improvements) is referred to herein as the "**Over-Allowance Amount**". In the event that an Over-Allowance Amount exists in connection with any particular construction project involving the construction of the Improvements, then Tenant shall pay a percentage of each amount requested by Contractor or otherwise disbursed under this Work Letter, which percentage shall be equal to the Over-Allowance Amount divided by the amount of the Final Costs (after deducting from the Final Costs any amounts expended in connection with the preparation of the Construction Drawings, and the cost of other Improvement Allowance Items incurred prior to the commencement of construction of the Improvements) and such payments by Tenant (the "**Over-Allowance Payments**") shall be a condition to Landlord's obligation to pay any amounts from the Tenant Improvement Allowance. In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Improvements shall change, any additional costs necessary to such design and construction in excess of the Final Costs, shall be in accordance with the terms of the immediately preceding sentence and the amounts to be disbursed by Landlord pursuant to the terms of this Work Letter thereafter shall be accordingly adjusted so that Landlord's disbursements in the aggregate pursuant to the terms of this Work Letter and Tenant's Over-Allowance Payments are each proportionate to the adjusted Final Costs. In connection with any Over-Allowance Payment made by Tenant pursuant to this Section 4.2.1, Tenant shall provide Landlord with the documents described in Sections 2.2.2.1(i), (ii), (iii) and (iv) of this Work Letter, above, for Landlord's approval, prior to Tenant paying such costs.

#### 4.2.2 Tenant's Agents.

4.2.2.1 Landlord's General Conditions for Tenant's Agents and Improvement Work. Tenant's and Tenant's Agent's construction of the Improvements shall comply with the following: (i) the Improvements shall be constructed in substantial accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Improvements to Contractor and Contractor shall, within five

(5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all reasonable rules made by Landlord's Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Work Letter, including, without limitation, the construction of the Improvements. Tenant shall pay a logistical coordination fee (the "**Coordination Fee**") to Landlord in an amount equal to the product of (i) two percent (2%), and (ii) the sum of the Improvement Allowance, the Over-Allowance Amount, as such amount may be increased hereunder, and any other amounts expended by Tenant in connection with the design and construction of the Improvements, which Coordination Fee shall be for services relating to the coordination of the construction of the Improvements.

4.2.2.2 **Indemnity.** Tenant's indemnity of Landlord as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises.

4.2.2.3 **Requirements of Tenant's Agents.** Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Lease Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Improvements, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

#### 4.2.2.4 **Insurance Requirements.**

4.2.2.4.1 **General Coverages.** All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.2 **Special Coverages.** Tenant shall carry "Builder's All Risk" insurance in an amount reasonably approved by Landlord based on the cost of construction, covering the construction of the Improvements, and such other insurance as Landlord may reasonably require, it being understood and agreed that the Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that the Contractor shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than \$5,000,000 per incident, \$5,000,000 in aggregate, and all other Tenant's Agents shall carry excess liability insurance in an amount reasonably approved by Landlord, all in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.3 **General Terms.** Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Work Letter. Landlord may, in its discretion, but only in the event (i) the Over-Allowance Amount exceeds \$500,000.00, and (ii) Tenant cannot reasonably identify specifically earmarked, immediately available funds necessary to pay such Over-Allowance Amount, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Improvements and naming Landlord as a co-obligee.

4.2.3 **Governmental Compliance.** The Improvements shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 Inspection by Landlord. Landlord shall have the right to inspect the Improvements at all times, provided however, that Landlord's failure to inspect the Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or material deviations in, and/or disapproval by Landlord of, the Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or material deviation exists or disapproves of any matter in connection with any portion of the Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Building, the structure or exterior appearance of the Building or any other tenant's use of such other tenant's leased premises, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 Meetings. Commencing upon the execution of this Lease, Tenant shall hold weekly meetings at a reasonable time, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Improvements, which meetings shall be held at a location designated by Landlord, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 Notice of Completion; Copy of Record Set of Plans. Within fifteen (15) days after final completion of construction of the Improvements (including completion of all punchlist items and final payment to all of Tenant's Agents), Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with Section 8182 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

## SECTION 5

### MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated Traci Benson as its sole representative with respect to the matters set forth in this Work Letter (whose e-mail address for the purposes of this Work Letter is [traci.benson@retrophin.com](mailto:traci.benson@retrophin.com)), who shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter.

5.2 Landlord's Representative. Landlord has designated Robert Chambers as its sole representative with respect to the matters set forth in this Work Letter (whose e-mail address for the purposes of this Work Letter is [rchambers@kilroyrealty.com](mailto:rchambers@kilroyrealty.com)), who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter.

5.3 Time of the Essence in This Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord. Unless otherwise indicated, wherever Landlord's approval is required (a) such approval shall not be unreasonably withheld, conditioned or delayed, and (b) if Landlord does not respond within the number of days indicated (or if no such timeframe is indicated, within five (5) business days), Tenant may send a second written notice to Landlord requesting such approval and, if Landlord does not respond within five (5) business days of its receipt of such second request, Landlord shall be deemed to have approved the request.

5.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease or this Work Letter, if any default by Tenant under the Lease (beyond the applicable notice and cure periods) or this Work Letter (including, without limitation, any failure by Tenant to fund any portion of the Over-Allowance Amount) occurs at any time on or before the substantial completion of the Improvements, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to withhold payment of all or any portion of the Improvement Allowance and/or Landlord may, without any liability whatsoever, cause the cessation of construction of the Improvements (in which case, Tenant shall be responsible for any delay in the substantial completion of the Improvements and any costs occasioned thereby), and (ii) all other obligations of Landlord under the terms of the Lease and this Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of the Lease.

5.5 Landlord Delay. As used herein, "**Landlord Delay**" shall mean an actual delay in the substantial completion of the Improvements resulting from (i) failure of Landlord to timely approve or disapprove any items requiring Landlord's approval in this Work Letter; (ii) interference by Landlord, its agents or contractors with the completion of the Improvements and which objectively preclude or delay the construction of Improvements

in the Building; (iii) delays due to the acts or failures to act of Landlord, its agents or contractors with respect to payment of the Improvement Allowance; and (iv) the failure of any item in the Base Building portions of the Premises to comply with Code. If Tenant contends that a Landlord Delay has occurred, Tenant shall notify Landlord in writing (the "**Delay Notice**") of the event which constitutes such Landlord Delay. If the actions or inactions or circumstances described in the Delay Notice qualify as a Landlord Delay, and are not cured by Landlord within one (1) business day after Landlord's receipt of the Delay Notice, the Lease Commencement Date and Occupancy Outside Date shall each be delayed for the period by which substantial completion of the Improvements is actually delayed as a result of such Landlord Delay.

**SCHEDULE 1 TO EXHIBIT B**

**LIST OF TENANT DELIVERABLES**

**1. Prior to Start of Construction**

- 1.1. Approved and permitted Construction Drawings (except to the extent not necessary for phasing of construction as approved by Landlord pursuant to Section 4.2.1).
- 1.2. Approved subcontractors list.
- 1.3. Copies of all executed Contracts with Contractor.
- 1.4. Construction Schedule.
- 1.5. Copies of Permits for Improvements.
- 1.6. Preliminary Budget and the budget with Final Costs, including a schedule of values for all hard construction costs.

**2. Ongoing During Construction**

- 2.1. Budget and Construction Schedule revisions as they occur.
- 2.2. Change orders as they occur.
- 2.3. Construction Drawings revisions as they occur.
- 2.4. Monthly applications of payment with reciprocal releases **when received**.
- 2.5. Monthly Architect's field report or equivalent.
- 2.6. Monthly 4-week look ahead schedule.
- 2.7. Weekly meeting minutes.
- 2.8. Permit sign off card **when received**.
- 2.9. Temporary certificate of occupancy/certificate of occupancy **when received**.

**3. Prior to Release of Any Funds Related to Hard Costs**

- 3.1. Final Space Plans approved by both parties.
- 3.2. Construction Drawings approved by both parties.
- 3.3. Project budget
- 3.4. Project schedule.
- 3.5. Pay applications as above.

**4. Prior to Release of Final Payment**

- 4.1. Signed off inspection card or equivalent temporary certificate of occupancy.
- 4.2. Architect's Certificate of Substantial Completion.
- 4.3. Final Contractor pay application indicating 100% complete, 90% previously paid.
- 4.4. Physical inspection of the Premises by Landlord inspection team.
- 4.5. Unconditional mechanic's lien releases.
- 4.6. Final as-builts.
- 4.7. Final subcontractors list.
- 4.8. Warranties and guarantees.
- 4.9. CAD files.
- 4.10. Temporary certificate of occupancy/certificate of occupancy.



**SCHEDULE 2 TO EXHIBIT B**

**TIME DEADLINES**

Dates

Actions to be Performed

- |    |  |   |
|----|--|---|
| A. | September 1, 2019  | Final Space Plan to be completed by Tenant and delivered to Landlord.   |
| B. | Six (6) weeks following the parties' approval of the Final Space Plan. | Tenant to deliver Final Working Drawings to Landlord.   |
| C. | April 1, 2020  | Tenant to deliver a copy of the Permits to Landlord.  |
| D. | Lease Commencement Date  | Tenant to deliver the certificate of occupancy, temporary certificate of occupancy, or permit card signed by the City of San Diego for the Premises, as applicable, and the Architect's Certificate of Substantial Completion of the Improvements, to Landlord. |

EXHIBIT C

**KILROY CENTRE DEL MAR**

**NOTICE OF LEASE TERM DATES**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Office Lease dated \_\_\_\_\_, 20\_\_ (the "**Lease**"), by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Landlord**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Tenant**"), for \_\_\_\_\_ rentable square feet of space commonly known as Suite \_\_\_\_\_ (the "**Premises**"), located on the \_\_\_\_\_ (\_\_\_\_) floor of that certain office building located at \_\_\_\_\_, \_\_\_\_\_ (the "**Building**").

Dear \_\_\_\_\_:

Notwithstanding any provision to the contrary contained in the Lease, this letter is to confirm and agree upon the following:

1. Tenant has accepted the above-referenced Premises as being delivered in accordance with the Lease, and there is no deficiency in construction.
2. The Lease Term shall commence on or has commenced on \_\_\_\_\_ for a term of \_\_\_\_\_ ending on \_\_\_\_\_.
3. Rent commenced to accrue on \_\_\_\_\_, in the amount of \_\_\_\_\_.
4. If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter shall be for the full amount of the monthly installment as provided for in the Lease.
5. Your rent checks should be made payable to \_\_\_\_\_ at \_\_\_\_\_.
6. The rentable square feet of the Premises is \_\_\_\_\_.
7. Tenant's Share of Direct Expenses with respect to the Premises is \_\_\_\_\_% of the Project.
8. Capitalized terms used herein that are defined in the Lease shall have the same meaning when used herein. Tenant confirms that the Lease has not been modified or altered except as set forth herein, and the Lease is in full force and effect. Landlord and Tenant acknowledge and agree that to each party's actual knowledge, neither party is in default or violation of any covenant, provision, obligation, agreement or condition in the Lease.

If the provisions of this letter correctly set forth our understanding, please so acknowledge by signing at the place provided below on the enclosed copy of this letter and returning the same to Landlord.

**"Landlord":**

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

Agreed to and Accepted  
as of \_\_\_\_\_, 20\_\_.

**"Tenant":**

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

## EXHIBIT D

### KILROY CENTRE DEL MAR

#### RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Project. In the event of any conflict between the Rules and Regulations and the other provisions of this Lease, the latter shall control.

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys will be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord. Upon the termination of this Lease, Tenant shall restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, Tenant and in the event of the loss of keys so furnished, Tenant shall pay to Landlord the cost of replacing same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.

2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises.

3. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as are customary for comparable buildings in the San Diego, California area. Tenant, its employees and agents must be sure that the doors to the Building are securely closed and locked when leaving the Premises if it is after the normal hours of business for the Building. Any tenant, its employees, agents or any other persons entering or leaving the Building at any time when it is so locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register. Access to the Building may be refused unless the person seeking access has proper identification or has a previously arranged pass for access to the Building. Landlord will furnish passes to persons for whom Tenant requests same in writing. Tenant shall be responsible for all persons for whom Tenant requests passes and shall be liable to Landlord for all acts of such persons. The Landlord and his agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building or the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.

4. No furniture, freight or equipment of any kind shall be brought into the Building without prior notice to Landlord. All moving activity into or out of the Building shall be scheduled with Landlord and done only at such time and in such manner as Landlord designates. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Building and also the times and manner of moving the same in and out of the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. Any damage to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility and expense of Tenant.

5. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours, in such specific elevator and by such personnel as shall be designated by Landlord.

6. The requirements of Tenant will be attended to only upon application at the management office for the Project or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

7. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by Tenant on any part of the Premises or the Building without the prior written consent of the Landlord. Tenant shall not disturb, solicit, peddle, or canvass any occupant of the Project and shall cooperate with Landlord and its agents of Landlord to prevent same.

8. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees shall have caused same.

9. Tenant shall not overload the floor of the Premises, nor mark, drive nails or screws, or drill into the partitions, woodwork or drywall or in any way deface the Premises or any part thereof without Landlord's prior written consent. Tenant shall not purchase spring water, ice, towel, linen, maintenance or other like services from any person or persons not approved by Landlord.

10. Except for vending machines intended for the sole use of Tenant's employees and invitees, no vending machine or machines other than fractional horsepower office machines shall be installed, maintained or operated upon the Premises without the written consent of Landlord.

11. Tenant shall not use or keep in or on the Premises, the Building, or the Project any kerosene, gasoline, explosive material, corrosive material, material capable of emitting toxic fumes, or other inflammable or combustible fluid chemical, substitute or material. Tenant shall provide material safety data sheets for any hazardous material or substance used or kept on the Premises.

12. Tenant shall not without the prior written consent of Landlord use any method of heating or air conditioning other than that supplied by Landlord.

13. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Project by reason of noise, odors, or vibrations, or interfere with other tenants or those having business therein, whether by the use of any musical instrument, radio, phonograph, or in any other way. Tenant shall not throw anything out of doors, windows or skylights or down passageways.

14. Tenant shall not bring into or keep within the Project, the Building or the Premises any firearms, animals, birds, aquariums, or, except in areas designated by Landlord, bicycles or other vehicles.

15. No cooking shall be done or permitted on the Premises, nor shall the Premises be used for the storage of merchandise, for lodging or for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages for employees and visitors, provided that such use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.

16. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the use of the Premises provided for in the Summary. Tenant shall not occupy or permit any portion of the Premises to be occupied as an office for a messenger-type operation or dispatch office, public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau without the express prior written consent of Landlord. Tenant shall not engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises.

17. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

18. Tenant, its employees and agents shall not loiter in or on the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, vestibules or any Common Areas for the purpose of smoking tobacco products or for any other purpose, nor in any way obstruct such areas, and shall use them only as a means of ingress and egress for the Premises.

19. Tenant shall not waste electricity, water or air conditioning and agrees to cooperate fully with Landlord to ensure the most effective operation of the Building's heating and air conditioning system, and shall refrain from attempting to adjust any controls. Tenant shall participate in recycling programs undertaken by Landlord.

20. Tenant shall store all its trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in San Diego, California without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as Landlord shall designate. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expense, cause the Premises to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

21. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

22. Any persons employed by Tenant to do janitorial work shall be subject to the prior written approval of Landlord, and while in the Building and outside of the Premises, shall be subject to and under the control and direction of the Building manager (but not as an agent or servant of such manager or of Landlord), and Tenant shall be responsible for all acts of such persons.

23. No awnings or other projection shall be attached to the outside walls of the Building without the prior written consent of Landlord, and no curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord standard drapes. All electrical ceiling fixtures hung in the Premises or spaces along the perimeter of the Building must be fluorescent and/or of a quality, type, design and a warm white bulb color approved in advance in writing by Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreensed without the prior written consent of Landlord. Tenant shall be responsible for any damage to the window film on the exterior windows of the Premises and shall promptly repair any such damage at Tenant's sole cost and expense. Tenant shall keep its window coverings closed during any period of the day when the sun is shining directly on the windows of the Premises. Prior to leaving the Premises for the day, Tenant shall draw or lower window coverings and extinguish all lights. Tenant shall abide by Landlord's regulations concerning the opening and

closing of window coverings which are attached to the windows in the Premises, if any, which have a view of any interior portion of the Building or Building Common Areas.

24. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the windowsills.

25. Tenant must comply with requests by the Landlord concerning the informing of their employees of items of importance to the Landlord.

26. Tenant must comply with applicable "**NO-SMOKING**" ordinances and all related, similar or successor ordinances, rules, regulations or codes. If Tenant is required under the ordinance to adopt a written smoking policy, a copy of said policy shall be on file in the office of the Building. In addition, no smoking of any substance shall be permitted within the Project except in specifically designated outdoor areas. Within such designated outdoor areas, all remnants of consumed cigarettes and related paraphernalia shall be deposited in ash trays and/or waste receptacles. No cigarettes shall be extinguished and/or left on the ground or any other surface of the Project. Cigarettes shall be extinguished only in ashtrays. Furthermore, in no event shall Tenant, its employees or agents smoke tobacco products or other substances (x) within any interior areas of the Project, or (y) within two hundred feet (200') of the main entrance of the Building or the main entrance of any of the adjacent buildings, or (z) within seventy-five feet (75') of any other entryways into the Building.

27. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises, the Building or the Project. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed, whether or not Landlord, at its option, elects to provide security protection for the Project or any portion thereof. Tenant further assumes the risk that any safety and security devices, services and programs which Landlord elects, in its sole discretion, to provide may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Tenant shall, in addition to its other insurance obligations under this Lease, obtain its own insurance coverage to the extent Tenant desires protection against losses related to such occurrences. Tenant shall cooperate in any reasonable safety or security program developed by Landlord or required by law.

28. All office equipment of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord, to absorb or prevent any vibration, noise and annoyance.

29. Tenant shall not use in any space or in the public halls of the Building, any hand trucks except those equipped with rubber tires and rubber side guards.

30. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without the prior written consent of Landlord.

31. No tenant shall use or permit the use of any portion of the Premises for living quarters, sleeping apartments or lodging rooms.

32. Tenant shall not purchase spring water, towels, janitorial or maintenance or other similar services from any company or persons not approved by Landlord. Landlord shall approve a sufficient number of sources of such services to provide Tenant with a reasonable selection, but only in such instances and to such extent as Landlord in its judgment shall consider consistent with the security and proper operation of the Building.

33. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate, visibly marked and properly operational fire extinguisher next to any duplicating or photocopying machines or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, Building, the Common Areas and the Project, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules or Regulations against any or all tenants of the Project. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

**EXHIBIT E**

**KILROY CENTRE DEL MAR**

**FORM OF TENANT'S ESTOPPEL CERTIFICATE**

The undersigned as Tenant under that certain Office Lease (the "Lease") made and entered into as of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ as Landlord, and the undersigned as Tenant, for Premises on the \_\_\_\_\_ floor(s) of the office building located at \_\_\_\_\_, \_\_\_\_\_, California \_\_\_\_\_, certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in Exhibit A represent the entire agreement between the parties as to the Premises.
2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on \_\_\_\_\_, and the Lease Term expires on \_\_\_\_\_, and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises, the Building and/or the Project.
3. Base Rent became payable on \_\_\_\_\_.
4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Exhibit A.
5. Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:
  6. Tenant shall not modify the documents contained in Exhibit A without the prior written consent of Landlord's mortgagee.
  7. All monthly installments of Base Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through \_\_\_\_\_. The current monthly installment of Base Rent is \$ \_\_\_\_\_.
  8. To the undersigned's knowledge, all conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, the undersigned has not delivered any notice to Landlord regarding a default by Landlord thereunder.
  9. No rental has been paid more than thirty (30) days in advance and no security has been deposited with Landlord except as provided in the Lease.
  10. As of the date hereof, there are no existing defenses or offsets, or, to the undersigned's knowledge, claims or any basis for a claim, that the undersigned has against Landlord.
11. If Tenant is a corporation or partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.
12. There are no actions pending against the undersigned under the bankruptcy or similar laws of the United States or any state.
13. Other than in compliance with all applicable laws and incidental to the ordinary course of the use of the Premises, the undersigned has not used or stored any hazardous materials or substances in the Premises.
14. To the undersigned's knowledge, all improvement work to be performed by Landlord under the Lease has been completed in accordance with the Lease and has been accepted by the undersigned and all reimbursements and allowances due to the undersigned under the Lease in connection with any improvement work have been paid in full.

The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises is a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

"Tenant":

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT F

**KILROY CENTRE DEL MAR**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
1901 Avenue of the Stars, 18th Floor  
Los Angeles, California 90067  
Attention: Anton N. Natsis, Esq.

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**RECOGNITION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS**

This Recognition of Covenants, Conditions, and Restrictions (this "**Agreement**") is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_ ("Tenant"), with reference to the following facts:

A. Landlord and Tenant entered into that certain Office Lease dated \_\_\_\_, 20\_\_ (the "**Lease**"). Pursuant to the Lease, Landlord leased to Tenant and Tenant leased from Landlord space (the "**Premises**") located in an office building on certain real property described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

B. The Premises is located in an office building located on real property which is part of an area owned by Landlord containing approximately \_\_\_ (\_\_) acres of real property located in the City of \_\_\_\_\_, California (the "**Project**"), as more particularly described in **Exhibit B** attached hereto and incorporated herein by this reference.

C. Landlord, as declarant, has previously recorded, or proposes to record concurrently with the recordation of this Agreement, a Declaration of Covenants, Conditions, and Restrictions (the "**Declaration**"), dated \_\_\_\_\_, 20\_\_\_, in connection with the Project.

D. Tenant is agreeing to recognize and be bound by the terms of the Declaration, and the parties hereto desire to set forth their agreements concerning the same.

NOW, THEREFORE, in consideration of (a) the foregoing recitals and the mutual agreements hereinafter set forth, and (b) for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows,

1. Tenant's Recognition of Declaration. Notwithstanding that the Lease has been executed prior to the recordation of the Declaration, Tenant agrees to recognize and be bound by all of the terms and conditions of the Declaration.

2. Miscellaneous.

2.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, estates, personal representatives, successors, and assigns.

2.2 This Agreement is made in, and shall be governed, enforced and construed under the laws of, the State of California.

2.3 This Agreement constitutes the entire understanding and agreements of the parties with respect to the subject matter hereof, and shall supersede and replace all prior understandings and agreements, whether verbal or in writing. The parties confirm and acknowledge that there are no other promises, covenants, understandings, agreements, representations, or warranties with respect to the subject matter of this Agreement except as expressly set forth herein.

2.4 This Agreement is not to be modified, terminated, or amended in any respect, except pursuant to any instrument in writing duly executed by both of the parties hereto.

2.5 In the event that either party hereto shall bring any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, the losing party in such action or proceeding shall reimburse the prevailing party therein for all reasonable costs of litigation, including reasonable attorneys' fees, in such amount as may be determined by the court or other tribunal having jurisdiction, including matters on appeal.

2.6 All captions and heading herein are for convenience and ease of reference only, and shall not be used or referred to in any way in connection with the interpretation or enforcement of this Agreement.

2.7 If any provision of this Agreement, as applied to any party or to any circumstance, shall be adjudged by a court of competent jurisdictions to be void or unenforceable for any reason, the same shall not affect any other provision of this Agreement, the application of such provision under circumstances different from those adjudged by the court, or the validity or enforceability of this Agreement as a whole.

2.8 Time is of the essence of this Agreement.

2.9 The Parties agree to execute any further documents, and take any further actions, as may be reasonable and appropriate in order to carry out the purpose and intent of this Agreement.

2.10 As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others whenever and whatever the context so indicates.

**SIGNATURE PAGE OF RECOGNITION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

"Landlord":

\_\_\_\_\_,

a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

"Tenant":

\_\_\_\_\_,

a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT G**

**KILROY CENTRE DEL MAR**

**INTENTIONALLY OMITTED**

## EXHIBIT H

### KILROY CENTRE DEL MAR

#### MARKET RENT DETERMINATION FACTORS

When determining Market Rent, the following rules and instructions shall be followed.

1. **RELEVANT FACTORS.** The "Market Rent," as used in this Lease, shall be derived from an analysis (as such derivation and analysis are set forth in this Exhibit H) of the "Net Equivalent Lease Rates," of the "Comparable Transactions" (as that term is defined below). The Market Rent, as used in this Lease, shall be equal to the annual rent per rentable square foot, at which tenants, are, pursuant to transactions consummated within twelve (12) months prior to the commencement of the Option Term, provided that timing adjustments shall be made to reflect any changes in the Market Rent following the date of any particular Comparable Transaction up to the date of the commencement of the applicable Option Term, leasing non-sublease, non-encumbered space comparable in location and quality to the Premises containing a square footage comparable to that of the Premises for a term of five (5) years, in an arm's-length transaction, which comparable space is located in "Comparable Buildings" (transactions satisfying the foregoing criteria shall be known as the "**Comparable Transactions**"). The terms of the Comparable Transactions shall be calculated as a "Net Equivalent Lease Rate" pursuant to the terms of this Exhibit H, and shall take into consideration only the following terms and concessions: (i) the rental rate and escalations for the Comparable Transactions, (ii) the amount of parking rent per parking permit paid in the Comparable Transactions, if any, (iii) operating expense and tax protection granted in such Comparable Transactions such as a base year or expense stop (although for each such Comparable Transaction the base rent shall be adjusted to a triple net base rent using reasonable estimates of operating expenses and taxes as determined by Landlord for each such Comparable Transaction); (iv) rental abatement concessions, if any, being granted such tenants in connection with such comparable space, (v) any "Renewal Allowance," as defined herein below, to be provided by Landlord in connection with the Option Term as compared to the improvements or allowances provided or to be provided in the Comparable Transactions, taking into account the contributory value of the existing improvements in the Premises, such value to be based upon the age, design, quality of finishes, and layout of the existing improvements, and (vi) all other monetary concessions (including the value of any signage), if any, being granted such tenants in connection with such Comparable Transactions. Notwithstanding any contrary provision hereof, in determining the Market Rent, no consideration shall be given to (A) any period of rental abatement, if any, granted to tenants in Comparable Transactions in connection with the design, permitting and construction of improvements, or (B) any commission paid or not paid in connection with such Comparable Transaction. The Market Rent shall include adjustment of the stated size of the Premises based upon the standards of measurement utilized in the Comparable Transactions; provided, however, the size of the Premises shall, notwithstanding the foregoing, be at least equal to the greater of: (i) the square footages set forth in this Lease, and (ii) the square footage of the Premises determined pursuant to the standards of space measurement used in the Comparable Transactions.

2. **TENANT SECURITY.** The Market Rent shall additionally include a determination as to whether, and if so to what extent, Tenant must provide Landlord with financial security, such as an enhanced security deposit, a letter of credit or guaranty, for Tenant's Rent obligations during the Option Term. Such determination shall be made by reviewing the extent of financial security then generally being imposed in Comparable Transactions from tenants of comparable financial condition and credit history to the then existing financial condition and credit history of Tenant (with appropriate adjustments to account for differences in the then-existing financial condition of Tenant and such other tenants, and giving reasonable consideration to Tenant's prior performance history during the Lease Term).

3. **RENEWAL IMPROVEMENT ALLOWANCE.** Notwithstanding anything to the contrary set forth in this Exhibit H, once the Market Rent for the Option Term is determined as a Net Equivalent Lease Rate, if, in connection with such determination, it is deemed that Tenant is entitled to an improvement or comparable allowance for the improvement of the Premises, (the total dollar value of such allowance shall be referred to herein as the "**Renewal Allowance**"), Landlord shall pay the Renewal Allowance to Tenant pursuant to a commercially reasonable disbursement procedure determined by Landlord and the terms of Article 8 of this Lease, and, as set forth in Section 5, below, of this Exhibit H, the rental rate component of the Market Rent shall be increased to be a rental rate which takes into consideration that Tenant will receive payment of such Renewal Allowance and, accordingly, such payment with interest shall be factored into the base rent component of the Market Rent.

4. **COMPARABLE BUILDINGS.** For purposes of this Lease, the term "**Comparable Buildings**" shall mean first-class multi-tenant occupancy office buildings which are comparable to the Building in terms of age (based upon the date of completion of construction or major renovation), quality of construction, level of services and amenities (including, but not limited to, the type (e.g., surface, covered, subterranean) and amount of parking), size and appearance, and are located in the "**Comparable Area**," which is the which is the "Del Mar Heights Area." The "**Del Mar Heights Area**" shall be the area containing Comparable Buildings which have reasonably comparable freeway access to the Project and which are within an area bounded by Highway 56 on the South side, Del Mar Heights Road on the North side, Carmel Valley Road on the East side, and I-5 on the West side, but shall exclude the buildings located at 12860 and 12830 El Camino Real, San Diego, California.

5. **METHODOLOGY FOR REVIEWING AND COMPARING THE COMPARABLE TRANSACTIONS.** In order to analyze the Comparable Transactions based on the factors to be considered in calculating Market Rent, and given that the Comparable Transactions may vary in terms of length of term, rental rate, concessions, etc., the following steps shall be taken into consideration to "adjust" the objective data from each of the Comparable Transactions. By taking this approach, a "Net Equivalent Lease Rate" for each of the Comparable Transactions shall be determined using the following steps to adjust the Comparable Transactions, which will allow for an "apples to apples" comparison of the Comparable Transactions.

5.1. The contractual rent payments for each of the Comparable Transactions should be arrayed monthly or annually over the lease term. All Comparable Transactions should be adjusted to simulate a net rent structure, wherein the tenant is responsible for the payment of all property operating expenses in a manner consistent with this Lease. This results in the estimate of Net Equivalent Rent received by each landlord for each Comparable Transaction being expressed as a periodic net rent payment.

5.2 Any free rent or similar inducements received over time should be deducted in the time period in which they occur, resulting in the net cash flow arrayed over the lease term.

5.3 The resultant net cash flow from the lease should then be discounted (using an 8% annual discount rate) to the lease commencement date, resulting in a net present value estimate.

5.4 From the net present value, up front inducements (improvements allowances and other concessions) should be deducted. These items should be deducted directly, on a "dollar for dollar" basis, without discounting since they are typically incurred at lease commencement, while rent (which is discounted) is a future receipt.

5.5 The net present value should then be amortized back over the lease term as a level monthly or annual net rent payment using the same annual discount rate of 8.0% used in the present value analysis. This calculation will result in a hypothetical level or even payment over the option period, termed the "Net Equivalent Lease Rate" (or constant equivalent in general financial terms).

6. **USE OF NET EQUIVALENT LEASE RATES FOR COMPARABLE TRANSACTIONS.** The Net Equivalent Lease Rates for the Comparable Transactions shall then be used to reconcile, in a manner usual and customary for a real estate appraisal process, to a conclusion of Market Rent which shall be stated as a "NNN" lease rate applicable to each year of the Option Term.

**EXHIBIT I-1**

**ALTERNATIVE BASE RENT SCHEDULE**

In the event Tenant timely elects to continue to lease a portion of the Existing Premises under the Existing Lease, the following Base Rent schedule shall apply:

| <u>Period During<br/>Lease Term</u>               | <u>Annual<br/>Base Rent*</u> | <u>Monthly<br/>Installment<br/>of Base Rent*</u> | <u>Monthly<br/>Rental Rate<br/>per Rentable<br/>Square Foot**</u> |
|---|------------------------------|--|---|
| Lease Commencement Date<br>through Lease Month 12 | \$4,310,103.60               | \$359,175.30                                     | \$4.65  |
| Lease Month 13 through Lease<br>Month 24          | \$4,439,406.72               | \$369,950.56                                     | \$4.79  |
| Lease Month 25 through Lease<br>Month 36          | \$4,572,588.96               | \$381,049.08                                     | \$4.93  |
| Lease Month 37 through Lease<br>Month 48          | \$4,709,766.6                | \$392,480.55                                     | \$5.08  |
| Lease Month 49 through Lease<br>Month 60          | \$4,851,059.64               | \$404,254.97                                     | \$5.23  |
| Lease Month 61 through Lease<br>Month 72          | \$4,996,591.44               | \$416,382.62                                     | \$5.39  |
| Lease Month 73 through Lease<br>Month 84          | \$5,146,489.2                | \$428,874.10                                     | \$5.55  |
| Lease Month 85 through Lease<br>Expiration Date   | \$5,300,883.84               | \$441,740.32                                     | \$5.72  |

**EXHIBIT I-2**

**ALTERNATIVE BASE RENT SCHEDULE**

In the event Tenant timely elects to continue to lease the entirety of the Existing Premises under the Existing Lease, the following Base Rent schedule shall apply:

| <u>Period During Lease Term</u>                | <u>Annual Base Rent*</u> | <u>Monthly Installment of Base Rent*</u> | <u>Monthly Rental Rate per Rentable Square Foot**</u> |
|--|--------------------------|--|---|
| Lease Commencement Date through Lease Month 12 | \$4,263,758.40           | \$355,313.20                             | \$4.60  |
| Lease Month 13 through Lease Month 24          | \$4,391,671.20           | \$365,972.60                             | \$4.74  |
| Lease Month 25 through Lease Month 36          | \$4,523,421.36           | \$376,951.78                             | \$4.88  |
| Lease Month 37 through Lease Month 48          | \$4,659,123.96           | \$388,260.33                             | \$5.03  |
| Lease Month 49 through Lease Month 60          | \$4,798,897.68           | \$399,908.14                             | \$5.18  |
| Lease Month 61 through Lease Month 72          | \$4,942,864.56           | \$411,905.38                             | \$5.34  |
| Lease Month 73 through Lease Month 84          | \$5,091,150.48           | \$424,262.54                             | \$5.49  |
| Lease Month 85 through Lease Expiration Date   | \$5,243,885.04           | \$436,990.42                             | \$5.66  |

**EXHIBIT J**

**SUPERIOR RIGHTS HOLDERS**

**(i.e., tenants with existing expansion rights)**

| <u>Building Number</u> | <u>Expansion Space</u> | <u>Tenant Name</u>              | <u>Type of Expansion Right</u> |
|------------------------|------------------------|---------------------------------|--------------------------------|
| 3721                   | Second (2nd) floor     | Volcano                         | Right of first refusal         |
| 3579                   | Entire building        | Foley                           | Right of first refusal         |
| 3611                   | First (1st) floor      | Lindsay Poe and David Van Vuren | Right of first refusal         |
| 3611, 3661 and 3721    | Entire buildings       | FICO                            | Right of first refusal         |



**OFFICE LEASE**  
**KILROY REALTY**  
**KILROY CENTRE DEL MAR**

**KILROY REALTY, L.P.,**

a Delaware limited partnership,

as Landlord,

and

**RETROPHIN, INC.,**

a Delaware corporation,

as Tenant.

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**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**  
**PURSUANT TO EXCHANGE ACT RULE 13a-14(a) OR 15d-14(a)**

I, Eric M. Dube, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Retrophin, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2019

/s/ Eric M. Dube

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Eric M. Dube

Chief Executive Officer

(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**  
**PURSUANT TO EXCHANGE ACT RULE 13a-14(a) OR 15d-14(a)**

I, Laura Clague, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Retrophin, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2019

/s/ Laura Clague

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Laura Clague

Chief Financial Officer

(Principle Financial Officer)

**CERTIFICATION OF  
CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO**

**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Retrophin, Inc. (the "Company"), for the period ending June 30, 2019 (the "Report"), the undersigned officer of the Company hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to such officer's knowledge:

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

Date: August 6, 2019

/s/ Eric M. Dube

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Eric M. Dube

Chief Executive Officer

(Principal Executive Officer)



**CERTIFICATION OF  
CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO**

**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Retrophin, Inc. (the "Company"), for the period ending June 30, 2019 (the "Report"), the undersigned officer of the Company hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to such officer's knowledge:

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

Date: August 6, 2019

/s/ Laura Clague

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Laura Clague

Chief Financial Officer

(Principal Financial Officer)