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, 2022

OR

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

For the transition period from _____ to _____

Commission file number 001-40215

Instil Bio, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**83-2072195**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
3963 Maple Avenue, Suite 350 **Dallas, Texas**	**75219**
(Address of Principal Executive Offices)	(Zip Code)

(972) 499-3350
Registrant's telephone number, including area code
Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.000001 par value per share	TIL	The Nasdaq Stock Market LLC

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 and posted on its corporate web site, if any, 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 files). Yes ☒ No ☐

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

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 7(a)(2)(B) of the Securities Act. ☐

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Class of Common Stock	Outstanding at
129,694,369 shares of Common Stock, $0.000001 par value per share	August 10, 2022

TABLE OF CONTENTS

Part I. Financial Information
Item 1. Financial Statements (Unaudited)
INSTIL BIO, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)
(Unaudited)

	June 30, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	$ 42,463	$ 37,590
Marketable securities	312,144	416,509
Prepaid expenses and other current assets	13,069	9,921
Total current assets	367,676	464,020
Property, plant and equipment, net	167,126	121,999
Operating lease right-of-use assets	13,658	—
Intangibles	10,104	10,104
Goodwill	5,722	5,722
Other long-term assets	4,250	8,138
Total assets	$ 568,536	$ 609,983
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 5,793	$ 5,568
Accrued expenses and other current liabilities	37,167	34,449
Contingent consideration, current portion	252	1,341
Total current liabilities	43,212	41,358
Contingent consideration, net of current portion	10,406	10,980
Operating lease liabilities, non-current	6,021	—
Deferred tax liabilities	1,086	2,426
Loan payable	49,134	—
Other long-term liabilities	345	20
Total liabilities	110,204	54,784
Commitments and contingencies (Note 6)		
Stockholders' equity:		
Common stock, par value $0.000001 per share; 300,000,000 shares authorized; 129,550,297 and 129,028,278 shares issued and outstanding as of June 30, 2022, and December 31, 2021, respectively	—	—
Additional paid-in capital	773,715	757,003
Accumulated other comprehensive loss	(557)	(87)
Accumulated deficit	(314,826)	(201,717)
Total stockholders' equity	458,332	555,199
Total liabilities and stockholders' equity	$ 568,536	$ 609,983

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

INSTIL BIO, INC.

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,	
	2022	**2021**	**2022**	**2021**
Operating expenses:				
Research and development	$ 41,500	$ 21,186	$ 80,674	$ 35,610
General and administrative	17,224	14,195	32,336	23,174
Total operating expenses	58,724	35,381	113,010	58,784
Loss from operations	(58,724)	(35,381)	(113,010)	(58,784)
Interest income	486	15	583	23
Interest expense	(331)	—	(331)	—
Other expense, net	(1,032)	(104)	(1,448)	(41)
Loss before income tax benefit	(59,601)	(35,470)	(114,206)	(58,802)
Income tax benefit	609	159	1,097	363
Net loss	(58,992)	(35,311)	(113,109)	(58,439)
Other comprehensive (loss) income:				
Foreign currency translation	220	43	189	73
Unrealized loss on available-for-sale securities, net	(336)	—	(659)	—
Net comprehensive loss	$ (59,108)	$ (35,268)	$ (113,579)	$ (58,366)
Net loss per share, basic and diluted	$ (0.46)	$ (0.27)	$ (0.88)	$ (0.71)
Weighted-average shares used in computing net loss per share, basic and diluted	129,367,833	128,743,123	129,244,334	82,478,284

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

INSTIL BIO, INC.

CONDENSED CONSOLIDATED STATEMENTS OF
CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY
(in thousands, except share and per share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance—December 31, 2021	129,028,278	$ —	$ 757,003	$ (87)	$ (201,717)	$ 555,199
Shares of common stock issued in connection with incentive stock plan	189,638	—	338	—	—	338
Stock-based compensation	—	—	7,493	—	—	7,493
Net loss	—	—	—	—	(54,117)	(54,117)
Other comprehensive loss	—	—	—	(354)	—	(354)
Balance—March 31, 2022	129,217,916	—	764,834	(441)	(255,834)	508,559
Shares of common stock issued in connection with incentive stock plan	332,381	—	565	—	—	565
Stock-based compensation	—	—	8,316	—	—	8,316
Net loss	—	—	—	—	(58,992)	(58,992)
Other comprehensive loss	—	—	—	(116)	—	(116)
Balance—June 30, 2022	129,550,297	$ —	$ 773,715	$ (557)	$ (314,826)	$ 458,332

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

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
Balance—December 31, 2020	70,176,046	$ 331,966	20,591,554	$ —	$ 5,607	$ (283)	$ (44,923)	$ (39,599)
Issuance of Series C convertible preferred shares at $12.58 per share	4,174,551	52,460	—	—	—	—	—	—
Issuance of common shares upon initial public offering net of underwriting discounts, commissions and offering costs	—	—	18,400,000	—	339,174	—	—	339,174
Conversion of redeemable convertible preferred stock	(74,350,597)	(384,426)	89,220,699	—	384,426	—	—	384,426
Shares of common stock issued in connection with incentive stock plan	—	—	530,870	—	1,438	—	—	1,438
Stock-based compensation	—	—	—	—	2,812	—	—	2,812
Net loss	—	—	—	—	—	—	(23,128)	(23,128)
Foreign currency translation	—	—	—	—	—	30	—	30
Balance—March 31, 2021	—	—	128,743,123	—	733,457	(253)	(68,051)	665,153
Deferred financing costs in connection with initial public offering	—	—	—	—	(158)	—	—	(158)
Stock-based compensation	—	—	—	—	5,745	—	—	5,745
Net loss	—	—	—	—	—	—	(35,311)	(35,311)
Foreign currency translation	—	—	—	—	—	43	—	43
Balance—June 30, 2021	—	$ —	128,743,123	$ —	$ 739,044	$ (210)	$ (103,362)	$ 635,472

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

INSTIL BIO, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(Unaudited)

	Six Months Ended June 30,	
	2022	**2021**
Cash flows from operating activities:		
Net loss	$ (113,109)	$ (58,439)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	15,816	8,557
Noncash lease expense	826	—
Foreign exchange remeasurement loss	1,477	45
Change in fair value of contingent consideration	(963)	(37)
Depreciation and amortization	1,949	1,095
Non-cash interest expense	331	—
Other	(9)	—
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	(4,608)	(2,778)
Other long-term assets	(1,454)	(1,531)
Accounts payable	915	1,995
Operating lease liabilities	(96)	—
Accrued expenses and current other liabilities	(3,386)	1,140
Net cash used in operating activities	(102,311)	(49,953)
Cash flows from investing activities:		
Purchase of marketable securities	(472,082)	—
Maturities of marketable securities	576,000	—
Purchases of property, plant and equipment	(46,378)	(17,622)
Purchase of derivative financial instrument	(1,174)	—
Net cash provided by (used in) investing activities	56,366	(17,622)
Cash flows from financing activities:		
Proceeds from initial public offering, net of issuance costs	—	339,016
Proceeds from issuance of convertible preferred stock, net of issuance costs	—	52,460
Proceeds from exercise of stock options	903	1,438
Proceeds from note payable	50,059	—
Other financing activities	—	(69)
Net cash provided by financing activities	50,962	392,845
Net increase in cash and cash equivalents	5,017	325,270
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(144)	(259)
Cash, cash equivalents and restricted cash—beginning of period	38,090	241,764
Cash, cash equivalents and restricted cash—end of period	$ 42,963	$ 566,775
Supplemental disclosure of noncash information:		
Conversion of preferred stock to common stock upon IPO	$ —	$ 384,426
Purchases of property, plant and equipment in accounts payable and accrued expenses and other current liabilities	$ 13,274	$ 9,634

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

INSTIL BIO, INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Organization and Description of Business

Instil Bio, Inc. (the "Company" or "Instil Bio") is headquartered in Dallas, Texas and was incorporated in the state of Delaware in August 2018. The Company is a clinical-stage biopharmaceutical company focused on developing an innovative cell therapy pipeline of autologous tumor infiltrating lymphocyte ("TIL") therapies for the treatment of patients with cancer. Principal operations commenced during the first quarter of 2019 when the Company in-licensed its foundational TIL technology.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and include the accounts of the Company and its wholly owned subsidiaries Instil Bio (UK) Ltd. (formerly Immetacyte Ltd. ("Immetacyte")) and Complex Therapeutics, LLC. Immetacyte was acquired on March 2, 2020 and Complex Therapeutics, LLC was formed on October 14, 2020. All intercompany balances and transactions have been eliminated in consolidation.

The unaudited condensed consolidated financial statements have been prepared on the same basis as the audited annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for the fair statement of the Company's financial position as of June 30, 2022, the condensed consolidated statements of operations and comprehensive loss for the three and six months ended June 30, 2022 and 2021, the condensed consolidated statements of convertible preferred stock and stockholders' equity for the three and six months ended June 30, 2022 and 2021, and the results of its cash flows for the six months ended June 30, 2022 and 2021. The financial data and other information disclosed in these notes related to the three and six months ended June 30, 2022 and 2021 are also unaudited. The results for the three and six months ended June 30, 2022 are not necessarily indicative of results to be expected for the year ending December 31, 2022, any other periods, or any future year period. The Company has evaluated subsequent events through the date the condensed consolidated financial statements were issued.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited financial statements and the related notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021, as filed with the Securities and Exchange Commission ("SEC") on March 7, 2022.

Stock Split and Initial Public Offering

On March 12, 2021, the Company effected a 1.2-for-1 stock split of the Company's common stock. The par value was not adjusted as a result of the stock split. The authorized shares as of March 12, 2021 were adjusted as a result of the stock split. All share and per share information included in the accompanying condensed consolidated financial statements has been adjusted to reflect this stock split. The accompanying condensed consolidated financial statements and notes thereto give retroactive effect to the stock split for all periods presented.

On March 23, 2021, the Company completed its initial public offering ("IPO") through an underwritten sale of an aggregate of 18,400,000 shares of its common stock at a price of $20.00 per share. The aggregate net proceeds from the offering, inclusive of an additional 2,400,000 common shares sold upon the full exercise of the underwriters' purchase option, after deducting underwriting discounts and commissions and other offering expenses, was $339.0 million.

Concurrent with the IPO, all then-outstanding shares of the Company's convertible preferred stock outstanding (see Note 7) were automatically converted into an aggregate of 89,220,699 shares of common stock and were reclassified into permanent equity. Further, immediately following the closing of the IPO, the Company amended and restated its certificate of incorporation such that the total number of shares of common stock authorized to be issued was 300,000,000 and the total number of shares of preferred stock authorized to be issued was 10,000,000. Following the IPO, there are no shares of convertible preferred stock outstanding.

Segments

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision-maker in making decisions regarding resource allocation and assessing performance. The Company views its operations and manages its business in one operating segment.

Cash, Cash Equivalents, Restricted Cash and Marketable Securities

The Company considers all highly liquid investments purchased with original maturities of three months or less from the purchase date to be cash equivalents. Cash equivalents include amounts invested in money market accounts.

Restricted cash consists of a money market account which serves as collateral for the Company’s employee corporate credit cards and is classified within Prepaid expenses and other current assets on the consolidated balance sheets.

The Company's short-term marketable securities have original maturities of less than a year at date of purchase. The Company classifies and accounts for marketable securities as available-for-sale securities, which are carried at their fair values based on the quoted market prices of the securities. Unrealized gains and losses are reported as accumulated other comprehensive loss. Realized gains and losses on available-for-sale securities are included in net loss in the period earned or incurred. As of June 30, 2022 and December 31, 2021, marketable securities consisted of U.S. Treasury bills.

Short-term marketable securities are recorded at their estimated fair value. The Company periodically reviews whether its securities may be other-than-temporarily impaired, including whether or not (i) the Company has the intent to sell the security or (ii) it is more likely than not that the Company will be required to sell the security before its anticipated recovery. If one of these factors is met, the Company will record an impairment loss associated with its impaired investment. The impairment loss will be recorded as a write-down of investments in the condensed consolidated balance sheets and a realized loss within other expense in the condensed consolidated statements of operations.

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the consolidated balance sheets that sum to the amounts shown in the consolidated statements of cash flows (in thousands):

	June 30, 2022	December 31, 2021
Cash and cash equivalents	$ 42,463	$ 37,590
Restricted cash	500	500
Cash, cash equivalents and restricted cash	$ 42,963	$ 38,090

Emerging Growth Company Status

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting

standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has elected to avail itself of this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these condensed consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

Leases

The Company determines if an arrangement is or contains a lease at contract inception by assessing whether the arrangement contains an identified asset and whether the lessee has the right to control such asset. Lessees are required to classify leases as either finance or operating leases and to record a right-of-use ("ROU") asset and a lease liability for all leases with a term greater than 12 months regardless of the lease classification. The lease classification will determine whether the lease expense is recognized based on an effective interest rate method or on a straight-line basis over the term of the lease. The Company determines the initial classification and measurement of its ROU assets and lease liabilities at the lease commencement date and thereafter if modified. For leases with a term greater than 12 months, the Company records the lease liability at the present value of lease payments over the term. The term of the Company's leases equals the non-cancellable period of the lease, including any rent-free periods provided by the lessor, and also includes options to extend or terminate the lease that the Company is reasonably certain to exercise. The ROU asset equals the carrying amount of the related lease liability, adjusted for any lease payments made prior to lease commencement, any deferred rent upon adoption, and lease incentives provided by the lessor.

The Company has elected, for all classes of underlying assets, not to recognize ROU assets and lease liabilities for leases with a term of 12 months or less. Lease cost for short-term leases is recognized on a straight-line basis over the lease term. The Company estimates its incremental borrowing rate based on the rate of interest that the Company would have to pay to borrow on a collateralized basis over a similar term, an amount equal to the lease payments in a similar economic environment.

Variable lease payments are expensed as incurred and do not factor into the measurement of the applicable ROU asset or lease liability. Lease payments may be fixed or variable; however, only fixed payments are included in the Company's lease liability calculation. Lease costs for the Company's operating leases are recognized on a straight-line basis within operating expenses over the lease term. The Company's lease agreements may contain non-lease components such as common area maintenance, operating expenses or other costs, which are expensed as incurred for all classes of assets. The Company's leases do not contain any residual value guarantees.

See Note 6, Commitments and Contingencies, regarding the Company's leases, below.

Recent Accounting Pronouncements Adopted

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-02, Leases (Topic 842) which supersedes FASB ASC Topic 840, Leases (Topic 840) and provides principles for the recognition, measurement, presentation, and disclosure of leases for both lessees and lessors. The Company adopted the new standard effective January 1, 2022 using the modified retrospective transition approach. Upon adoption on January 1, 2022, the Company recognized ROU assets and lease liabilities totaling $15.4 million and $8.9 million, respectively, to reflect the present value of remaining lease payments under existing lease arrangements. The Company applied the modified retrospective transition approach and did not recast prior periods. As permitted by the standard, the Company elected the transition practical expedient package, which, among other things, allows the carryforward of historical lease classifications. The Company's new accounting policies around leases are described in Leases, above, and in Note 6, Commitments and Contingencies.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. Additionally, the FASB issued ASU No. 2019-04, Codification Improvements to Topic 326, in April 2019 and ASU 2019-05, Financial Instruments — Credit Losses (Topic 326) — Targeted Transition Relief, in May 2019. 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. The Company adopted this standard on January 1, 2022. The adoption of this standard did not have a material impact on the Company's condensed consolidated financial statements and disclosures.

In December 2019, the FASB issued ASU No. 2019-12. Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes. The standard simplifies the accounting for income taxes by removing certain exceptions to the general principles in Topic 740 and also improves consistent application by clarifying and amending existing guidance. The Company adopted this standard on January 1, 2022. The adoption of this standard did not have a material impact on the Company's condensed consolidated financial statements and disclosures.

3. Balance Sheet Components

Property, Plant and Equipment, Net

Property, plant and equipment, net consist of the following (in thousands):

	June 30, 2022	December 31, 2021
Land	$ 31,243	$ 31,243
Laboratory equipment	13,554	13,962
Buildings[1]	31,516	6,034
Office and computer equipment	3,116	2,239
Leasehold improvements	2,124	1,836
Manufacturing equipment	1,528	1,717
Vehicles	64	64
Construction work-in-progress	88,600	67,883
Total property, plant and equipment, gross	171,745	124,978
Less: accumulated depreciation	(4,619)	(2,979)
Total property, plant and equipment, net	$ 167,126	$ 121,999

(1) Relates to a building which was developed as part of the Company's clinical manufacturing facility in Tarzana, California. The building was placed into service and ready for its intended use at the end of the quarter ended June 30, 2022, and depreciation will commence in the quarter ending September 30, 2022.

Depreciation expense was $1.0 million and $0.7 million for the three months ended June 30, 2022 and 2021, respectively, and was $1.9 million and $1.1 million for the six months ended June 30, 2022 and 2021, respectively.

Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consist of the following (in thousands):

	June 30, 2022	December 31, 2021
Accrued construction costs	$ 15,483	$ 12,085
Accrued compensation and benefits	11,214	11,928
Accrued research, development and clinical trial expenses	4,546	4,234
Operating lease liabilities, current	1,978	—
Accrued operational expenses	3,055	5,292
Other current liabilities	891	910
Total accrued expenses and other current liabilities	$ 37,167	$ 34,449

4. Fair Value Measurement

The fair value of cash and cash equivalents approximates carrying value since cash and cash equivalents consist of short-term highly liquid investments with maturities of less than three months at the time of purchase. Cash and cash equivalents are quoted market prices in active markets for identical assets and are therefore classified as Level 1 assets. Money market funds are open-end mutual funds that invest in cash, government securities, and/or repurchase agreements that are collateralized fully. To the extent that these funds are valued based upon the reported net asset value, they are categorized in Level 1 of the fair value hierarchy.

Short-term marketable securities comprised U.S. Treasury bills that are classified within Level 2 of the fair value hierarchy are valued based on other observable inputs, including broker or dealer quotations, alternative pricing sources or U.S. Government Treasury yield of appropriate term.

The following tables provide information by level for assets and liabilities that are measured at fair value on a recurring basis:

	As of June 30, 2022			
	Level 1	Level 2	Level 3	Total
	(In thousands)			
Financial Assets				
Money market funds	$ 9,781	$ —	$ —	$ 9,781
U.S. Treasury bills	—	312,144	—	312,144
Derivative financial instrument	—	1,106	—	1,106
Total	$ 9,781	$ 313,250	$ —	$ 323,031
Financial Liabilities				
Contingent consideration	$ —	$ —	$ 10,658	$ 10,658

	As of December 31, 2021			
	Level 1	Level 2	Level 3	Total
	(In thousands)			
Financial Assets				
Money market funds	$ 18,493	$ —	$ —	$ 18,493
U.S. Treasury bills	—	416,509	—	416,509
Total	$ 18,493	$ 416,509	$ —	$ 435,002
Financial Liabilities				
Contingent consideration	$ —	$ —	$ 12,321	$ 12,321

There were no transfers in or out of Level 1, 2 and 3 measurements for the six months ended June 30, 2022 and the year ended December 31, 2021. As of June 30, 2022 and December 31, 2021, there were no securities within Level 3 of the fair value hierarchy. The derivative financial instrument above relates to the interest rate swap discussed in Note 6, and is included in other long-term assets in the condensed consolidated balance sheet.

5. Financial Instruments

Marketable securities classified as available-for-sale on June 30, 2022 and December 31, 2021 consisted of the following (in thousands):

	June 30, 2022				
	Maturity	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
U.S. Treasury bills	Less than one year	$ 312,853	$ —	$ (709)	$ 312,144

	December 31, 2021				
	Maturity	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
U.S. Treasury bills	Less than one year	$ 416,559	$ —	$ (50)	$ 416,509

As of June 30, 2022 and December 31, 2021, marketable securities had contractual maturities less than one year, or marketable securities with maturities greater than one year are classified as current because management considers all marketable securities to be available for current operations. The Company does not intend to sell its marketable securities and it is not likely that the Company will be required to sell these securities before recovery of their amortized cost bases.

6. Commitments and Contingencies

Operating Lease Obligations

The Company currently leases office spaces and laboratory spaces located in Greater Los Angeles, California, Dallas, Texas, the United Kingdom and other parts of the United States. The Company's leased facilities have original lease terms ranging from 2 to 5 years that predominately require the Company to provide a security deposit, while certain leases provide the right for the Company to renew the lease upon the expiration of the initial lease term, and various leases have scheduled rent increases on an annual basis. The exercise of lease renewal options for the Company's existing leases is at the Company's sole discretion, and not included in the measurement of ROU asset or lease liability as they are not reasonably certain to be exercised. Certain leases provide free rent, or tenant improvement allowances, of which certain of these improvements have been classified as leasehold improvements and are being amortized over the shorter of the estimated useful life of the improvements or the remaining life of the lease, while other tenant improvements incurred by the Company revert to the landlord at the expiration of the lease and are not assets on the Company's condensed consolidated balance sheets.

Information related to the Company's operating ROU assets and related lease liability was as follows (in thousands, except for years and percentages):

The Company's lease costs consist of the following (in thousands):

	Three Months Ended June 30, 2022	Six Months Ended June 30, 2022
Short-term lease cost	$ 183	$ 350
Operating lease cost	1,349	2,672
Variable lease cost	242	460
Total lease cost	$ 1,775	$ 3,483

The following table summarizes cash flow information related to the Company's lease obligations (in thousands):

	Three Months Ended June 30, 2022	Six Months Ended June 30, 2022
Cash paid for operating lease liabilities	$ 1,214	$ 1,819

The following table summarizes the Company's lease assets and liabilities (in thousands):

	As of June 30, 2022
Operating lease right-of-use assets	$ 13,658
Current operating lease liabilities	$ 1,978
Non-current operating lease liabilities	$ 6,021

The following table summarizes other supplemental information related to the Company's lease obligations:

	As of June 30, 2022
Weighted-average remaining lease term (in years)	3.9
Weighted-average discount rate	6.70 %

Future minimum lease payments under operating lease liabilities were (in thousands):

	As of June 30, 2022
2022 (remaining six months)	$ 1,209
2023	2,463
2024	2,214
2025	1,920
2026	1,274
Total future lease payments	9,080
Less: imputed interest	1,081
Total lease liability balance	7,999
Less: current portion of operating lease liabilities	1,978
Total operating lease liabilities, non-current	$ 6,021

Under ASC 840, rent expense recognized under the leases was $0.8 million and $1.2 million for the three and six months ended June 30, 2021, respectively.

Future minimum lease payments under noncancellable operating leases were (in thousands):

	As of December 31, 2021
2022	$ 2,411
2023	2,354
2024	2,215
2025	1,936
2026	1,272
Total	$ 10,188

Legal Proceedings

From time to time, the Company may have certain contingent liabilities that arise in the ordinary course of its business activities. The Company accrues a liability for such matters when it is probable that future expenditures will be made and that such expenditures can be reasonably estimated. Significant judgment is required to determine both probability and the estimated amount. The Company does not expect that the resolution of these matters will have a material adverse effect on its financial position, results of operations or cash flows.

Tarzana Land and Building Acquired

The Company's contractual commitments for the acquired land and buildings in the Tarzana, California development project are limited to unreimbursed spend by the general contractor and as such, as of June 30, 2022, and December 31, 2021, $33.3 million and $63.2 million, respectively, is contractually committed to the development of this project.

Debt

In June 2022, the Company's wholly-owned subsidiary, Complex Therapeutics Mezzanine LLC, and the Company's wholly-owned indirect subsidiary, Complex Therapeutics LLC,entered into a mortgage construction loan

and mezzanine construction loan (together, the "Loan") secured by its Tarzana, California land and building (the "Property"), currently under construction. The initial principal amount of the Loan was $52.1 million, with additional future principal of up to $32.9 million to fund ongoing Property construction costs. The Loan principal is payable in July 2025, with the option to extend until July 2027, and accordingly is recorded as a noncurrent liability in the condensed consolidated balance sheet, net of debt issuance costs of $3.0 million. The Loan is guaranteed by the Company and secured by the Property, and bears interest at one-month Secured Overnight Financing Rate, or SOFR, plus 5.25% per annum. The Company's effective interest rate during the quarter ended June 30, 2022 was approximately 7.8%. The Loan contains customary negative and affirmative covenants that include limitations on the ability of the Company to enter into significant contracts and incur additional debt. The Company is also required to maintain consolidated net worth and liquid assets of at least $85.0 million and $85.0 million, respectively, as defined in the loan agreement. As of June 30, 2022, the Company was in compliance with the covenants of the Loan. The Company is also required to maintain certain insurance coverage on the Property. The carrying value of the Loan on the Company's balance sheet closely approximates its fair value. In connection with the Loan, the Company entered into an interest rate swap to effectively limit its maximum interest rate, as discussed in Note 5.

7. Equity

Common Stock

Each share of common stock has the right to one vote. The holders of common stock are also entitled to receive dividends whenever funds are legally available and if declared by the board of directors, subject to the prior rights of holders of all classes of stock outstanding having priority rights as to dividends. No cash dividends have been declared by the board of directors from inception.

In November 2020, the Company executed a limited recourse promissory note with its Chief Executive Officer ("CEO"), Bronson Crouch, in the amount of $1.1 million, which was secured by a pledge of a total of 3.2 million shares of its common stock issued upon exercise of vested stock options. The note bore an interest rate of 2.5% per annum with a maturity date of the earlier of (i) five years from the date of the note or (ii) one business day prior to the filing or submission of the Company's first registration statement covering the Company's common stock with the SEC. The principal and interest under the note may be repaid at any time without penalty. Because the Company only had partial recourse under the promissory note, the Company deemed the note receivable to be non-substantive. As such, the note receivable was not reflected in the condensed consolidated financial statements and the related stock transaction was recorded at the time the note receivable is settled in cash. The promissory note was fully repaid in January 2021.

On March 23, 2021, the Company completed its IPO through an underwritten sale of an aggregate of 18,400,000 shares of its common stock at a price of $20.00 per share (see Note 2).

As of June 30, 2022, the Company had outstanding 129,550,297 shares of common stock.

Convertible Preferred Stock

Concurrent with the IPO, all then-outstanding shares of the Company's convertible preferred stock were automatically converted into an aggregate of 89,220,699 shares of common stock and were reclassified into permanent equity. Following the IPO, there are no shares of preferred stock outstanding.

2021 Preferred Stock Activity

All then outstanding shares of convertible preferred stock were converted into an aggregate of 89,220,699 shares of common stock on March 23, 2021, the closing date of the Company's IPO (see Note 2). After the completion of the IPO, the Company's current amended and restated certificate of incorporation authorizes the Company to issue up to 10,000,000 shares of preferred stock at $0.000001 par value per share. The board of

directors is authorized to provide for the issuance of the preferred stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in subsequent resolution or resolutions adopted by the board providing for the issuance of such shares. As of June 30, 2022, there have been no shares of preferred stock issued by the Company.

8. Stock-Based Compensation

2021 Equity Incentive Plan

In March 2021, the Company adopted the 2021 Equity Incentive Plan (the "2021 Plan"), which became effective in connection with the IPO. The 2021 Plan was approved by the Company's board of directors and stockholders in March 2021. The 2021 Plan is an equity incentive plan pursuant to which the Company may grant the following awards: (i) incentive stock options; (ii) nonstatutory stock options; (iii) stock appreciation rights; (iv) restricted stock awards; (v) restricted stock unit awards; (vi) performance awards; and (vii) other forms of stock awards to employees, directors, and consultants, including employees and consultants of the Company's affiliates. The 2021 Plan is a successor to the Company's 2018 Stock Incentive Plan (the "2018 Plan"). Following the effectiveness of the 2021 Plan, no further grants may be made under the 2018 Plan; however, any outstanding equity awards granted under the 2018 Plan will continue to be governed by the terms of the 2018 Plan.

As of June 30, 2022, 5,613,997 shares of common stock remained available for issuance under the 2021 Plan. As of June 30, 2022, the total number of shares authorized for issuance under the 2021 Plan was 12,854,437 shares.

Compensation expense for share-based awards is recognized over the requisite service period. The fair value of stock option awards is estimated using the Black-Scholes option-pricing model, which involves using assumptions regarding price volatility, risk-free interest rate, expected dividends and projected employee stock option exercise behaviors.

The following table sets forth stock-based compensation included in the Company's statement of operations and comprehensive loss (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Research and development expense	$ 3,596	$ 2,043	$ 6,825	$ 3,448
General and administrative expense	4,727	3,702	8,991	5,109
Total stock-based compensation expense	$ 8,323	$ 5,745	$ 15,816	$ 8,557

As of June 30, 2022, there was $97.3 million of total unrecognized compensation cost related to unvested stock options granted under the 2018 Plan and 2021 Plan, which is expected to be recognized over a weighted average period of 2.7 years.

Employee Stock Purchase Plan

In March 2021, the Company adopted the Employee Stock Purchase Plan (the "ESPP"), which became effective in connection with the IPO. The ESPP was adopted by the Company's board of directors and stockholders in March 2021. The ESPP initially provides participating employees with the opportunity to purchase up to an aggregate of 1,237,000 shares of common stock. The Company has not yet commenced offerings to employees under the ESPP.

9. Net Loss Per Share

The following outstanding potentially dilutive shares have been excluded from the calculation of diluted net loss per share for the periods presented due to their anti-dilutive effect:

	June 30,	
	2022	**2021**
Stock options to purchase common stock	24,096,736	19,863,690

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, 2021 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 filed with the Securities and Exchange Commission ("SEC") on March 7, 2022. Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to "we," "us" and "our" refer to Instil Bio, Inc.

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, or the Securities Act, 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. 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 1A, "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 clinical-stage biopharmaceutical company focused on developing an innovative cell therapy pipeline of autologous tumor infiltrating lymphocyte, or TIL, therapies for the treatment of patients with cancer. We have assembled an accomplished team with a successful track record in the development, manufacture, regulatory approval and commercialization of multiple cell therapies. Using our optimized and scalable manufacturing process, we are advancing our lead TIL product candidate, ITIL-168, for the treatment of advanced melanoma. Based on the clinical results from a compassionate use program with a TIL product that was manufactured using a prior version of the ITIL-168 manufacturing process, we submitted an investigational new drug application, or IND, to the U.S. Food and Drug Administration, or the FDA, and were cleared to initiate DELTA-1, a Phase 2 trial in patients with advanced melanoma whose disease has progressed following PD-1 inhibitor therapy and, if BRAF-mutated, targeted therapy, in late 2021. We expect topline safety and efficacy data in early 2024 and believe this trial could support a biologics license application, or BLA, submission to the FDA and a Marketing Authorization Application, or MAA, to the European Medicines Agency, or the EMA. We initiated DELTA-2, a Phase 1 trial of ITIL-168 with pembrolizumab in additional indications with unmet medical need, including non-small cell lung cancer, cervical cancer and head and neck squamous cell carcinoma in August 2022. ITIL-168 will be manufactured in our company-operated in-house manufacturing facilities for both our clinical trials and commercial sales, if approved.

We are also developing a novel class of genetically engineered TIL therapies using our Co-Stimulatory Antigen Receptor, or CoStAR, platform. These modified TILs still rely on their native, patient-specific T cell receptors, or TCRs, to bind to tumor neoantigens, but have been enhanced to express novel CoStAR molecules, which bind to shared tumor-associated antigens and provide potent costimulation to T cells within the tumor microenvironment. We believe that the ability of CoStAR to augment the activation of TILs upon native TCR-mediated recognition of tumor neoantigens has the potential to bring TIL therapy to patients with cancer types that have been historically resistant to immunotherapy. We initiated a trial for our lead CoStAR-TIL product candidate, ITIL-306, in July 2022. The CoStAR molecule in ITIL-306 binds to folate receptor alpha, a tumor associated antigen that is commonly expressed in many solid tumors including the three cancers that will be studied initially with ITIL-306: NSCLC, ovarian cancer, and renal cell cancer.

We were founded in August 2018. In February 2019, we entered into a license agreement with Immetacyte Ltd., or Immetacyte, pursuant to which we obtained a worldwide license to Immetacyte's proprietary technology, know-how and intellectual property for the research, development, manufacture and commercialization of TIL therapies. Immetacyte had been manufacturing a TIL product under a compassionate use program since 2011. In March 2020, we acquired 100% of the share capital of Immetacyte and terminated the Immetacyte license agreement. We acquired Immetacyte primarily for the in process research and development, or IPR&D, which is critical to achieve our objective in developing an innovative cell therapy pipeline of autologous TIL therapies for the treatment of patients with cancer. Utilizing this IPR&D, we have optimized and scaled the manufacturing process.

Since inception, we have had significant operating losses. Our net loss was $59.0 million for the three months ended June 30, 2022 and $113.1 million for the six months ended June 30, 2022. As of June 30, 2022, we had an accumulated deficit of $314.8 million. As of June 30, 2022, we had cash, cash equivalents, restricted cash, and marketable securities of $355.1 million, which consists of $42.5 million in cash and cash equivalents, $0.5 million in restricted cash, and $312.1 million in marketable securities. We expect to continue to incur net losses for the foreseeable future, and we expect our research and development expenses, general and administrative expenses, and capital expenditures will continue to increase.

Impact of the COVID-19 Pandemic on Our Operations

On March 11, 2020, the World Health Organization characterized the outbreak of COVID-19 as a global pandemic and recommended containment and mitigation measures. Since then, extraordinary actions have been taken by international, federal, state, and local public health and governmental authorities to contain and combat the outbreak and spread of COVID-19 in regions throughout the world, including the United Kingdom and California, where most of our operations are conducted. These actions include travel bans, quarantines, and similar mandates for many individuals to substantially restrict daily activities and for many businesses to curtail or cease normal operations. We have been carefully monitoring the COVID-19 pandemic as it continues to progress and its potential impact on our business. As a result of COVID-19, we have taken precautionary measures in order to minimize the risk of the virus to our employees. In addition, a significant portion of our workforce now works remotely. To date, we have been able to continue our key business activities and advance our clinical programs. However, in the future, it is possible that it will become more difficult to enroll participants in our clinical trials, which could delay our clinical development timelines. While the broader implications of the COVID-19 pandemic on our results of operations and overall financial performance remain uncertain, including any implications from the recent spread of the Omicron variant and its various subvariants, the COVID-19 pandemic has, to date, not had a material adverse impact on our results of operations or our ability to raise funds to sustain operations. The economic effects of the pandemic and resulting societal changes are currently not predictable, and the future financial impacts could vary from those foreseen.

See "Risk Factors" for a further discussion of the potential adverse impact of COVID-19 on our business.

Components of Operating Results

Operating Expenses

Research and Development

Research and development expenses account for a significant portion of our operating expenses. Research and development expenses consist primarily of research and development, manufacturing, monitoring and other services payments and, to a lesser extent, salaries, benefits and other personnel-related costs, including stock-based compensation, professional service fees, and facility and other related costs. In addition, research and development expense is presented net of reimbursements from reimbursable tax and expenditure credits and grants from the U.K. government. For the three and six months ended June 30, 2022 and June 30, 2021, we did not allocate our research and development expenses by program.

We expect our research and development expenses to increase substantially for the foreseeable future as we continue to ramp up our clinical development activities and incur expenses associated with hiring additional personnel to support our research and development efforts. Our expenditures on future nonclinical and clinical development programs are subject to numerous uncertainties in timing and cost to completion. The duration, costs and timing of clinical trials and development of product candidates will depend on a variety of factors, including:

- the scope, rate of progress and expenses of clinical trials and other research and development activities;
- potential safety monitoring and other studies requested by regulatory agencies;
- significant and changing government regulation; and
- the timing and receipt of regulatory approvals, if any.

The process of conducting the necessary clinical research to obtain FDA and other regulatory approval is costly and time consuming and the successful development of product candidates is highly uncertain. The risks and uncertainties associated with our research and development projects are discussed more fully in the section of this Quarterly Report titled "Risk Factors." As a result of these risks and uncertainties, we are unable to determine with any degree of certainty the duration and completion costs of our research and development projects, or if, when or to what extent we will generate revenues from the commercialization and sale of any of our product candidates that obtain regulatory approval. We may never succeed in achieving regulatory approval for any of our product candidates.

General and Administrative

General and administrative expenses consist primarily of compensation and personnel-related expenses, including stock-based compensation, for our personnel in executive, finance and other administrative functions. General and administrative expenses also include professional fees paid for accounting, auditing, legal, tax and consulting services, insurance costs, recruiting costs, travel expenses, amortization and depreciation, and other general and administrative costs.

We expect our general and administrative expenses to increase substantially for the foreseeable future as we continue to increase our headcount to support our research and development activities and operations generally, the growth of our business and, if any of our product candidates receive marketing approval, commercialization activities. We also expect to continue to incur additional expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC, additional director and officer insurance expenses, investor relations activities and other administrative and professional services.

Interest Income

Interest income consists of interest income from funds held in our cash and cash equivalent accounts, and marketable securities.

Interest Expense

Interest expense consists of interest expense on our note payable.

Other Expense, Net

Other expense, net consists primarily of foreign exchange remeasurement gains and other expenses and income.

Income Tax Provision

We are subject to income taxes in the United States and the foreign jurisdiction where we operate, the United Kingdom. The United Kingdom has statutory tax rates that differ from those in the United States. Accordingly, our effective tax rates will vary depending on the relative proportion of United Kingdom to United States income, the availability of research and development tax credits, changes in the valuation of our deferred tax assets and liabilities and changes in tax laws.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Due to the uncertainty of the business in which we operate, projections of future profitability are difficult and past profitability is not necessarily indicative of future profitability. On June 30, 2022, we maintained a full valuation allowance against net deferred tax assets for the United States entity. The valuation allowance has been provided based on the positive and negative evidence relative to our company, including the existence of cumulative net operating losses, or NOLs, since the Company's inception, and the inability to carryback these NOLs to prior periods. Furthermore, the Company determined that it is more likely than not that the benefit of these assets would not be realized in the foreseeable future.

Results of Operations

Comparison of the Three Months Ended June 30, 2022 and 2021

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

	Three Months Ended June 30,		Change
	2022	2021	$
Operating expenses:			
Research and development	$ 41,500	$ 21,186	$ 20,314
General and administrative	17,224	14,195	3,029
Total operating expenses	58,724	35,381	23,343
Loss from operations	(58,724)	(35,381)	(23,343)
Interest income	486	15	471
Interest expense	(331)	—	(331)
Other expense, net	(1,032)	(104)	(928)
Loss before income tax benefit	(59,601)	(35,470)	(24,131)
Income tax benefit	609	159	450
Net loss	$ (58,992)	$ (35,311)	$ (23,681)

Research and Development Expenses

Research and development expenses were $41.5 million and $21.2 million for the three months ended June 30, 2022 and 2021, respectively. The increase in research and development expenses of $20.3 million was primarily due to:

- $10.9 million in costs from an increase in headcount and related costs for our research and development personnel, including increased stock-based compensation expense of $1.6 million, to support increased clinical trial activities, including clinical manufacturing;
- $5.2 million in costs related to research and clinical development activities, including from our clinical trials and expanded clinical manufacturing activities; and

- $4.2 million of expenses related to facilities and overhead, depreciation and amortization, and other expenses.

General and Administrative Expenses

General and administrative expenses were $17.2 million and $14.2 million for the three months ended June 30, 2022 and 2021, respectively. The net increase of $3.0 million was primarily due to:

- $3.9 million in costs resulting from increased headcount and personnel related costs, including increased stock based compensation expense of $1.0 million, to support our growing business and for preparation of clinical trials;
- Offset by a decrease of $1.0 million in costs resulting from decreased facilities and offices costs.

Interest Income, Interest Expense and Other Expense, Net

Interest income, interest expense and other expense, net were $0.9 million and $0.1 million for the three months ended June 30, 2022 and 2021, respectively. The total increase of $0.8 million was primarily due to:

- $0.9 million loss on foreign currency transactions;
- $0.3 million in interest expense from our note payable;
- Offset by a $0.5 million increase in interest income from our investments.

Income Tax Benefit

Income tax benefit during the three months ended June 30, 2022 and 2021 were related to the deferred income taxes from our operations in the United Kingdom.

Comparison of the Six Months Ended June 30, 2022 and 2021

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

	Six Months Ended June 30,		Change
	2022	2021	$
Operating expenses:			
Research and development	$ 80,674	$ 35,610	$ 45,064
General and administrative	32,336	23,174	9,162
Total operating expenses	113,010	58,784	54,226
Loss from operations	(113,010)	(58,784)	(54,226)
Interest income	583	23	560
Interest expense	(331)	—	(331)
Other expense, net	(1,448)	(41)	(1,407)
Loss before income tax benefit	(114,206)	(58,802)	(55,404)
Income tax benefit	1,097	363	734
Net loss	$ (113,109)	$ (58,439)	$ (54,670)

Research and Development Expenses

Research and development expenses were $80.7 million and $35.6 million for the six months ended June 30, 2022 and 2021, respectively. The increase in research and development expenses of $45.1 million was primarily due to:

- $24.7 million in costs from an increase in headcount and related costs for our research and development personnel, including increased stock-based compensation expense of $3.4 million, to support increased clinical trial activities, including clinical manufacturing;
- $10.9 million in costs related to research and clinical development activities, including from our clinical trials and expanded clinical manufacturing activities; and
- $9.5 million of expenses related to facilities and overhead, depreciation and amortization, and other expenses.

General and Administrative Expenses

General and administrative expenses were $32.3 million and $23.2 million for the six months ended June 30, 2022 and 2021, respectively. The net increase of $9.2 million was primarily due to:

- $9.6 million in costs resulting from increased headcount and personnel related costs, including increased stock-based compensation expense of $3.9 million, to support our growing business and for preparation of clinical trials;
- $0.4 million in costs relating to information technology and facility consultants;
- Offset by a decrease of $0.8 million in costs resulting from decreased facilities expenses, offices costs, insurance expenses and other administrative expenses.

Interest Income, Interest Expense and Other Expense, Net

Interest income, interest expense and other expense, net were $1.2 million and nil for the six months ended June 30, 2022 and 2021, respectively. The increase of $1.2 million was primarily due to:

- $1.4 million from loss on foreign currency transactions;
- $0.3 million in interest expense from our note payable;
- Offset by a $0.6 million increase in interest income from our investments.

Income Tax Benefit

Income tax benefit for the six months ended June 30, 2022 and 2021 were related to the deferred income taxes from our operations in the United Kingdom.

Liquidity and Capital Resources

Sources of Liquidity

Since our inception, we have not generated any revenue from product sales and we have incurred significant operating losses. We do not have any products that have achieved regulatory marketing approval and we do not expect to generate revenue from sales of any product candidates for several years, if ever.

As of June 30, 2022, we had cash, cash equivalents, restricted cash, and marketable securities of $355.1 million, which consists of $42.5 million in cash and cash equivalents, $0.5 million in restricted cash, and

$312.1 million in marketable securities. Cash in excess of immediate requirements is invested in accordance with our investment policy, primarily with a view to liquidity and capital preservation.

Prior to our IPO, we funded our operations primarily through the issuance and sale of convertible preferred stock. From our inception through March 31, 2021, we raised net cash proceeds of $380.1 million from the issuance and sale of our convertible preferred stock.

In March 2021, we raised net proceeds of $339.0 million in our IPO, pursuant to which we sold an aggregate of 18,400,000 shares of common stock.

On April 1, 2022, we filed an automatic shelf registration statement on Form S-3, or the 2022 Shelf Registration Statement. Pursuant to the 2022 Shelf Registration Statement, we may offer and sell an indeterminate amount and combination of shares of our common stock, shares of our preferred stock, various series of debt securities and warrants to purchase any of such securities in one or more registered offerings. We have not yet sold and issued any securities under the 2022 Shelf Registration Statement.

In June 2022, the Company's wholly-owned subsidiary, Complex Therapeutics Mezzanine LLC, and the Company's wholly-owned subsidiary, Complex Therapeutics LLC, entered into a mortgage construction loan and mezzanine construction loan (together, the "Loan") secured by its Tarzana, California land and building (the "Property"), currently under construction. The initial principal amount of the Loan was $52.1 million, with additional future principal of up to $32.9 million to fund ongoing Property construction costs.

Funding Requirements

Based on our current operating plan, we believe our existing cash and cash equivalents, marketable securities, and the expected proceeds from the completion of anticipated sale-leaseback of Tarzana, CA manufacturing site will be sufficient to fund our operating expenses and capital expenditure requirements into 2025. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we expect. We expect to continue to expend significant resources for the foreseeable future.

We use our cash to fund operations, primarily to fund our research and development expenditures and related personnel costs. We expect our expenses to increase substantially for the foreseeable future as we continue to invest in research and development activities, particularly as we advance our product candidates into later stages of development and conduct larger clinical trials, seek regulatory approvals for and commercialize any product candidates that successfully complete clinical trials, hire additional personnel and invest in and grow our business, expand and protect our intellectual property portfolio, and operate as a public company. Because of the numerous risks and uncertainties associated with research, development and commercialization of our product candidates, we are unable to estimate the exact timing and amount of our funding requirements. Our future operating expenditures will depend on many factors, including:

- the scope, rate of progress, costs and results of our clinical and preclinical development activities;
- the number and characteristics of any additional product candidates we develop or acquire;
- the timing of, and the costs involved in, obtaining regulatory approvals for ITIL-168, ITIL-306 or any future product candidates, and the number of trials required for regulatory approval;
- the cost of manufacturing ITIL-168, ITIL-306 or any future product candidates, as well as any products we successfully commercialize;
- costs related to our manufacturing and other facilities;
- the cost of commercialization activities of our product candidates, if approved for sale, including marketing, sales and distribution costs;
- the timing, receipt and amount of sales of ITIL-168, ITIL-306 or any future product candidates, if approved;

- the costs associated with constructing our new clinical and commercial manufacturing facility and building out lab space, as well as our ability to complete the anticipated sale-leaseback of our Tarzana, CA facility;
- the extent to which we acquire or in-license other companies' product candidates and technologies;
- our ability to establish and maintain strategic collaborations, licensing or other arrangements and the financial terms of any such arrangements, including the timing and amount of any future milestone, royalty or other payments due under any such agreement;
- any product liability or other lawsuits;
- the expenses needed to attract, hire and retain skilled personnel;
- our investments in our operational, financial and management information systems;
- the costs associated with operating as a public company;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing our intellectual property portfolio; and
- any delays or issues resulting from the ongoing COVID-19 pandemic or adverse geopolitical conditions.

In March 2020, we acquired 100% of the share capital of Immetacyte for total cash and non-cash consideration, including contingent consideration, of $15.4 million. In connection with the acquisition, we terminated the Immetacyte license agreement and associated payment obligations. The maximum consideration that remained unpaid at June 30, 2022, which payment is contingent on future events, was $13.8 million.

Until such time as we can generate significant revenue from sales of our product candidates, if ever, we expect to finance our operations through equity offerings, debt financings or other capital sources, which may include strategic collaborations or other arrangements with third parties. Additional funds may not be available to us on acceptable terms or at all. If we raise additional funds by issuing equity or convertible debt securities, our stockholders will suffer dilution and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our common shareholders. Debt financing, if available, may involve restrictive covenants limiting our flexibility in conducting future business activities, and, in the event of insolvency, debt holders would be repaid before holders of our equity securities receive any distribution of our corporate assets. If we raise funds through collaborations or other similar arrangements with third parties, we may have to relinquish valuable rights to technologies, future revenue streams, product candidates or research programs or grant licenses on terms that may not be favorable to us and/or may reduce the value of our common shares. Our ability to raise additional funds may be adversely impacted by potential worsening global economic conditions and the recent disruptions to, and volatility in, the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic, the war in Ukraine, inflation and rising interest rates. If we fail to obtain necessary capital when needed on acceptable terms, or at all, it could force us to delay, limit, reduce or terminate our product development programs, commercialization efforts or other operations. See "Risk Factors."

We lease various operating spaces in the United States and the United Kingdom under non-cancelable operating lease arrangements that expire on various dates through 2026. These arrangements require us to pay certain operating expenses, such as taxes, repairs, and insurance and contain landlord or tenant incentives or allowances, renewal and escalation clauses. As of June 30, 2022, our future minimum lease payments under committed or non-cancelable lease agreements were $9.1 million.

Our contractual obligations and commitments primarily consist of amounts we will pay to the general contractor constructing and developing land and buildings in Tarzana, California which we acquired in October 2020 for $37.6 million. We are in the process of developing this land for our United States operations and our contractual commitments for this development project are limited to unreimbursed spend by the general contractor. As of June 30, 2022, $33.3 million was contractually committed to the development of this project.

In the normal course of business, we enter into contracts with Clinical Research Organizations, or CROs and other third parties for preclinical studies and clinical trials, research and development supplies and other testing and manufacturing services. We are contractually obligated for approximately $50.3 million in future services related to clinical trials, depending on whether certain milestones are met, as of June 30, 2022.

Cash Flows

The following table sets forth the significant sources and uses of cash for the periods set forth below (in thousands):

	Six Months Ended June 30,	
	2022	**2021**
Net cash provided by (used in):		
Cash used in operating activities	$ (102,311)	$ (49,953)
Cash provided by (used in) investing activities	56,366	(17,622)
Cash provided by financing activities	50,962	392,845
Net increase in cash, cash equivalents, and restricted cash	$ 5,017	$ 325,270

Cash Flows from Operating Activities

Cash used in operating activities for the six months ended June 30, 2022 was $102.3 million, which consisted of the net loss of $113.1 million and an increase of $8.6 million to our net operating assets and liabilities, partially offset by $19.4 million in non-cash charges and other adjustments to reconcile net loss to net cash used in operating activities. The non-cash charges primarily consisted of stock-based compensation of $15.8 million, depreciation and amortization expense of $1.9 million and change in foreign exchange remeasurement of $1.5 million. The net change in our operating assets and liabilities was primarily due to an increase of $0.9 million in accounts payable, partially offset by a decrease of $3.4 million in accrued expenses and other liabilities, an increase of $4.6 million in prepaid expenses and other current assets and an increase of $1.6 million in other long-term assets and operating lease liabilities.

Cash used in operating activities for the six months ended June 30, 2021 was $50.0 million, which consisted primarily of the net loss of $58.4 million, partially offset by $9.7 million in non-cash charges and other adjustments to reconcile net loss to net cash used in operating activities and a $1.2 million net change to our net operating assets and liabilities. The non-cash charges primarily consisted of stock-based compensation of $8.6 million, and depreciation and amortization expense of $1.1 million. The net change in our operating assets and liabilities was primarily due to a increase of $2.0 million in accounts payable, an increase of $1.1 million in accrued expenses and other liabilities, partially offset by a increase in $2.8 million in prepaid expenses and other current assets and an increase in $1.5 million in other long-term assets.

Cash Flows from Investing Activities

Cash provided by investing activities for the six months ended June 30, 2022 was $56.4 million, which consisted primarily of $103.9 million of cash provided by marketable securities investments, offset by $46.4 million related to cash used to purchase property and equipment.

Cash used in investing activities for the six months ended June 30, 2021 was $17.6 million, which was related to purchases of property and equipment.

Cash Flows from Financing Activities

Cash provided by financing activities for the six months ended June 30, 2022 was $51.0 million, which was primarily related to cash proceeds from our note payable of $50.1 million and $0.9 million from exercise of stock options.

Cash provided by financing activities for the six months ended June 30, 2021 was $392.8 million, which was primarily related to net cash proceeds from our IPO of $339.0 million, net cash proceeds from the issuance of Series C convertible preferred stock of $52.5 million and cash proceeds from exercise of stock options of $1.4 million.

Critical Accounting Policies and Estimates

This management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of our condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the condensed financial statements, as well as the reported expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

For a description of critical accounting policies that require significant judgments and estimates during the preparation of our financial statements, refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates" and Note 2 to our Consolidated Financial Statements contained in our Annual Report on Form 10-K for the year ended December 31, 2021. There have been no significant changes to our critical accounting policies from those disclosed in our 2021 Annual Report.

Recent Accounting Pronouncements

Information regarding recent accounting pronouncements applicable to us is included in Note 2 to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Emerging Growth Company Status and Smaller Reporting Company Status

We are an "emerging growth company" as defined in the JOBS Act. For so long as we remain an emerging growth company, we are permitted and intend to rely on certain exemptions from various public company reporting requirements, including not being required to have our internal control over financial reporting audited by our independent registered public accounting firm pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden parachute payments not previously approved. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock.

In addition, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have elected to avail ourselves of this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

We will remain an emerging growth company until the earliest of (i) December 31, 2026, (ii) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion, (iii) the last day of the fiscal

year in which we are deemed to be a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock held by non-affiliates exceeded $700.0 million as of the last business day of the second fiscal quarter of such year or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

We are also a "smaller reporting company," as defined in Rule 12b-2 under the Exchange Act. We may continue to be a smaller reporting company if either (i) the market value of our shares held by non-affiliates is less than $250 million or (ii) our annual revenue was less than $100 million during the most recently completed fiscal year and the market value of our shares held by non-affiliates is less than $700 million. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies. Specifically, as a smaller reporting company, we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and, similar to emerging growth companies, smaller reporting companies have reduced disclosure obligations regarding executive compensation.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

We had cash, cash equivalents, restricted cash, and marketable securities of $355.1 million, which consists of $42.5 million in cash and cash equivalents, $0.5 million in restricted cash, and $312.1 million in marketable securities as of June 30, 2022. We generally hold our cash in interest-bearing money market accounts. We believe that historical fluctuations in interest rates have not had a material effect on our results of operations during the period presented.

Due to the low risk profile of our investments and debt, including our interest rate swap discussed in Note 6 to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q, a hypothetical one percentage point change in interest rates during the period presented would not have had a material impact on our financial statements included elsewhere in this report.

The Company does not believe that inflation or foreign currency exchange rate fluctuations have had a significant impact on its results of operations for any periods presents herein.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended, or the Exchange Act) as of the end of the period covered by this Quarterly Report. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of June 30, 2022, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms and to provide reasonable assurance 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.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. We have not experienced any material impact on our internal control over financial reporting despite the fact that most of our employees are working remotely due to the COVID-19 pandemic. We are continually monitoring and assessing the COVID-19 situation on our internal controls to minimize the impact on their design and operating effectiveness.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, do not expect that our disclosure controls or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Part II. Other Information

Item 1. Legal Proceedings

From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. We are not currently subject to any material legal proceedings.

Item 1A. Risk Factors

RISK FACTORS

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. You should carefully consider the risks described below, in addition to the other information contained in this Quarterly Report on Form 10-Q and our other public filings. Our business, financial condition or results of operations could be harmed by any of these risks. The risks and uncertainties described below are not the only ones we face. Additional risks not presently known to us or other factors not perceived by us to present significant risks to our business at this time also may impair our business operations.

Risks Associated with Our Business

Our business is subject to a number of risks of which you should be aware before making a decision to invest in our common stock. These risks are more fully described in this "Risk Factors" section, including the following:

- We have incurred significant losses since our inception. We expect to incur losses over the next several years and may never achieve or maintain profitability.
- We have a limited operating history and no history of commercializing products, which may make it difficult for an investor to evaluate the success of our business to date and to assess our future viability.
- We will need substantial additional funding to meet our financial obligations and to pursue our business objectives. If we are unable to raise capital when needed, we could be forced to delay further development of our technologies or product candidates or curtail our planned operations and the pursuit of our growth strategy.
- All of our product candidates are currently in clinical and preclinical development. If we are unable to successfully develop, receive regulatory approval for and commercialize our product candidates for the indications we seek, or successfully develop any other product candidates, or experience significant delays in doing so, our business will be harmed.
- Because ITIL-168, as well as ITIL-306 and any future product candidates developed from our CoStAR platform, represent novel approaches to the treatment of disease, there are many uncertainties regarding the development, market acceptance, third-party reimbursement coverage and commercial potential of our product candidates.
- The regulatory approval processes of the FDA, EMA and comparable foreign authorities are lengthy, time consuming and inherently unpredictable. If we are not able to obtain required regulatory approval for our product candidates, our business will be substantially harmed.
- Success in preclinical studies or earlier clinical trials, including the compassionate use program, may not be indicative of results in future clinical trials. Our product candidates may not have favorable results in clinical trials, including results in the DELTA-1 and DELTA-2 clinical trials using ITIL-168 and in the first-in-human Phase 1 trial without post-infusion high-dose IL-2 using ITIL-306, or receive regulatory approval.
- Negative public opinion of TIL therapies, a dynamically evolving competitive landscape for our target indications or increased regulatory scrutiny of cell therapy using TILs may adversely impact the development or commercial strategy of our product candidates, or investing in manufacturing readiness for regulatory filings and success of our current and future product candidates.

- As an organization, we are early in the process of conducting our first clinical trials, have no prior experience in conducting clinical trials, and may be unable to complete clinical trials for any product candidates we may develop, including ITIL-168 and ITIL-306. Further, the FDA, EMA or other foreign regulatory authorities may require us to obtain and submit additional nonclinical data supporting the comparability of ITIL-168 with the TIL product that was evaluated in the compassionate use program in the United Kingdom that was manufactured using a prior version of the ITIL-168 manufacturing process, or may not permit us to rely on the data from the compassionate use program to support the development of ITIL-168 at all, which could delay clinical development or marketing approval of ITIL-168.
- We may not be successful in our efforts to build a pipeline of additional product candidates.
- Our business and operations may be adversely affected by the evolving and ongoing COVID-19 global pandemic.
- Cell therapies are complex and difficult to manufacture. We could experience manufacturing problems that result in delays in the development or commercialization of our product candidates or otherwise harm our business.
- The treatable populations for our product candidates may be smaller than we or third parties currently project, which may affect the addressable markets for our product candidates.
- We face significant competition from other biotechnology and pharmaceutical companies, and our operating results will suffer if we fail to compete effectively.
- If we are unable to obtain or protect intellectual property rights related to any of our product candidates, we may not be able to compete effectively in our market.
- Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, the outcome of which would be uncertain.

Risks Related to our Financial Position and Capital Needs

We have incurred significant losses since our inception. We expect to incur losses over the next several years and may never achieve or maintain profitability.

Since our inception, we have incurred significant net losses, and we expect to continue to incur significant expenses and operating losses for the foreseeable future. Our net losses were $113.1 million and $58.4 million for the six months ended June 30, 2022 and 2021, respectively. As of June 30, 2022, we had an accumulated deficit of $314.8 million. We have financed our operations with $719.0 million in net proceeds raised in our initial public offering and private placements of convertible preferred stock to date, as well as, our $50.1 million construction loan, net of debt issuance costs. We have no products approved for commercialization and have never generated any revenue from product sales.

All of our product candidates are still in clinical and preclinical testing. We expect to continue to incur significant expenses and operating losses over the next several years. We expect that it could be several years, if ever, before we have a commercialized product. Our net losses may fluctuate significantly from quarter to quarter and year to year. We anticipate that our expenses will increase substantially as we:

- conduct our planned and ongoing clinical trials of ITIL-168 and ongoing clinical trial of ITIL-306, as well as initiate and complete additional clinical trials of future product candidates or current product candidates in new indications;
- continue to advance the preclinical and clinical development of our product candidates and our preclinical and discovery programs, including in our CoStAR platform;
- seek regulatory approval for any product candidates that successfully complete clinical trials;
- continue to develop our product candidate pipeline;
- scale up our clinical and regulatory capabilities;
- manufacture current good manufacturing practices, or cGMP, material for clinical trials or potential commercial sales at our manufacturing facilities;
- establish and validate a commercial-scale cGMP manufacturing facility;

- establish a commercialization infrastructure and scale up internal and external manufacturing and distribution capabilities to commercialize any product candidates for which we may obtain regulatory approval;
- adapt our regulatory compliance efforts to incorporate requirements applicable to marketed products;
- maintain, expand and protect our intellectual property portfolio;
- hire additional clinical, manufacturing quality control, regulatory, manufacturing and scientific and administrative personnel;
- add operational, financial and management information systems and personnel, including personnel to support our product development and planned future commercialization efforts; and
- incur additional legal, accounting and other expenses in operating as a public company.

To date, we have not generated any revenue from product sales. To become and remain profitable, we must succeed in developing and eventually commercializing product candidates that generate significant revenue. This will require us to be successful in a range of challenging activities, including completing preclinical testing and clinical trials of our product candidates, obtaining regulatory approval, and manufacturing, marketing and selling any product candidates for which we may obtain regulatory approval, as well as discovering and developing additional product candidates. We are only in the preliminary stages of most of these activities and all of our product candidates are in clinical or preclinical development. We may never succeed in these activities and, even if we do, may never generate any revenue or revenue that is significant enough to achieve profitability.

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

We have a limited operating history and no history of commercializing products, which may make it difficult for an investor to evaluate the success of our business to date and to assess our future viability.

We are a clinical-stage biopharmaceutical company with a limited operating history. We commenced operations in 2019, and our operations to date have been largely focused on organizing and staffing our company, business planning, raising capital, acquiring our technology and product candidates, acquiring our facilities in Tarzana, California, developing our manufacturing capabilities and developing our clinical and preclinical product candidates, including undertaking preclinical studies and conducting clinical trials. To date, we have not yet demonstrated our ability to successfully complete pivotal clinical trials, obtain regulatory approvals, manufacture a product on a commercial scale, or arrange for a third party to do so on our behalf, or conduct sales and marketing activities necessary for successful commercialization. Consequently, any predictions you make about our future success or viability may not be as accurate as they could be if we had a longer operating history or a history of successfully developing and commercializing products.

We may encounter unforeseen expenses, difficulties, complications, delays and other known or unknown factors in achieving our business objectives. We will need to develop commercial capabilities, and we may not be successful in doing so.

We will need substantial additional funding to meet our financial obligations and to pursue our business objectives. If we are unable to raise capital when needed, we could be forced to delay further development of our technologies or product candidates or curtail our planned operations and the pursuit of our growth strategy.

Our operations have consumed substantial amounts of cash since inception. Identifying and acquiring potential product candidates, conducting preclinical testing and clinical trials and developing manufacturing operations for our product candidates is a time-consuming, expensive and uncertain process that takes years to complete, and we

may never generate the necessary data or results required to obtain regulatory approval and achieve product sales. We expect to continue to incur significant expenses and operating losses over the next several years as we conduct clinical trials of our product candidates, initiate future clinical trials of our product candidates, advance our preclinical programs, build our manufacturing capabilities, seek marketing approval for any product candidates that successfully complete clinical trials and advance any of our other product candidates we may develop or otherwise acquire. In addition, our product candidates, if approved, may not achieve commercial success. Our revenue, if any, will be derived from sales of products that we do not expect to be commercially available for a number of years, if at all. If we obtain marketing approval for any product candidates that we develop or otherwise acquire, we expect to incur significant commercialization expenses related to product sales, marketing, distribution and manufacturing. We also expect an increase in our expenses associated with creating additional infrastructure to support operations as a public company. Accordingly, we will need to obtain substantial additional funding in order to continue our operations.

As of June 30, 2022, we had cash, cash equivalents, restricted cash, and marketable securities of $355.1 million, which consists of $42.5 million in cash and cash equivalents, $0.5 million in restricted cash, and $312.1 million in marketable securities. We believe that our existing cash and cash equivalents, marketable securities and expected proceeds from the completion of the anticipated sale-leaseback of our Tarzana, CA manufacturing site will be sufficient to fund our operating expenses and capital requirements into 2025. This estimate is based on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we expect. Changes may occur beyond our control that would cause us to consume our available capital before that time, including changes in and progress of our development activities, acquisitions of additional product candidates, and changes in regulation. Our future capital requirements will depend on many factors, including:

- the scope, progress, costs and results of discovery, preclinical development, laboratory testing and clinical trials for ITIL-168, ITIL-306 and future product candidates;
- the extent to which we develop, in-license or acquire other product candidates and technologies in our product candidate pipeline;
- the costs and timing of process development and manufacturing scale-up activities associated with our product candidates and other programs as we advance them through preclinical and clinical development;
- the number and development requirements of product candidates that we may pursue;
- our ability to complete the anticipated sale-leaseback of our Tarzana, CA facility;
- the costs, timing and outcome of regulatory review of our product candidates;
- our headcount growth and associated costs as we expand our research and development capabilities and establish a commercial infrastructure;
- the costs of establishing and maintaining our own commercial-scale cGMP manufacturing facility;
- the costs and timing of future commercialization activities, including product manufacturing, marketing, sales, and distribution, for any of our product candidates for which we receive marketing approval;
- the costs and timing of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending any intellectual property-related claims;
- the revenue, if any, received from commercial sales of our product candidates for which we receive marketing approval; and
- the costs of operating as a public company.

We will require additional capital to achieve our business objectives. Additional funds may not be available on a timely basis, on favorable terms, or at all, and such funds, if raised, may not be sufficient to enable us to continue to implement our long-term business strategy. Further, our ability to raise additional capital may be adversely impacted by worsening global economic conditions and the recent disruptions to and volatility in the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic, the ongoing armed conflict between Russia and Ukraine, rising inflation and interest rate increases, and supply chain disruptions, among other geopolitical and macroeconomic factors. If we are unable to raise sufficient additional capital, we could be forced to delay further development of our technologies or product candidates or curtail our planned operations and the pursuit of our growth strategy.

Raising additional capital may cause dilution to our stockholders, restrict our operations or require us to relinquish rights to technologies or product candidates.

Until such time, if ever, as we can generate substantial revenue, we may finance our cash needs through a combination of equity offerings, government or private party grants, debt financings and license and collaboration agreements. Other than our construction loans for the construction and development of our manufacturing facility in Tarzana, California, we do not currently have any other committed external source of funds. To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a common stockholder. Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. For example, the agreements governing our construction loans contain certain affirmative and negative covenants, including maintaining a specified minimum net worth and amount of liquid assets, which could limit our operations.

If we raise additional funds through collaborations, strategic alliances or marketing, distribution or licensing arrangements with third parties, we may be required to relinquish valuable rights to our technologies, future revenue streams or product candidates, grant licenses on terms that may not be favorable to us or commit to future payment streams. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

Risks Related to the Development of our Product Candidates

All of our product candidates are currently in clinical and preclinical development. If we are unable to successfully develop, receive regulatory approval for and commercialize our product candidates for the indications we seek, or successfully develop any other product candidates, or experience significant delays in doing so, our business will be harmed.

We currently have no products approved for commercial sale, and all of our product candidates are currently in clinical and preclinical development. To date, we have clinical experience in the context of a compassionate use program at a single clinical site with a TIL product that was manufactured using a prior version of the ITIL-168 manufacturing process. However, as an organization, we are early in the process of conducting our first multi-center clinical trials with centralized manufacturing, have no prior experience in conducting any clinical trials, have limited experience in preparing, submitting and prosecuting regulatory filings and have not previously submitted a biologics license application, or BLA, for any product candidate. Each of our programs and product candidates will require additional preclinical and/or clinical development, regulatory approval, obtaining manufacturing supply, capacity and expertise, building a commercial organization or successfully outsourcing commercialization, substantial investment and significant marketing efforts before we generate any revenue from product sales. We do not have any products that are approved for commercial sale, and we may never be able to develop or commercialize marketable products.

Our ability to generate revenue from our product candidates, which we do not expect will occur for several years, if ever, will depend heavily on the successful development, regulatory approval and eventual commercialization of our product candidates. The success of ITIL-168, ITIL-306 or any other product candidates that we develop or otherwise may acquire will depend on several factors, including:

- timely and successful completion of preclinical studies and clinical trials;
- effective INDs from the U.S. Food and Drug Administration, or the FDA, or comparable foreign applications that allow commencement of our planned clinical trials or future clinical trials for our product candidates;
- sufficiency of our financial and other resources to complete the necessary preclinical studies and clinical trials;
- successful enrollment and completion of clinical trials, including under the FDA's current Good Clinical Practices, or GCPs, and current Good Laboratory Practices;

- successful development of, or making arrangements with third-party manufacturers for, our commercial manufacturing processes for any of our product candidates that receive regulatory approval;
- receipt of timely marketing approvals from applicable regulatory authorities;
- launching commercial sales of products, if approved, whether alone or in collaboration with others;
- acceptance of the benefits and use of our products, including method of administration, if approved, by patients, the medical community and third-party payors, for their approved indications;
- the prevalence and severity of adverse events experienced with ITIL-168, ITIL-306 or any other product candidates;
- the availability, perceived advantages, cost, safety and efficacy of alternative therapies for any product candidate, and any indications for such product candidate, that we develop;
- our ability to produce ITIL-168, ITIL-306 or any other product candidates we develop on a commercial scale;
- obtaining and maintaining patent, trademark and trade secret protection and regulatory exclusivity for our product candidates and otherwise protecting our rights in our intellectual property portfolio;
- maintaining compliance with regulatory requirements, including cGMPs, and complying effectively with other procedures;
- obtaining and maintaining third-party coverage and adequate reimbursement and patients' willingness to pay out-of-pocket in the absence of such coverage and adequate reimbursement; and
- maintaining a continued acceptable safety, tolerability and efficacy profile of the products following approval.

If we are not successful with respect to one or more of these factors in a timely manner or at all, we could experience significant delays or an inability to successfully commercialize the product candidates we develop, which would materially harm our business. If we do not receive marketing approvals for any product candidate we develop, we may not be able to continue our operations.

Because ITIL-168, as well as ITIL-306 and any future product candidates developed from our CoStAR platform, represent novel approaches to the treatment of disease, there are many uncertainties regarding the development, market acceptance, third-party reimbursement coverage and commercial potential of our product candidates.

Human immunotherapy products are a new category of therapeutics, and to date, no TIL therapies have been approved by the FDA, EMA or other foreign regulatory authorities. Because this is a relatively new and expanding area of novel therapeutic interventions, there are many uncertainties related to development, marketing, reimbursement and the commercial potential for our product candidates. There can be no assurance as to the length of the trial period, the number of patients the FDA will require to be enrolled in the trials in order to establish the safety, efficacy, purity and potency of immunotherapy products or that the data generated in these trials will be acceptable to the FDA to support marketing approval. The FDA may take longer than usual to come to a decision on any BLA that we submit and may ultimately determine that there is not enough data, information, or experience with our product candidates to support an approval decision. The FDA may also require that we conduct additional post-marketing studies or implement risk management programs, such as Risk Evaluation and Mitigation Strategies, or REMS, until more experience with our product candidates is obtained. Finally, after increased usage, we may find that our product candidates do not have the intended effect or have unanticipated side effects, potentially jeopardizing initial or continuing regulatory approval and commercial prospects.

The success of our business depends in part upon our ability to develop engineered TIL therapies using our CoStAR platform. The CoStAR platform is novel and we have not completed a clinical trial of any product candidate developed using the CoStAR platform. The platform may fail to deliver TIL therapies that are effective in

the treatment of cancer. Even if we are able to identify and develop TIL therapies using the CoStAR platform, we cannot assure that such product candidates will achieve marketing approval to safely and effectively treat cancer.

If we uncover any previously unknown risks related to our CoStAR platform, or if we experience unanticipated problems or delays in developing our CoStAR product candidates, we may be unable to achieve our strategy of building a pipeline of TIL therapies.

We may also find that the manufacture of our product candidates is more difficult than anticipated, resulting in an inability to produce a sufficient amount of our product candidates for our clinical trials or, if approved, commercial supply.

There is no assurance that the approaches offered by our products will gain broad acceptance among doctors or patients or that governmental agencies or third-party medical insurers will be willing to provide reimbursement coverage for proposed product candidates. Since our current product candidates and any future product candidates will represent novel approaches to treating various conditions, it may be difficult, in any event, to accurately estimate the potential revenues from these product candidates. Accordingly, we may spend significant capital trying to obtain approval for product candidates that have an uncertain commercial market. The market for any products that we successfully develop will also depend on the cost of the product. We do not yet have sufficient information to reliably estimate what it will cost to commercially manufacture our current product candidates, and the actual cost to manufacture these products could materially and adversely affect the commercial viability of these products. Our goal is to reduce the cost of manufacturing and providing our product candidates. However, unless we can reduce those costs to an acceptable amount, we may never be able to develop a commercially viable product. If we do not successfully develop and commercialize products based upon our approach or find suitable and economical sources for materials used in the production of our products, we will not become profitable, which would materially and adversely affect the value of our common stock.

Our TIL therapies and our other therapies may be provided to patients in combination with other agents provided by third parties. The cost of such combination therapy may increase the overall cost of therapy and may result in issues regarding the allocation of reimbursements between our therapy and the other agents, all of which may affect our ability to obtain reimbursement coverage for the combination therapy from governmental or private third party medical insurers.

Preclinical studies and clinical trials are expensive, time-consuming, difficult to design and implement and involve an uncertain outcome. Further, we may encounter substantial delays in completing the development of our product candidates.

All of our product candidates are in clinical and preclinical development and their risk of failure is high. The clinical trials and manufacturing of our product candidates are, and the manufacturing and marketing of our products, if approved, will be, subject to extensive and rigorous review and regulation by numerous government authorities in the United States and in other countries where we intend to test and market our product candidates. Before obtaining regulatory approvals for the commercial sale of any of our product candidates, we must demonstrate through lengthy, complex and expensive preclinical testing and clinical trials that our product candidates are both safe and effective for use in each target indication. In particular, because our product candidates are subject to regulation as biological products, we will need to demonstrate that they are safe, pure and potent for use in their target indications. Each product candidate must demonstrate an adequate risk versus benefit profile in its intended patient population and for its intended use.

Clinical trials are expensive and can take many years to complete, and their outcomes are inherently uncertain. We cannot guarantee that our ongoing and any future clinical trials will be conducted as planned or completed on schedule, if at all. Failure can occur at any time during the clinical trial process. Even if our ongoing and any future clinical trials are completed as planned, we cannot be certain that their results will support the safety and effectiveness of our product candidates for their targeted indications or support continued clinical development of such product candidates. Our ongoing and any future clinical trials may not be successful.

In addition, even if such trials are successfully completed, we cannot guarantee that the FDA, EMA or other foreign regulatory authorities will interpret the results as we do, and more trials could be required before we submit our product candidates for approval. Moreover, results acceptable to support approval in one jurisdiction may be deemed inadequate by another regulatory authority to support regulatory approval in that other jurisdiction. To the extent that the results of the trials are not satisfactory to the FDA, EMA or other foreign regulatory authorities for support of a marketing application, we may be required to expend significant resources, which may not be available to us, to conduct additional trials in support of potential approval of our product candidates.

To date, we have not completed any clinical trials required for the approval of our product candidates. We may experience delays in conducting any clinical trials and we do not know whether our clinical trials will begin on time, need to be redesigned, recruit and enroll patients on time or be completed on schedule, or at all. Clinical trials can be delayed suspended or terminated for a variety of reasons, including in connection with:

- inability to generate sufficient preclinical, toxicology, or other in vivo or in vitro data to support the initiation of clinical trials;
- delays in sufficiently developing, characterizing or controlling a manufacturing process suitable for advanced clinical trials;
- delays in developing suitable assays for screening patients for eligibility for trials with respect to certain product candidates;
- delays in reaching agreement with the FDA, EMA or other regulatory authorities as to the design or implementation of our clinical trials;
- obtaining regulatory authorization to commence a clinical trial;
- reaching an agreement on acceptable terms with clinical trial sites or prospective contract research organizations, or CROs, the terms of which can be subject to extensive negotiation and may vary significantly among different clinical trial sites;
- obtaining institutional review board, or IRB, approval at each trial site;
- recruiting suitable patients to participate in a clinical trial;
- having patients complete a clinical trial or return for post-treatment follow-up;
- inspections of clinical trial sites or operations by applicable regulatory authorities, or the imposition of a clinical hold;
- clinical sites, CROs or other third parties deviating from trial protocol or dropping out of a trial;
- failure to perform in accordance with the applicable regulatory requirements, including FDA's GCP requirements, or applicable regulatory requirements in other countries;
- addressing patient safety concerns that arise during the course of a trial, including occurrence of adverse events associated with the product candidate that are viewed to outweigh its potential benefits;
- adding a sufficient number of clinical trial sites;
- manufacturing sufficient quantities of product candidate for use in clinical trials; or

- suspensions or terminations by IRBs of the institutions at which such trials are being conducted, by the Data Safety Monitoring Board, or DSMB, for such trial or by the FDA or other regulatory authorities due to a number of factors, including those described above.

We may experience numerous unforeseen events during, or as a result of, clinical trials that could delay or prevent our ability to receive marketing approval or commercialize our product candidates or significantly increase the cost of such trials, including:

- we may experience changes in regulatory requirements or guidance, or receive feedback from regulatory authorities that requires us to modify the design of our clinical trials;

- clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon development programs;
- the number of patients required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be slower than we anticipate or participants may drop out of these clinical trials at a higher rate than we anticipate;
- our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- we or our investigators might have to suspend or terminate clinical trials of our product candidates for various reasons, including non-compliance with regulatory requirements, a finding that our product candidates have undesirable side effects or other unexpected characteristics, or a finding that the participants are being exposed to unacceptable health risks;
- the cost of clinical trials of our product candidates may be greater than we anticipate and we may not have funds to cover the costs;
- the supply or quality of our product candidates or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate;
- regulators may revise the requirements for approving our product candidates, or such requirements may not be as we anticipate; and
- any future collaborators that conduct clinical trials may face any of the above issues, and may conduct clinical trials in ways they view as advantageous to them but that are suboptimal for us.

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 clinical trials of our product candidates 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:

- incur unplanned costs;
- be delayed in obtaining marketing approval for our product candidates or not obtain marketing approval at all;
- obtain marketing approval in some countries and not in others;
- obtain marketing approval for indications or patient populations that are not as broad as intended or desired;

- obtain marketing approval with labeling that includes significant use or distribution restrictions or safety warnings, including boxed warnings or REMS.
- be subject to additional post-marketing testing requirements;
- be subject to changes in the way the product is administered; or
- have regulatory authorities withdraw or suspend their approval of the product or to impose restrictions on its distribution after obtaining marketing approval.

We could encounter delays if a clinical trial is suspended or terminated by us, by the IRBs of the institutions in which such trials are being conducted, by the DSMB for such trial or by the FDA or other regulatory authorities. Such authorities may impose such a suspension or termination due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a drug, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial.

All of our product candidates will require extensive clinical testing before we are prepared to submit a BLA or marketing authorization application, or MAA, for regulatory approval. We cannot predict with any certainty if or when we might complete the clinical development for our product candidates and submit a BLA or MAA for regulatory approval of any of our product candidates or whether any such BLA or MAA will be approved. We may also seek feedback from the FDA, EMA or other regulatory authorities on our clinical development program, and the FDA, EMA or such regulatory authorities may not provide such feedback on a timely basis, or such feedback may not be favorable, which could further delay our development programs.

We cannot predict with any certainty whether or when we might complete a given clinical trial. If we experience delays in the commencement or completion of our clinical trials, or if we terminate a clinical trial prior to completion, the commercial prospects of our product candidates could be harmed, and our ability to generate revenues from our product candidates may be delayed or lost. In addition, any delays in our clinical trials could increase our costs, slow down the development and approval process and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and results of operations. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

We have received Fast Track designation for ITIL-168 for the treatment of metastatic melanoma, and we may seek Fast Track designation for other product candidates. Even if received, Fast Track designation may not actually lead to a faster review or approval process and does not increase the likelihood that our product candidates will receive marketing approval.

We have received Fast Track designation for ITIL-168 for the treatment of metastatic melanoma, and we may seek Fast Track designation for our other product candidates. If a drug or biologic is intended for the treatment of a serious or life-threatening condition and the product demonstrates the potential to address unmet medical needs for this condition, the sponsor may apply for FDA Fast Track designation for a particular indication. There is no assurance that the FDA will grant this status to any of our other product candidates. If granted, Fast Track designation makes a product eligible for more frequent interactions with FDA to discuss the development plan and clinical trial design, as well as rolling review of the application, which means that the company can submit completed sections of its marketing application for review prior to completion of the entire submission. Marketing applications of product candidates with Fast Track designation may qualify for priority review under the policies and procedures offered by the FDA, but the Fast Track designation does not assure any such qualification or ultimate marketing approval by the FDA. The FDA has broad discretion whether or not to grant Fast Track designation, so even if we believe a particular product candidate is eligible for this designation, there can be no assurance that the FDA would decide to grant it. Even if we do receive Fast Track designation, we may not experience a faster

development process, review or approval compared to conventional FDA procedures, and receiving a Fast Track designation does not provide any assurance of ultimate FDA approval. In addition, the FDA may withdraw Fast Track designation at any time if it believes that the designation is no longer supported by data from our clinical development program.

The regulatory approval processes of the FDA, EMA and comparable foreign authorities are lengthy, time consuming and inherently unpredictable. If we are not able to obtain required regulatory approval for our product candidates, our business will be substantially harmed.

The time required to obtain approval or other marketing authorizations by the FDA, EMA and comparable foreign authorities is unpredictable, and it typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, approval policies, regulations, and the type and amount of clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions. We have not obtained regulatory approval for any product candidate, and it is possible that we may never obtain regulatory approval for any product candidates we may seek to develop in the future. Neither we nor any current or future collaborator is permitted to market any drug product candidates in the United States until we receive regulatory approval of a BLA from the FDA, and we cannot market them in the European Union until we receive approval for a MAA from the EMA, or in other foreign countries until we receive the required regulatory approval in such other countries. To date, we have had only limited discussions with the FDA, EMA and the Medicines and Healthcare products Regulatory Agency, or MHRA, regarding clinical development programs or regulatory approval for any product candidate within the United States, European Union and United Kingdom, respectively. In addition, we have had no discussions with other comparable foreign authorities regarding clinical development programs or regulatory approval for any product candidate outside of those jurisdictions.

Prior to obtaining approval to commercialize any drug product candidate in the United States or abroad, we must demonstrate with substantial evidence from well-controlled clinical trials, and to the satisfaction of the FDA, EMA or other comparable foreign regulatory agencies, that such product candidates are safe, pure and effective for their intended uses. Results from preclinical studies and clinical trials can be interpreted in different ways. Even if we believe the preclinical or clinical data for our product candidates are promising, such data may not be sufficient to support approval by the FDA and other regulatory authorities. The FDA may also require us to conduct additional preclinical studies or clinical trials for our product candidates either prior to or after approval, or it may object to elements of our clinical development programs.

Our product candidates could fail to receive regulatory approval for many reasons, including the following:

- the FDA or comparable foreign regulatory authorities may disagree with the design or implementation of our clinical trials;
- we may be unable to demonstrate to the satisfaction of the FDA or comparable foreign regulatory authorities that a product candidate is safe and effective for its proposed indication;
- the results of clinical trials may not meet the level of statistical significance required by the FDA or comparable foreign regulatory authorities for approval;
- we may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks;
- the FDA or comparable foreign regulatory authorities may fail to approve the manufacturing processes or facilities of third-party manufacturers with which we contract for clinical and commercial supplies; and
- the approval policies or regulations of the FDA or comparable foreign authorities may significantly change in a manner rendering our clinical data insufficient for approval.

Of the large number of products in development, only a small percentage successfully complete the FDA or foreign regulatory approval processes and are commercialized. The lengthy approval and marketing authorization process as well as the unpredictability of future clinical trial results may result in our failing to obtain regulatory approval and marketing authorization to market our product candidates, which would significantly harm our business, financial condition, results of operations and prospects.

We have invested a significant portion of our time and financial resources in the development of our clinical and preclinical product candidates. Our business is dependent on our ability to successfully complete preclinical and clinical development of, obtain regulatory approval for, and, if approved, successfully commercialize ITIL-168, ITIL-306 and any future product candidates in a timely manner.

Even if we eventually complete clinical testing and receive approval of a BLA or foreign marketing application for ITIL-168, ITIL-306 or any future product candidates, the FDA, EMA or the applicable foreign regulatory agency may grant approval or other marketing authorization contingent on the performance of costly additional clinical trials, including post-marketing clinical trials. The FDA, EMA or the applicable foreign regulatory agency also may approve or authorize for marketing a product candidate for a more limited indication or patient population than we originally request, and the FDA, EMA or applicable foreign regulatory agency may not approve or authorize the labeling that we believe is necessary or desirable for the successful commercialization of a product candidate. Any delay in obtaining, or inability to obtain, applicable regulatory approval or other marketing authorization would delay or prevent commercialization of that product candidate and would materially adversely impact our business and prospects.

In addition, the FDA, EMA and other regulatory authorities may change their policies, issue additional regulations or revise existing regulations, or take other actions, which may prevent or delay approval of our future products under development on a timely basis. Such policy or regulatory changes could impose additional requirements upon us that could delay our ability to obtain approvals, increase the costs of compliance or restrict our ability to maintain any marketing authorizations we may have obtained.

Success in preclinical studies or earlier clinical trials, including the compassionate use program, may not be indicative of results in future clinical trials. Our product candidates may not have favorable results in later clinical trials, if any, or receive regulatory approval.

Success in preclinical testing and early clinical trials, including the compassionate use program, does not ensure that later clinical trials will generate the same results or otherwise provide adequate data to demonstrate the efficacy and safety of a product candidate. Preclinical tests and Phase 1 and Phase 2 clinical trials are primarily designed to test safety, to study pharmacokinetics and pharmacodynamics and to understand the side effects of product candidates at various doses and schedules. Success in preclinical or animal studies and early clinical trials does not ensure that later large-scale efficacy trials will be successful nor does it predict final results. For example, we may be unable to identify suitable animal disease models for our product candidates, which could delay or frustrate our ability to proceed into clinical trials or obtain marketing approval. Our product candidates may fail to show the desired safety and efficacy in clinical development despite having progressed through preclinical studies and initial clinical trials.

Many companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in late-stage clinical trials even after achieving promising results in preclinical testing and earlier-stage clinical trials. Data obtained from preclinical and clinical activities are subject to varying interpretations, which may delay, limit or prevent regulatory approval. In addition, we may experience regulatory delays or rejections as a result of many factors, including changes in regulatory policy during the period of our product candidate development. Any such delays could negatively impact our business, financial condition, results of operations and prospects.

Interim, "top-line" and preliminary results from our clinical trials that we announce or publish from time to time may change as more 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 publish interim, top-line or preliminary results from our clinical trials. Interim results 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 continues and more patient data become available. Preliminary or top-line results 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, interim and preliminary data should be viewed with caution until the final data are available. Differences between preliminary, top-line or interim data and final data could significantly harm our business prospects and may cause the trading price of our common stock to fluctuate significantly. 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 top-line 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.

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 development 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. Any information we determine not to disclose may ultimately be deemed meaningful by you or others with respect to future decisions, conclusions, views, activities or otherwise regarding a particular product candidate or our business. If the interim, top-line or preliminary 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, product candidates may be harmed, which could significantly harm our business prospects.

Our preclinical studies and clinical trials may fail to demonstrate substantial evidence of the safety and efficacy of our product candidates, or serious adverse or unacceptable side effects may be identified during the development of our product candidates, which could prevent, delay or limit the scope of regulatory approval of our product candidates, limit their commercialization, increase our costs or necessitate the abandonment or limitation of the development of some of our product candidates.

To obtain the requisite regulatory approvals for the commercial sale of our product candidates, we must demonstrate through lengthy, complex and expensive preclinical testing and clinical trials that our product candidates are safe, pure and potent for use in each target indication. These trials are expensive and time consuming, and their outcomes are inherently uncertain. Failures can occur at any time during the development process. Preclinical studies and clinical trials often fail to demonstrate safety or efficacy of the product candidate studied for the target indication, and most product candidates that begin clinical trials are never approved.

We may fail to demonstrate with substantial evidence from adequate and well-controlled trials, and to the satisfaction of the FDA or comparable foreign regulatory authorities, that our product candidates are safe and potent for their intended uses.

Possible adverse side effects that could occur with treatment with cell therapy products include thrombocytopenia, chills, anemia, pyrexia, febrile neutropenia, diarrhea, neutropenia, vomiting, hypotension, dyspnea, cytokine release syndrome and neurotoxicity. If our product candidates are associated with undesirable effects in preclinical studies or clinical trials or have characteristics that are unexpected, we may decide or be required to perform additional preclinical studies or to halt or delay further clinical development of our product candidates or to limit their development to more narrow uses or subpopulations in which the undesirable side effects or other characteristics are less prevalent, less severe, or more acceptable from a risk-benefit perspective, which may limit the commercial expectations for the product candidate, if approved. These side effects may not be appropriately recognized or managed by the treating medical staff, as toxicities resulting from personalized cell therapy, as with our TIL product candidates, are not normally encountered in the general patient population and by medical personnel. Further, patients in the United Kingdom have been treated under a compassionate use program with a TIL product that was manufactured using a prior version of the ITIL-168 manufacturing process. To the extent the experiences of patients being treated in this program are inconsistent with the results of our ongoing company-sponsored trials of ITIL-168, it may negatively affect perceptions of ITIL-168 or our business. In addition,

the FDA, EMA or other foreign regulatory authorities may require us to obtain and submit additional nonclinical data supporting the comparability of our ITIL-168 product candidate with the TIL product evaluated in the compassionate use study in the United Kingdom, or may not permit us to rely on the data from the compassionate use program to support the development of ITIL-168 at all, which could delay clinical development or marketing approval of ITIL-168.

If any such adverse events occur, our clinical trials could be suspended or terminated. If we cannot demonstrate that any adverse events were not caused by the drug, the FDA, EMA or foreign regulatory authorities could order us to cease further development of, or deny approval of, our product candidates for any or all targeted indications. Even if we are able to demonstrate that all future serious adverse events are not product-related, such occurrences could affect patient recruitment or the ability of enrolled patients to complete the trial. Moreover, if we elect, or are required, to not initiate, delay, suspend or terminate any future clinical trial of any of our product candidates, the commercial prospects of such product candidates may be harmed and our ability to generate product revenues from any of these product candidates may be delayed or eliminated. Any of these occurrences may harm our ability to develop other product candidates, and may harm our business, financial condition and prospects significantly.

If our product candidates are associated with side effects in clinical trials or have characteristics that are unexpected, we may need to abandon their development or limit development to more narrow uses in which the side effects or other characteristics are less prevalent, less severe or more acceptable from a risk-benefit perspective. The FDA or an IRB may also require that we suspend, discontinue, or limit our clinical trials based on safety information, or that we conduct additional animal or human studies regarding the safety and efficacy of our product candidates which we have not planned or anticipated. Such findings could further result in regulatory authorities failing to provide marketing authorization for our product candidates or limiting the scope of the approved indication, if approved. Many product candidates that initially showed promise in early stage testing have later been found to cause side effects that prevented further development of the product candidate.

Additionally, if one or more of our product candidates receives marketing approval, and we or others identify undesirable side effects caused by such products, a number of potentially significant negative consequences could result, including:

- regulatory authorities may suspend, withdraw or limit approvals of such product, or seek an injunction against its manufacture or distribution;
- regulatory authorities may require additional warnings on the label;
- we may be required to create a medication guide outlining the risks of such side effects for distribution to patients or other requirements subject to a REMS;
- we may be required to change the way a product is administered or conduct additional trials;
- we could be sued and held liable for harm caused to patients;
- we may decide to remove the product from the market;
- we may not be able to achieve or maintain third-party payor coverage and adequate reimbursement;
- we may be subject to fines, injunctions or the imposition of civil or criminal penalties; and
- our reputation and physician or patient acceptance of our products may suffer.

There can be no assurance that we will resolve any issues related to any product-related adverse events to the satisfaction of the FDA or foreign regulatory agency in a timely manner or at all. Moreover, any of these events

could prevent us from achieving or maintaining market acceptance of the particular product candidate, if approved, and could significantly harm our business, results of operations and prospects.

Negative public opinion of TIL therapies and increased regulatory scrutiny of cell therapy using TILs may adversely impact the development or commercial success of our current and future product candidates.

The clinical and commercial success of our TIL therapies will depend in part on public acceptance of the use of cell therapy using TILs. Any adverse public attitudes about the use of TIL therapies may adversely impact our ability to enroll clinical trials. Moreover, our success will depend upon physicians prescribing, and their patients being willing to receive, treatments that involve the use of product candidates we may develop in lieu of, or in addition to, existing treatments with which they are already familiar and for which greater clinical data may be available.

More restrictive government regulations or negative public opinion would have a negative effect on our business or financial condition and may delay or impair the development and commercialization of our product candidates or demand for any products once approved. Adverse events in our or others' clinical trials, even if not ultimately attributable to our product candidates, and the resulting publicity could result in increased governmental regulation, unfavorable public perception, potential regulatory delays in the testing or approval of our product candidates, stricter labeling requirements for those product candidates that are approved and a decrease in demand for any such product candidates, all of which would have a negative impact on our business and operations.

As an organization, we are early in the process of conducting our first clinical trials, have no prior experience in conducting clinical trials, and may be unable to complete clinical trials for any product candidates we may develop, including ITIL-168 and ITIL-306. Further, the FDA, EMA or other foreign regulatory authorities may require us to obtain and submit additional nonclinical data supporting the comparability of ITIL-168 with the TIL product that was evaluated in the compassionate use program in the United Kingdom that was manufactured using a prior version of the ITIL-168 manufacturing process, or may not permit us to rely on the data from the compassionate use program to support the development of ITIL-168 at all, which could delay clinical development or marketing approval of ITIL-168.

We are early in our development efforts for our product candidates, and will need to successfully complete our ongoing and planned clinical trials, including pivotal clinical trials, in order to obtain FDA approval to market any of our product candidates. Carrying out clinical trials and the submission of a successful BLA is a complicated process. As an organization, we are early in the process of conducting our first multi-center clinical trials with centralized manufacturing, have no prior experience in conducting any clinical trials, have limited experience in preparing regulatory submissions and have not previously submitted a BLA for any product candidate. We have only previously treated patients with our TIL product in a compassionate use program. In addition, we have had limited interactions with the FDA and cannot be certain how many additional clinical trials of our product candidates will be required or how such trials should be designed. Consequently, we may be unable to successfully and efficiently execute and complete necessary clinical trials in a way that leads to BLA submission and approval of any product candidate. We may require more time and incur greater costs than our competitors and may not succeed in obtaining regulatory approvals of product candidates that we develop. Failure to commence or complete, or delays in, our planned clinical trials, could prevent us from or delay us in commercializing our product candidates.

We may experience delays or difficulties in the enrollment and/or retention of patients in clinical trials, which could delay or prevent our receipt of necessary regulatory approvals.

Successful and timely completion of clinical trials will require that we enroll a sufficient number of patients. Patient enrollment, a significant factor in the timing of clinical trials, is affected by many factors, including the size and nature of the patient population and competition for patients eligible for our clinical trials with competitors which may have ongoing clinical trials for product candidates that are under development to treat the same indications as one or more of our product candidates, or approved products for the conditions for which we are developing our product candidates.

Trials may be subject to delays as a result of patient enrollment taking longer than anticipated or patient withdrawal. We may not be able to initiate or continue clinical trials for our product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in these trials as required by the FDA or foreign regulatory authorities. We cannot predict how successful we will be at enrolling subjects in future clinical trials. Subject enrollment is affected by other factors including:

- the severity and difficulty of diagnosing the disease under investigation;
- the eligibility and exclusion criteria for the trial in question;
- the size of the patient population and process for identifying patients;
- our ability to recruit clinical trial investigators with the appropriate competencies and experience;
- the design of the trial protocol;
- the perceived risks and benefits of the product candidate in the trial, including relating to cell therapy approaches;
- the availability of competing commercially available therapies and other competing therapeutic candidates' clinical trials for the disease or condition under investigation;
- the willingness of patients to be enrolled in our clinical trials;
- the efforts to facilitate timely enrollment in clinical trials;
- potential disruptions caused by the COVID-19 pandemic, including difficulties in initiating clinical sites, enrolling and retaining participants, diversion of healthcare resources away from clinical trials, travel or quarantine policies that may be implemented, and other factors;
- the patient referral practices of physicians;
- the ability to monitor patients adequately during and after treatment; and
- the proximity and availability of clinical trial sites for prospective patients.

Our inability to enroll a sufficient number of patients for clinical trials would result in significant delays and could require us to abandon one or more clinical trials altogether. Enrollment delays in these clinical trials may result in increased development costs for our product candidates, which would cause the value of our company to decline and limit our ability to obtain additional financing. Furthermore, we expect to rely on CROs and clinical trial sites to ensure the proper and timely conduct of our clinical trials and we will have limited influence over their performance.

Furthermore, even if we are able to enroll a sufficient number of patients for our clinical trials, we may have difficulty maintaining enrollment of such patients in our clinical trials.

We have received orphan drug designation for ITIL-168 for the treatment of malignant melanoma stages IIB to IV and may seek orphan drug designation for future product candidates. We may be unsuccessful, or may be unable to maintain the benefits associated with orphan drug designation, including the potential for market exclusivity, for product candidates for which we obtain orphan drug designation.

We have obtained orphan drug designation for ITIL-168 for the treatment of malignant melanoma stages of IIB to IV and may seek orphan drug designation for some or all of our product candidates in specific orphan indications in which there is a medically plausible basis for the use of these product candidates. Under the Orphan

Drug Act, the FDA may grant orphan drug designation to a drug or biologic intended to treat a rare disease or condition, defined as a patient population of fewer than 200,000 individuals in the United States, or a patient population of 200,000 or more in the United States where there is no reasonable expectation that the cost of developing and making available the drug or biologic will be recovered from sales in the United States. Orphan drug designation must be requested before submitting a BLA. Although we may seek orphan drug designation for some or all of our product candidates, we may never receive such designations.

In the United States, orphan drug designation entitles a party to financial incentives such as tax advantages and user fee waivers. Opportunities for grant funding toward clinical trial costs may also be available for clinical trials of drugs or biologics for rare diseases, regardless of whether the drugs or biologics are designated for the orphan use.

In addition, if a drug or biologic with an orphan drug designation subsequently receives the first marketing approval for a particular active ingredient or principal molecular structural features for the indication for which it has such designation, the product is entitled to a seven year period of marketing exclusivity, which precludes the FDA from approving another marketing application for the same drug and indication for that time period, except in limited circumstances such as a showing of clinical superiority to the product with orphan drug exclusivity or if the FDA finds that the holder of the orphan drug exclusivity has not shown that it can ensure the availability of sufficient quantities of the orphan product to meet the needs of patients with the disease or condition for which the drug was designated. Even if we obtain orphan drug designation for a product candidate, we may not be the first to obtain marketing approval for any particular orphan indication due to the uncertainties associated with developing biological products. If we seek orphan drug designation, we may be unsuccessful in obtaining such orphan drug designation for our product candidates. Even if we obtain orphan drug exclusivity for any of our product candidates, we may be unable to maintain the benefits associated with orphan drug designation, or such orphan drug exclusivity may not effectively protect those product candidates from competition because different drugs can be approved for the same condition, and orphan drug exclusivity does not prevent the FDA from approving the same or a different drug in another indication. Even after an orphan drug is granted orphan drug exclusivity and approved, the FDA can subsequently approve a later application for the same drug for the same condition before the expiration of the seven-year exclusivity period if the FDA concludes that the later drug is clinically superior in that it is shown to be safer in a substantial portion of the target populations, more effective or makes a major contribution to patient care. In addition, a designated orphan drug may not receive orphan drug exclusivity if it is approved for a use that is broader than the indication for which it received orphan drug designation. Moreover, orphan-drug-exclusive marketing rights in the United States may be lost if the FDA later determines that the request for designation was materially defective or that we are unable to manufacture sufficient quantities of the product to meet the needs of patients with the rare disease or condition. Orphan drug designation neither shortens the development time or regulatory review time of a drug nor gives the drug any advantage in the regulatory review or approval process.

Breakthrough therapy designation by the FDA for any product candidate may not lead to a faster development or regulatory review or approval process, and it does not increase the likelihood that the product candidate will receive marketing approval.

We may, in the future, apply for breakthrough therapy designation, or the equivalent thereof in foreign jurisdictions (where available), for our product candidates. A breakthrough therapy is defined as a product candidate that is intended, alone or in combination with one or more other drugs, to treat a serious or life-threatening disease or condition, and preliminary clinical evidence indicates that the product candidate may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. For product candidates that have been designated as breakthrough therapies, interaction and communication between the FDA and the sponsor of the trial can help to identify the most efficient path for clinical development while minimizing the number of patients placed in ineffective control regimens. Product candidates designated as breakthrough therapies by the FDA are also eligible for priority review if supported by clinical data at the time of the submission of the BLA.

Designation as a breakthrough therapy is within the discretion of the FDA. Accordingly, even if we believe that one of our product candidates meets the criteria for designation as a breakthrough therapy, the FDA may disagree and instead determine not to make such designation. In any event, the receipt of a breakthrough therapy

designation for a product candidate may not result in a faster development process, review or approval compared to product candidates considered for approval under conventional FDA procedures and it would not assure ultimate approval by the FDA. In addition, even if one or more of our product candidates qualify as breakthrough therapies, the FDA may later decide that the product candidate no longer meets the conditions for qualification or it may decide that the time period for FDA review or approval will not be shortened.

We may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications that may be more profitable or for which there is a greater likelihood of success.

Because we have limited financial and management resources, we must focus on development programs and product candidates that we identify for specific indications. As such, we are currently primarily focused on the development of ITIL-168 for the treatment of PD-1-inhibitor-relapsed or refractory advanced cutaneous melanoma. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications for these product candidates that later prove to have greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future development programs and product candidates for specific indications may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such product candidate.

We plan to conduct and may in the future conduct additional clinical trials for our product candidates outside the United States, and the FDA and similar foreign regulatory authorities may not accept data from such trials conducted in locations outside of their jurisdiction.

We may choose to conduct clinical trials outside the United States, including in Australia, Canada, Europe or other foreign jurisdictions. While the majority of the trial sites for our Phase 2 clinical trial of ITIL-168 for the treatment of advanced cutaneous melanoma are located in the United States, one trial site is located in Canada. The acceptance of trial data from clinical trials conducted outside the United States by the FDA may be subject to certain conditions or may not be accepted at all. In cases where data from clinical trials conducted outside the United States are intended to serve as the sole basis for marketing approval in the United States, the FDA will generally not approve the application on the basis of foreign data alone unless (i) the data are applicable to the United States population and United States medical practice; (ii) the trials were performed by clinical investigators of recognized competence and (iii) the data may be considered valid without the need for an on-site inspection by the FDA or, if the FDA considers such an inspection to be necessary, the FDA is able to validate the data through an on-site inspection or other appropriate means. Additionally, the FDA's clinical trial requirements, including sufficient size of patient populations and statistical powering, must be met. Many foreign regulatory bodies have similar approval requirements. In addition, such foreign trials would be subject to the applicable local laws of the foreign jurisdictions where the trials are conducted. There can be no assurance that the FDA or any similar foreign regulatory authority will accept data from trials conducted outside of the United States or the applicable jurisdiction. If the FDA or any similar foreign regulatory authority does not accept such data, it would result in the need for additional trials, which would be costly and time-consuming and delay aspects of our business plan, and which may result in our product candidates not receiving approval or clearance for commercialization in the applicable jurisdiction.

We may not be successful in our efforts to build a pipeline of additional product candidates.

We may not be able to continue to identify and develop new product candidates in addition to our current pipeline. Even if we are successful in continuing to build our pipeline, the potential product candidates that we identify may not be suitable for clinical development. For example, product candidates may be shown to have harmful side effects or other characteristics that indicate that they are unlikely to be successfully developed, much less receive marketing approval and achieve market acceptance. If we do not successfully develop and commercialize product candidates based upon our approach, we will not be able to obtain product revenue in future periods, which likely would result in significant harm to our financial position and adversely affect our stock price.

If we do not achieve our projected development goals in the time frames we announce and expect, the commercialization of our products may be delayed.

From time to time, we may estimate the timing of the accomplishment of various scientific, clinical, regulatory, manufacturing and other product development goals, which we sometimes refer to as milestones. These milestones may include the commencement or completion of preclinical studies and clinical trials and the submission of regulatory filings. From time to time, we may publicly announce the expected timing of some of these milestones. All of these milestones are, and will be, based on a variety of assumptions. The actual timing of these milestones can vary significantly compared to our estimates, in some cases for reasons beyond our control. We may experience numerous unforeseen events during, or as a result of, any future clinical trials that we conduct that could delay or prevent our ability to receive marketing approval or commercialize our product candidates.

Our business and operations may be adversely affected by the evolving and ongoing COVID-19 global pandemic.

Our business and operations may be adversely affected by the effects of the evolving and ongoing COVID-19 pandemic. The COVID-19 pandemic has resulted in travel and other restrictions in order to reduce the spread of the disease, including public health directives and orders in the United States and the European Union. Future remote work policies and similar government orders or other restrictions on the conduct of business operations related to the COVID-19 pandemic may negatively impact productivity and may disrupt our ongoing research and development activities and our clinical programs and timelines, the magnitude of which will depend, in part, on the length and severity of the restrictions and other limitations on our ability to conduct our business in the ordinary course. Further, such orders also may impact the availability or cost of materials, which would disrupt our supply chain and manufacturing efforts and could affect our ability to conduct ongoing and planned clinical trials and preparatory activities.

Although our planned clinical trials have not been impacted by the COVID-19 pandemic to date, we may experience related disruptions in the future that could severely impact our clinical trials, including:

- delays, difficulties or a suspension in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- interruptions in our ability to manufacture and deliver drug supply for trials;
- diversion of healthcare resources away from the conduct of clinical trials, including the diversion of hospitals serving as our clinical trial sites and hospital staff supporting the conduct of our clinical trials;
- changes in local regulations as part of a response to the COVID-19 outbreak that may require us to change the ways in which our clinical trials are conducted, which may result in unexpected costs, or to discontinue the clinical trials altogether;
- interruption of key clinical trial activities, such as clinical trial site monitoring, and the ability or willingness of subjects to travel to trial sites due to limitations on travel imposed or recommended by federal or state governments, employers and others;
- limitations in employee resources that would otherwise be focused on the conduct of our clinical trials, including because of sickness of employees or their families or the desire of employees to avoid contact with large groups of people;
- delays in necessary interactions with local regulators, ethics committees and other important agencies and contractors due to limitations in employee resources or forced furlough of government employees; and

- refusal of the FDA to accept data from clinical trials in these affected geographies.

The spread of COVID-19, including the emergence and spread of the Omicron variant and its various subvariants, which have caused a broad impact globally, may materially affect us economically. While the potential economic impact brought by, and the duration of, the COVID-19 pandemic may be difficult to assess or predict, the global pandemic has already resulted in significant disruption of global financial markets, and could in the future reduce our ability to access capital, which could negatively affect our liquidity. In addition, a recession or market correction resulting from the spread of COVID-19 or otherwise could materially affect our business and the value of our common stock.

The global COVID-19 pandemic continues to rapidly evolve. The extent to which the COVID-19 pandemic impacts our business and operations, including our clinical development and regulatory efforts, will depend on future developments that are highly uncertain and cannot be predicted with confidence at the time of this Quarterly Report on Form 10-Q, such as the ultimate geographic spread of the disease, the duration of the outbreak, the duration and effect of business disruptions and the short-term effects and ultimate effectiveness of the vaccine mandates and other measures in the United States and other countries to contain and treat the disease. Accordingly, we do not yet know the full extent of potential delays or impacts on our business, our clinical and regulatory activities, healthcare systems or the global economy as a whole. However, these impacts could adversely affect our business, financial condition, results of operations and growth prospects.

In addition, to the extent the ongoing COVID-19 pandemic adversely affects our business and results of operations, it may also have the effect of heightening many of the other risks and uncertainties described in this "Risk Factors" section.

The market opportunities for any current or future product candidate we develop, if approved, may be limited to those patients who are ineligible for established therapies or for whom prior therapies have failed, and may be small.

Any revenue we are able to generate in the future from product sales will be dependent, in part, upon the size of the market in the United States and any other jurisdiction for which we gain regulatory approval and have commercial rights. If the markets or patient subsets that we are targeting are not as significant as we estimate, we may not generate significant revenues from sales of such products, even if approved.

Cancer therapies are sometimes characterized as first-line, second-line or third-line, and the FDA often approves new therapies initially only for third-line use. When cancer is detected early enough, first-line therapy, usually chemotherapy, immunotherapy, hormone therapy, surgery, radiation therapy or a combination of these, is sometimes adequate to cure the cancer or prolong life without a cure. Second- and third-line therapies are administered to patients when prior therapy is not effective. We may initially seek approval for ITIL-168, ITIL-306 and any other product candidates we develop as a therapy for patients who have received one or more prior treatments. If we do so, for those products that prove to be sufficiently beneficial, if any, we would expect to seek approval potentially as a first-line therapy, but there is no guarantee that any product candidate we develop, even if approved, would be approved for first-line therapy, and, prior to any such approvals, we may have to conduct additional clinical trials.

The number of patients who have the types of cancer we are targeting may turn out to be lower than expected. Additionally, the potentially addressable patient population for our current or future product candidates may be limited, if and when approved. Further, even if any of our product candidates are approved by the FDA or comparable foreign regulators, their approved indications may be limited to a subset of the indications that we targeted. Even if we obtain significant market share for any product candidate, if and when approved, if the potential target populations are small, we may never achieve profitability without obtaining marketing approval for additional indications, including to be used as first- or second-line therapy.

We may develop ITIL-168, ITIL-306 and future product candidates for use in combination with other therapies or third party product candidates, which exposes us to additional regulatory risks.

We recently initiated a Phase 1 clinical trial to evaluate ITIL-168 with pembrolizumab for the treatment of non-small cell lung cancer, cervical cancer and squamous cell carcinoma of head and neck in patients who have failed standard therapies, and we may develop ITIL-168, ITIL-306 and future product candidates for use in combination with one or more currently approved cancer therapies. Even if any product candidate we develop were to receive marketing approval or be commercialized for use in combination with other existing therapies, we would continue to be subject to the risk that the FDA, EMA or comparable foreign regulatory authorities could revoke approval of the therapy used in combination with our product candidate or that safety, efficacy, manufacturing or supply issues could arise with these existing therapies. This could result in our own products being removed from the market or being less successful commercially. Combination therapies are commonly used for the treatment of cancer, and we would be subject to similar risks if we develop any of our product candidates for use in combination with other drugs or for indications other than cancer.

We may also evaluate ITIL-168, ITIL-306 or any future product candidate in combination with one or more other third party product candidates that have not yet been approved for marketing by the FDA, EMA or comparable foreign regulatory authorities. If so, we will not be able to market and sell ITIL-168, ITIL-306 or any product candidate we develop in combination with any such unapproved cancer therapies that do not ultimately obtain marketing approval.

If the FDA or comparable foreign regulatory authorities do not approve these other biological products or revoke their approval of, or if safety, efficacy, manufacturing or supply issues arise with, the biologics we choose to evaluate in combination with ITIL-168, ITIL-306 or any product candidate we develop, we may be unable to obtain approval of or market any such product candidate.

The United Kingdom's withdrawal from the European Union may have a negative effect on global economic conditions, financial markets and our business.

Following the result of a referendum in 2016, the United Kingdom left the European Union on January 31, 2020, commonly referred to as Brexit. Pursuant to the formal withdrawal arrangements agreed to by the United Kingdom and the European Union, as of January 1, 2021, the United Kingdom is no longer subject to the transition period, or the Transition Period, during which European Union rules continued to apply. A trade and cooperation agreement, or the Trade and Cooperation Agreement, that outlines the post-Transition Period trading relationship between the United Kingdom and the European Union was agreed to in December 2020 and formally entered into force on May 1, 2021.

We have significant operations in the United Kingdom. Further, since a significant proportion of the regulatory framework in the United Kingdom is applicable to our business and our product candidates is derived from European Union directives and regulations, Brexit has had, and will continue to have, a material impact on the regulatory regime with respect to the development, manufacture, importation, approval and commercialization of our product candidates in the United Kingdom or the European Union. For example, Great Britain is no longer covered by the centralized procedures for obtaining EU-wide marketing authorizations from the EMA, and a separate marketing authorization will be required to market our product candidates in Great Britain. Any delay in obtaining, or an inability to obtain, any marketing approvals, as a result of Brexit or otherwise, would delay or prevent us from commercializing our product candidates in the United Kingdom and limit our ability to generate revenue and achieve and sustain profitability. While the Trade and Cooperation Agreement provides for the tariff-free trade of medicinal products between the United Kingdom and the European Union, there are additional non-tariff costs to such trade that did not exist prior to the end of the Transition Period and frequent delays in the transit of goods between the United Kingdom and the European Union. Further, should the United Kingdom diverge from the European Union from a regulatory perspective in relation to medicinal products, tariffs could be put into place in the future, and we may incur expenses in establishing a manufacturing facility in the European Union in order to circumvent such hurdles or incur significant additional expenses to operate our business, which could significantly and materially harm or delay our ability to generate revenues or achieve profitability of our business. Any further changes in international trade, tariff and import/export regulations as a result of Brexit or otherwise may impose unexpected duty costs or other non-tariff barriers on us. These developments, or the perception that any of them could occur, may significantly reduce global trade and, in particular, trade between the impacted nations and the United Kingdom. It is also possible that Brexit may negatively affect our ability to attract and retain employees, particularly those from the European Union.

Risks Related to the Manufacturing of our Product Candidates

Cell therapies are complex and difficult to manufacture. We could experience manufacturing problems that result in delays in the development or commercialization of our product candidates or otherwise harm our business.

The manufacture of cell therapy products is technically complex and necessitates substantial expertise and capital investment. Production difficulties caused by unforeseen events may delay the availability of material for our clinical studies.

The manufacturers of pharmaceutical products must comply with strictly enforced cGMP requirements, state and federal regulations, as well as foreign requirements when applicable. Any failure of us or our contract manufacturing organizations to adhere to or document compliance to such regulatory requirements could lead to a delay or interruption in the availability of our program materials for clinical trials or enforcement action from the FDA, EMA or foreign regulatory authorities. If we or our manufacturers were to fail to comply with the FDA, EMA or other regulatory authority, it could result in sanctions being imposed on us, including clinical holds, fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our product candidates. Our potential future dependence upon others for the manufacture of our product candidates may also adversely affect our future profit margins and our ability to commercialize any product candidates that receive regulatory approval on a timely and competitive basis.

Biological products are inherently difficult to manufacture. Our program materials are manufactured using technically complex processes requiring specialized equipment and facilities, highly specific raw materials, cells, and reagents, and other production constraints. Our production process requires a number of highly specific raw materials, cells and reagents with limited suppliers. Even though we aim to have backup supplies of raw materials, cells and reagents whenever possible, we cannot be certain they will be sufficient if our primary sources are unavailable. A shortage of a critical raw material, cell line, or reagent, or a technical issue during manufacturing may lead to delays in clinical development or commercialization plans. Any changes in the manufacturing of components of the raw materials we use could result in unanticipated or unfavorable effects in our manufacturing processes, resulting in delays.

Delays or failures in the manufacture of cell therapies (whether by us, any collaborator or our third party contract manufacturers) can result in a patient being unable to receive their cell therapy or a requirement to re-manufacture which itself then causes delays in manufacture for other patients. Any delay or failure or inability to manufacture on a timely basis can adversely affect a patient's outcomes and delay the timelines for our clinical trials. Such delays or failure or inability to manufacture can result from:

- a failure in the manufacturing process itself, for example by an error in manufacturing process (whether by us or our third party CMO), equipment or reagent failure, failure in any step of the manufacturing process, failure to maintain a GMP environment or failure in quality systems applicable to manufacture, sterility failures, contamination during process;
- product loss or failure due to logistical issues associated with the collection of a patient's tumor or other samples, shipping that material to analytical laboratories, and shipping the final product back to the location using cold chain distribution where it will be administered to the patient, manufacturing issues associated with the differences in patient starting materials, inconsistency in cell growth and variability in product characteristics;
- a lack of reliability or reproducibility in the manufacturing process itself leading to variability in end manufacture of cell therapy, which may lead to regulatory authorities placing a hold on a clinical trial or requesting further information on the process which could in turn result in delays to the clinical trials;
- variations in patient starting material or apheresis product resulting in less product than expected or product that is not viable, or that cannot be used to successfully manufacture a cell therapy;

- product loss or failure due to logistical issues including issues associated with the differences between patients' white blood cells or characteristics, interruptions to process, contamination, failure to supply patient apheresis material within required timescales (for example, as a result of an import or export hold-up) or supplier error;
- inability to obtain viral vector manufacturing slots from CMOs or to have enough manufacturing slots to manufacture cell therapies for patients as and when those patients require manufacture;
- inability to procure starting materials or to manufacture starting materials;
- loss of or close-down of any manufacturing facility used in the manufacture of our cell therapies, or the inability to find alternative manufacturing capability in a timely fashion;
- loss or contamination of patient starting material, requiring the starting material to be obtained again from the patient or the manufacturing process to be re-started; and
- a requirement to modify or make changes to any manufacturing process, which may also require comparability testing that delays our ability to make the required modifications or perform any required comparability testing in a timely fashion, require further regulatory approval or require successful tech transfer to CMOs to continue manufacturing.

Our product candidates are biologics and the manufacture of our product candidates is complex and we may encounter difficulties in production, particularly with respect to process development or scaling-out of our manufacturing capabilities. If we encounter such difficulties, our ability to provide supply of our product candidates for clinical trials or any approved products could be delayed or stopped.

All entities involved in the preparation of therapeutics for clinical trials or commercial sale, including our existing contract manufacturers for components our product candidates, are subject to extensive regulation. Components of a finished therapeutic product approved for commercial sale or used in late-stage clinical trials in the European Union must be manufactured in accordance with cGMP. These regulations govern manufacturing processes and procedures (including record keeping) and the implementation and operation of quality systems to control and assure the quality of investigational products and products approved for sale. Poor control of production processes can lead to the introduction of adventitious agents or other contaminants, or to inadvertent changes in the properties or stability of our product candidates that may not be detectable in final product testing. We or our contract manufacturers must supply all necessary documentation in support of a BLA or MAA on a timely basis. Our facilities and quality systems and the facilities and quality systems of some or all of our third-party contractors must pass a pre-approval inspection for compliance with the applicable regulations as a condition of regulatory approval of our product candidates or any of our other potential products. In addition, the regulatory authorities may, at any time, audit or inspect a manufacturing facility involved with the preparation of our product candidates or our other potential products or the associated quality systems for compliance with the regulations applicable to the activities being conducted, and they could put a hold on one or more of our clinical trials if the facilities of our contract development and manufacturing organizations do not pass such audit or inspections. If these facilities do not pass a pre-approval plant inspection, FDA approval of the products will not be granted.

The regulatory authorities also may, at any time following approval of a product for sale, inspect or audit our manufacturing facilities or those of our third-party contractors. If any such inspection or audit identifies a failure to comply with applicable regulations or if a violation of our product specifications or applicable regulations occurs independent of such an inspection or audit, we or the relevant regulatory authority may require remedial measures that may be costly and/or time-consuming for us or a third party to implement and that may include the temporary or permanent suspension of a clinical trial or commercial sales or the temporary or permanent closure of a facility. Any such remedial measures imposed upon us or third parties with whom we contract could harm our business. If we or any of our third-party manufacturers fail to maintain regulatory compliance, the FDA can impose regulatory sanctions including, among other things, refusal to approve a pending application for a new drug product or biologic product, or revocation of a pre-existing approval. As a result, our business, financial condition and results of operations may be harmed. Additionally, if supply from one approved manufacturer is interrupted, there could be a significant disruption in commercial supply. An alternative manufacturer would need to be qualified through a BLA and/or MAA supplement which could result in further delay. The regulatory agencies may also require additional

studies if a new manufacturer is relied upon for commercial production. Switching manufacturers may involve substantial costs and is likely to result in a delay in our desired clinical and commercial timelines.

These factors could cause the delay of clinical trials, regulatory submissions, required approvals or commercialization of our product candidates, cause us to incur higher costs and prevent us from commercializing our products successfully, if approved. Furthermore, if our suppliers fail to meet contractual requirements, and we are unable to secure one or more replacement suppliers capable of production at a substantially equivalent cost, our clinical trials may be delayed or we could lose potential revenue.

We may utilize third parties if needed to manufacture our product candidates. Therefore, we are subject to the risk that such third parties may not perform satisfactorily.

Although we expect that our manufacturing facility in Tarzana, California will be the primary source of clinical and, if approved, commercial supply for ITIL-168 and future product candidates, we may continue to rely on outside vendors for at least a portion of the manufacturing process and intend to evaluate potential third-party manufacturing capabilities if necessary to meet further clinical and commercial demand. In the event that we engage third-party manufacturers and they do not successfully carry out their contractual duties, meet expected deadlines or manufacture our product candidates in accordance with regulatory requirements or if there are disagreements between us and any third-party manufacturer, we may be delayed in producing sufficient clinical and commercial supply of our product candidates. In such instances, we may need to locate an appropriate replacement third-party relationship, which may not be readily available or on acceptable terms, which would cause additional delay or increased expense and would thereby have a material adverse effect on our business, financial condition, results of operations and prospects.

Reliance on third-party providers may expose us to more risk than if we were to manufacture product candidates ourselves. The facilities used by our contract manufacturers to manufacture our product candidates must be approved by the FDA pursuant to inspections that will be conducted after we submit our BLA to the FDA. We do not control the manufacturing process of, and are completely dependent on, our contract manufacturing partners for compliance with the regulatory requirements, known as cGMPs for the manufacture of our product candidates. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the strict regulatory requirements of the FDA or others, they will not be able to secure and/or maintain regulatory approval for their manufacturing facilities. In addition, we have no control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or a comparable foreign regulatory authority does not approve these facilities for the manufacture of our product candidates or if it withdraws any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates, if approved. In addition, any failure to achieve and maintain compliance with these laws, regulations and standards could subject us to the risk that we may have to suspend the manufacturing of our product candidates or that obtained approvals could be revoked, which would adversely affect our business and reputation. Furthermore, third-party providers may breach existing agreements they have with us because of factors beyond our control. They may also terminate or refuse to renew their agreement because of their own financial difficulties or business priorities, at a time that is costly or otherwise inconvenient for us. If we were unable to find adequate replacement or another acceptable solution in time, our clinical trials could be delayed or our commercial activities could be harmed.

We completed a technology transfer of the current manufacturing process of ITIL-168 from our manufacturing facility in Manchester, United Kingdom to our new manufacturing facility in Tarzana, California, and we intend to utilize material manufactured in our new manufacturing facility in our future clinical trials of ITIL-168. There is no assurance that we, or any other future third-party manufacturer that we engage, will be successful in producing ITIL-168, that any such product will pass the required comparability testing for regulatory approval, or that any materials produced by us or any other third-party manufacturer that we engage will have the same effect in patients that we have observed to date with respect to materials produced by our Manchester manufacturing facility. We believe that our manufacturing network will have sufficient capacity to meet demand for ITIL-168 for our clinical trials. Although we have identified additional third-party cGMP-compliant manufacturers that we believe we will be able to contract with in order to provide additional sources of such materials, there is a risk that if supplies are interrupted or result in poor yield or quality, it would materially harm our business. In addition, we may change

our manufacturing process for ITIL-168, which could cause delays in production as we and our third-party manufacturers seek to improve and streamline the process.

In addition, we do not currently have long-term supply or manufacturing arrangements in place for the production of ITIL-168. Although we intend to establish multiple sources for long-term supply, including our own commercial-scale cGMP-compliant manufacturing facility and one or more third-party manufacturers, if the cell therapy industry were to grow, we may encounter increasing competition for the raw materials and consumables necessary for the production of ITIL-168. Furthermore, demand for third-party cGMP manufacturing facilities may grow at a faster rate than existing manufacturing capacity, which could disrupt our ability to find and retain third-party manufacturers capable of producing sufficient quantities of ITIL-168 for future clinical trials or to meet initial commercial demand in the United States. In addition to our own manufacturing facilities, we currently rely, and expect to continue to rely, on additional third parties to manufacture ingredients of our product candidates and to perform quality testing. Even following our establishment of our own cGMP-compliant manufacturing capabilities, we intend to maintain third-party manufacturers for these ingredients, as well as to serve as additional sources of our product candidates, which will expose us to risks including:

- reduced control for certain aspects of manufacturing activities;
- termination or nonrenewal of manufacturing and service agreements with third parties in a manner or at a time that is costly or damaging to us; and
- disruptions to the operations of our third-party manufacturers and service providers caused by conditions unrelated to our business or operations, including the bankruptcy of the manufacturer or service provider.

Building our new manufacturing facility has required additional investment, has been time-consuming and may be subject to delays, including because of shortage of labor or compliance with regulatory requirements. In addition, building our manufacturing facility may cost more than we currently anticipate. In June 2022, we entered into construction loans for the construction and development of our new manufacturing facility that are secured in part by a first priority lien on the property. Delays or problems in the build out of our manufacturing facility, or our default under the construction loans, may adversely impact our ability to provide supply for the development and commercialization of ITIL-168, as well as our financial condition.

Any of these events could lead to clinical trial delays or failure to obtain regulatory approval, or impact our ability to successfully commercialize ITIL-168. Some of these events could be the basis for FDA action, including injunction, recall, seizure or total or partial suspension of product manufacture.

Our current operations are concentrated in two locations. We or the third parties upon whom we depend may be adversely affected by earthquakes, wildfires or other natural disasters, and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster.

We are in the process of transitioning from our manufacturing facility in Manchester, United Kingdom to our new manufacturing facility in Tarzana, California. Any unplanned event, such as flood, fire, explosion, earthquake, extreme weather condition, medical epidemics or pandemics, power shortage, telecommunication failure or other natural or manmade accidents or incidents that result in us being unable to fully utilize our facilities may have a material and adverse effect on our ability to operate our business, particularly on a daily basis, and have significant negative consequences on our financial and operating conditions. Loss of access to these facilities may result in increased costs, delays in the development of our product candidates or interruption of our business operations. Earthquakes, wildfires or other natural disasters could further disrupt our operations, and have a material and adverse effect on our business, financial condition, results of operations and prospects. If a natural disaster, power outage or other event prevents us from using all or a significant portion of our manufacturing facilities, or otherwise disrupted operations, it may be difficult or, in certain cases, impossible, for us to continue our business for a substantial period of time. The disaster recovery and business continuity plans we have in place may prove inadequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of the limited nature of our disaster recovery and business continuity plans, which could have a material adverse effect on

our business. As part of our risk management policy, we maintain insurance coverage at levels that we believe are appropriate for our business. However, in the event of an accident or incident at these facilities, we cannot assure you that the amounts of insurance will be sufficient to satisfy any damages and losses. If our facilities are unable to operate because of an accident or incident or for any other reason, even for a short period of time, any or all of our research and development programs may be harmed. Any business interruption may have a material and adverse effect on our business, financial condition, results of operations and prospects.

We depend on third-party suppliers for materials that are necessary for the conduct of preclinical studies and manufacture of our product candidates for clinical trials, and the loss of these third-party suppliers or their inability to supply us with sufficient quantities of adequate materials, or to do so at acceptable quality levels and on a timely basis, could harm our business.

Manufacturing our product candidates requires many reagents, which are substances used in our manufacturing processes to bring about chemical or biological reactions, and other specialty materials and equipment, some of which are manufactured or supplied by small companies with limited resources and experience to support commercial biologics production. We currently depend on a limited number of vendors for certain materials and equipment used in the manufacture of our product candidates. For example, we currently use facilities and equipment at external contract manufacturing organizations, or CMOs, as well as supply sources internal to the collaboration for vector supply. Our use of CMOs increases the risk of delays in production or insufficient supplies as we transfer our manufacturing technology to these CMOs and as they gain experience with our supply requirements. Some of these suppliers may not have the capacity to support clinical trials and commercial products manufactured under cGMP by biopharmaceutical firms or may otherwise be ill-equipped to support our needs. We also do not have supply contracts with many of these suppliers and may not be able to obtain supply contracts with them on acceptable terms or at all. Accordingly, we may experience delays in receiving key materials and equipment to support clinical or commercial manufacturing.

For some of these reagents, equipment, and materials, we rely and may in the future rely on sole source vendors or a limited number of vendors. The supply of the reagents and other specialty materials and equipment that are necessary to produce our product candidates could be reduced or interrupted at any time. In such case, identifying and engaging an alternative supplier or manufacturer could result in delay, and we may not be able to find other acceptable suppliers or manufacturers on acceptable terms, or at all. Switching suppliers or manufacturers may involve substantial costs and is likely to result in a delay in our desired clinical and commercial timelines. If we change suppliers or manufacturers for commercial production, applicable regulatory agencies may require us to conduct additional studies or trials. If key suppliers or manufacturers are lost, or if the supply of the materials is diminished or discontinued, we may not be able to develop, manufacture and market our product candidates in a timely and competitive manner, or at all. An inability to continue to source product from any of these suppliers, which could be due to a number of issues, including regulatory actions or requirements affecting the supplier, adverse financial or other strategic developments experienced by a supplier, labor disputes or shortages, unexpected demands or quality issues, could adversely affect our ability to satisfy demand for our product candidates, which could adversely and materially affect our product sales and operating results or our ability to conduct clinical trials, either of which could significantly harm our business.

As we continue to develop and scale our manufacturing process, we expect that we will need to obtain rights to and supplies of certain materials and equipment to be used as part of that process. We may not be able to obtain rights to such materials on commercially reasonable terms, or at all, and if we are unable to alter our process in a commercially viable manner to avoid the use of such materials or find a suitable substitute, it would have a material adverse effect on our business. Even if we are able to alter our process so as to use other materials or equipment, such a change may lead to a delay in our clinical development and/or commercialization plans. If such a change occurs for product candidate that is already in clinical testing, the change may require us to perform both ex vivo comparability studies and to collect additional data from patients prior to undertaking more advanced clinical trials. These factors could cause the delay of studies or trials, regulatory submissions, required approvals or commercialization of product candidates that we develop, cause us to incur higher costs and prevent us from commercializing our product candidates successfully.

Any contamination or interruption in our manufacturing process, shortages of raw materials or failure of our suppliers of reagents to deliver necessary components could result in delays in our clinical development or marketing schedules.

Given the nature of cell therapy manufacturing, there is a risk of contamination. Any contamination could adversely affect our ability to produce product candidates on schedule and could, therefore, harm our results of operations and cause reputational damage. Some of the raw materials required in our manufacturing process are derived from biologic sources. Such raw materials are difficult to procure and may be subject to contamination or recall. A material shortage, contamination, recall or restriction on the use of biologically derived substances in the manufacture of our product candidates could adversely impact or disrupt the commercial manufacturing or the production of clinical material, which could adversely affect our development timelines and our business, financial condition, results of operations and prospects.

Changes in methods of product candidate manufacturing or formulation may result in additional costs or delay.

As product candidates proceed through preclinical studies to late-stage clinical trials towards potential approval and commercialization, it is common that various aspects of the development program, such as manufacturing methods and formulation, are altered along the way in an effort to optimize processes and product characteristics. Such changes carry the risk that they will not achieve our intended objectives. Any such changes could cause our product candidates to perform differently and affect the results of planned clinical trials or other future clinical trials conducted with the materials manufactured using altered processes. Such changes may also require additional testing, FDA notification or FDA approval. This could delay completion of clinical trials, require the conduct of bridging clinical trials or the repetition of one or more clinical trials, increase clinical trial costs, delay approval of our product candidates and jeopardize our ability to commence sales and generate revenue. In addition, we may be required to make significant changes to our upstream and downstream processes across our pipeline, which could delay the development of our future product candidates.

Risks Related to the Commercialization of our Product Candidates

Even if any of our product candidates receive marketing approval, they may fail to achieve the degree of market acceptance by physicians, patients, third-party payors and others in the medical community necessary for commercial success.

If any of our product candidates receive marketing approval, they may nonetheless fail to gain sufficient market acceptance by physicians, patients, third-party payors and others in the medical community. If our product candidates do not achieve an adequate level of acceptance, we may not generate significant revenue and we may not become profitable. The degree of market acceptance of our product candidates, if approved for commercial sale, will depend on a number of factors, including:

- the efficacy, safety and potential advantages compared to alternative treatments;
- our ability to offer our products for sale at competitive prices;
- the convenience and ease of administration compared to alternative treatments;
- product labeling or product insert requirements of the FDA, EMA or other foreign regulatory authorities, including any limitations or warnings contained in a product's approved labeling, including any black box warning or REMS;
- the willingness of the target patient population to try new treatments and of physicians to prescribe these treatments;
- our ability to hire and retain a sales force in the United States;

- the strength of marketing and distribution support;
- the availability of third-party coverage and adequate reimbursement for ITIL-168, ITIL-306 and any other product candidates, once approved;
- the prevalence and severity of any side effects; and
- any restrictions on the use of our products together with other medications.

If we are unable to establish sales, marketing and distribution capabilities for ITIL-168, ITIL-306 or any other product candidate that may receive regulatory approval, we may not be successful in commercializing those product candidates if and when they are approved.

We do not have sales or marketing infrastructure. To achieve commercial success for ITIL-168, ITIL-306 or any other product candidate for which we may obtain marketing approval, we will need to establish a sales and marketing organization. In the future, we expect to build a focused sales and marketing infrastructure to market our product candidates in the United States, if they are approved. There are risks involved with establishing our own sales, marketing and distribution capabilities. For example, recruiting and training a sales force is expensive and time consuming and could delay any product launch. If the commercial launch of a product candidate for which we recruit a sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

Factors that may inhibit our efforts to market our products on our own include:

- our inability to recruit, train and retain adequate numbers of effective sales and marketing personnel;
- the inability of sales personnel to obtain access to physicians in order to educate physicians about our product candidates, once approved;
- the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies with more extensive product lines; and
- unforeseen costs and expenses associated with creating an independent sales and marketing organization.

If we are unable to establish our own sales, marketing and distribution capabilities and are forced to enter into arrangements with, and rely on, third parties to perform these services, our revenue and our profitability, if any, are likely to be lower than if we had developed such capabilities ourselves. In addition, we may not be successful in entering into arrangements with third parties to sell, market and distribute our product candidates or may be unable to do so on terms that are favorable to us. We likely will have little control over such third parties, and any of them may fail to devote the necessary resources and attention to sell and market our products effectively. If we do not establish sales, marketing and distribution capabilities successfully, either on our own or in collaboration with third parties, we will not be successful in commercializing our product candidates.

The treatable populations for our other product candidates may be smaller than we or third parties currently project, which may affect the addressable markets for our product candidates.

Our projections of the number of people who have the diseases we are seeking to treat, as well as the subset of people with these diseases who have the potential to benefit from treatment with our product candidates, are estimates based on our knowledge and understanding of these diseases. These estimates may prove to be incorrect and new studies may further reduce the estimated incidence or prevalence of this disease. The number of patients in the United States, the European Union and elsewhere may turn out to be lower than expected, may not be otherwise amenable to treatment with our product candidates or patients may become increasingly difficult to identify and

access, all of which would adversely affect our business, financial condition, results of operations and prospects. Further, even if we obtain approval for our product candidates, the FDA or other regulators may limit their approved indications to more narrow uses or subpopulations within the populations for which we are targeting development of our product candidates.

The total addressable market opportunity for our product candidates will ultimately depend upon a number of factors including the diagnosis and treatment criteria included in the final label, if approved for sale in specified indications, acceptance by the medical community, patient access and product pricing and reimbursement. Incidence and prevalence estimates are frequently based on information and assumptions that are not exact and may not be appropriate, and the methodology is forward-looking and speculative. The process we have used in developing an estimated incidence and prevalence range for the indications we are targeting has involved collating limited data from multiple sources. Accordingly, the incidence and prevalence estimates included in our filings with the Securities and Exchange Commission, or the SEC, should be viewed with caution. Further, the data and statistical information used in our filings with the SEC, including estimates derived from them, may differ from information and estimates made by our competitors or from current or future studies conducted by independent sources.

Off-label use or misuse of our products may harm our reputation in the marketplace, result in injuries that lead to costly product liability suits, and/or subject us to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with any product.

If our product candidates are approved by the FDA, we may only promote or market our product candidates for their specifically approved indications. We will train our marketing and sales force against promoting our product candidates for uses outside of the approved indications for use, known as "off-label uses." We cannot, however, prevent a physician from using our products off-label, when in the physician's independent professional medical judgment he or she deems it appropriate. Furthermore, the use of our products for indications other than those approved by the FDA may not effectively treat such conditions. Any such off-label use of our product candidates could harm our reputation in the marketplace among physicians and patients. There may also be increased risk of injury to patients if physicians attempt to use our products for these uses for which they are not approved, which could lead to product liability suits that that might require significant financial and management resources and that could harm our reputation.

Advertising and promotion of any product candidate that obtains approval in the United States will be heavily scrutinized by the FDA, the U.S. Federal Trade Commission, the Department of Justice, or the DOJ, the Office of Inspector General of the U.S. Department of Health and Human Services, or HHS, state attorneys general, members of the U.S. Congress, and the public. Additionally, advertising and promotion of any product candidate that obtains approval outside of the United States will be heavily scrutinized by comparable foreign entities and stakeholders. Violations, including actual or alleged promotion of our products for unapproved or off-label uses, are subject to enforcement letters, inquiries, and investigations, and civil and criminal sanctions by the FDA, DOJ, or comparable foreign bodies. Any actual or alleged failure to comply with labeling and promotion requirements may result in fines, warning letters, mandates to corrective information to healthcare practitioners, injunctions, or civil or criminal penalties.

We face significant competition from other biotechnology and pharmaceutical companies, and our operating results will suffer if we fail to compete effectively.

Drug development is highly competitive and subject to rapid and significant technological advancements. There are several large and small pharmaceutical companies focused on delivering therapeutics for the treatment of metastatic melanoma and other oncology indications we might target in the future. Further, it is likely that additional drugs will become available in the future for the treatment of our target indications.

We face competition from segments of the pharmaceutical, biotechnology and other related markets that pursue the development of TIL or other cell therapies for the treatment of solid tumors. Companies that are developing TIL therapies include Achilles Therapeutics, Ltd., Adaptimmune Therapeutics, Plc., Intima Bioscience, Inc., Iovance Biotherapeutics Inc., KSC Therapeutics, Inc., Lyell Immunopharma, Inc., Neogene Therapeutics, B.V., Nurix Therapeutics, Inc., Obsidian Therapeutics, Inc., and PACT Pharma, Inc. In addition, we may face competition

from companies focused on CAR-T and TCR-T cell therapies, such as Immatics N.V., Juno Therapeutics, Inc., a subsidiary of Bristol-Myers Squibb, Inc., Kite Pharma, Inc., a subsidiary of Gilead, Inc., Poseida Therapeutics, Inc., and TCR2 Therapeutics, Inc. There are also companies utilizing other cell-based approaches that may be competitive to our product candidates. For example, companies such as Artiva Biotherapeutics, Inc., Celyad, S.A., and Nkarta, Inc. are developing therapies that target and/or engineer natural killer, or NK, cells.

Many of our existing or potential competitors have substantially greater financial, technical and human resources than we do and significantly greater experience in the discovery and development of product candidates, as well as in obtaining regulatory approvals of those product candidates in the United States and in foreign countries. Our current and potential future competitors may also have significantly more experience commercializing drugs, particularly cell therapy and other biological products, that have been approved for marketing. Mergers and acquisitions in the pharmaceutical and biotechnology industries could result in even more resources being concentrated among a small number of our competitors.

We will face competition from other drugs or from other non-drug products currently approved or that will be approved in the future in the oncology field, including for the treatment of diseases and disorders in the therapeutic categories we intend to target. Therefore, our ability to compete successfully will depend largely on our ability to:

- develop and commercialize drugs that are superior to other products in the market;
- demonstrate through our clinical trials that our product candidates are differentiated from existing and future therapies;
- attract qualified scientific, product development and commercial personnel;
- obtain patent or other proprietary protection for our medicines;
- obtain required regulatory approvals;
- obtain coverage and adequate reimbursement from, and negotiate competitive pricing with, third-party payors; and
- successfully collaborate with pharmaceutical companies in the discovery, development and commercialization of new medicines.

The availability of our competitors' products could limit the demand, and the price we are able to charge, for any product candidate we develop. The inability to compete with existing or subsequently introduced drugs would have an adverse impact on our business, financial condition and prospects. In addition, the reimbursement structure of approved cell therapies by other companies could impact the anticipated reimbursement structure of our cell therapies, if approved, and our business, financial condition, results of operations and prospects.

Established pharmaceutical companies may invest heavily to accelerate discovery and development of novel compounds or to in-license novel compounds that could make our product candidates less competitive. In addition, any new product that competes with an approved product must demonstrate compelling advantages in efficacy, convenience, tolerability and safety in order to overcome price competition and to be commercially successful. Accordingly, our competitors may succeed in obtaining patent protection, discovering, developing, receiving regulatory and marketing approval for, or commercializing, drugs before we do, which would have an adverse impact on our business and results of operations.

Any product candidates for which we intend to seek approval as biologic products may face competition sooner than anticipated.

If we are successful in achieving regulatory approval to commercialize any biologic product candidate that we develop, it may face competition from biosimilar products. In the United States, our product candidates are regulated by the FDA as biologic products subject to approval under the BLA pathway. The Patient Protection and Affordable

Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively, the ACA, includes a subtitle called the Biologics Price Competition and Innovation Act of 2009, or BPCIA, which created an abbreviated approval pathway for biological products that are biosimilar to or interchangeable with an FDA-licensed reference biological product. Under the BPCIA, an application for a biosimilar product may not be submitted to the FDA until four years following the date that the reference product was first licensed by the FDA. In addition, the approval of a biosimilar product may not be made effective by the FDA until 12 years from the date on which the reference product was first licensed by the FDA. During this 12-year period of exclusivity, another company may still market a competing version of the reference product if the FDA approves a full BLA for the competing product containing the sponsor's own preclinical data and data from adequate and well-controlled clinical trials to demonstrate the safety, purity and potency of their product. The law is complex and is still being interpreted and implemented by the FDA. As a result, its ultimate impact, implementation and meaning are subject to uncertainty. While it is uncertain when such processes intended to implement BPCIA may be fully adopted by the FDA, any such processes could have an adverse effect on the future commercial prospects for our biological products.

There is a risk that any of our product candidates approved as a biological product under a BLA would not qualify for the 12-year period of exclusivity or that this exclusivity could be shortened due to congressional action or otherwise, or that the FDA will not consider our product candidates to be reference products for competing products, potentially creating the opportunity for generic competition sooner than anticipated. Other aspects of the BPCIA, some of which may impact the BPCIA exclusivity provisions, have also been the subject of recent litigation. Moreover, the extent to which a biosimilar, once approved, will be substituted for any one of our reference products in a way that is similar to traditional generic substitution for non-biological products is not yet clear, and will depend on a number of marketplace and regulatory factors that are still developing. If competitors are able to obtain marketing approval for biosimilars referencing our candidates, if approved, our products may become subject to competition from such biosimilars, with the attendant competitive pressure and potential adverse consequences.

The success of our product candidates will depend significantly on coverage and adequate reimbursement or the willingness of patients to pay for these therapies.

We believe our success depends on obtaining and maintaining coverage and adequate reimbursement for our product candidates and the extent to which patients will be willing to pay out-of-pocket for such products, in the absence of reimbursement for all or part of the cost. In the United States and in other countries, patients who are provided medical treatment for their conditions generally rely on third-party payors to reimburse all or part of the costs associated with their treatment. The availability of coverage and adequacy of reimbursement for our products by third-party payors, including government health care programs (e.g., Medicare, Medicaid, TRICARE), managed care providers, private health insurers, health maintenance organizations, and other organizations is essential for most patients to be able to afford medical services and pharmaceutical products such as our product candidates. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own coverage and reimbursement policies. However, decisions regarding the extent of coverage and amount of reimbursement to be provided are made on a payor-by-payor basis. One payor's determination to provide coverage for a drug product does not assure that other payors will also provide coverage, and adequate reimbursement. The principal decisions about reimbursement for new medicines are typically made by the Centers for Medicare & Medicaid Services, or CMS, an agency within the United States. Department of Health and Human Services, or HHS. CMS decides whether and to what extent products will be covered and reimbursed under Medicare and private payors tend to follow CMS to a substantial degree.

Third-party payors determine which products and procedures they will cover and establish reimbursement levels. Even if a third-party payor covers a particular product or procedure, the resulting reimbursement payment rates may not be adequate. Patients who are treated in-office for a medical condition generally rely on third-party payors to reimburse all or part of the costs associated with the procedure, including costs associated with products used during the procedure, and may be unwilling to undergo such procedures in the absence of such coverage and adequate reimbursement. Physicians may be unlikely to offer procedures for such treatment if they are not covered by insurance and may be unlikely to purchase and use our product candidates, if approved, for our stated indications unless coverage is provided and reimbursement is adequate. In addition, for products administered under the

supervision of a physician, obtaining coverage and adequate reimbursement may be particularly difficult because of the higher prices often associated with such drugs.

Reimbursement by a third-party payor may depend upon a number of factors, including the third-party payor's determination that a procedure is safe, effective and medically necessary; appropriate for the specific patient; cost-effective; supported by peer-reviewed medical journals; included in clinical practice guidelines; and neither cosmetic, experimental, nor investigational. Further, increasing efforts by third-party payors in the United States and abroad to cap or reduce healthcare costs may cause such organizations to limit both coverage and the level of reimbursement for newly approved products and, as a result, they may not cover or provide adequate payment for our product candidates. In order to secure coverage and reimbursement for any product that might be approved for sale, we may need to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of our products, in addition to the costs required to obtain FDA or comparable regulatory approvals. Additionally, we may also need to provide discounts to purchasers, private health plans or government healthcare programs. Our product candidates may nonetheless not be considered medically necessary or cost-effective. If third-party payors do not consider a product to be cost-effective compared to other available therapies, they may not cover the product after approval as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow a company to sell its products at a profit. We expect to experience pricing pressures from third-party payors in connection with the potential sale of any of our product candidates. Decreases in third-party reimbursement for any product or a decision by a third-party payor not to cover a product could reduce physician usage and patient demand for the product and also have a material adverse effect on sales.

Foreign governments also have their own healthcare reimbursement systems, which vary significantly by country and region, and we cannot be sure that coverage and adequate reimbursement will be made available with respect to the treatments in which our products are used under any foreign reimbursement system.

There can be no assurance that ITIL-168, ITIL-306, or any other product candidate, if approved for sale in the United States or in other countries, will be considered medically reasonable and necessary, that it will be considered cost-effective by third-party payors, that coverage or an adequate level of reimbursement will be available or that reimbursement policies and practices in the United States and in foreign countries where our products are sold will not adversely affect our ability to sell our product candidates profitably, if they are approved for sale.

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

We face an inherent risk of product liability exposure related to the testing of our product candidates in human clinical trials and will face an even greater risk if we commercially sell any products that we may develop. If we cannot successfully defend ourselves against claims that our product candidates or drugs 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 drugs that we may develop;
- injury to our reputation and significant negative media attention;
- withdrawal of clinical trial participants;
- significant costs to defend the related litigation;
- substantial monetary awards paid to trial participants or patients;
- loss of revenue;
- reduced resources of our management to pursue our business strategy; and
- the inability to commercialize any products that we may develop.

Although we maintain product liability insurance coverage, such insurance may not be adequate to cover all liabilities that we may incur. We may need to increase our insurance coverage as we expand our clinical trials or if we commence commercialization of our product candidates. Insurance coverage is increasingly expensive. We may not be able to maintain insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise.

Our business and operations would suffer in the event of computer system failures, cyberattacks or a deficiency in our cybersecurity.

Despite the implementation of security measures, our internal computer systems, and those of third parties on which we rely, are subject to attack by computer viruses, malware, natural disasters, ransomware, phishing, supply chain attacks, terrorism, war, telecommunication and electrical failures, cyberattacks or cyber-intrusions over the Internet, attachments to emails, persons inside our organization, or persons with authorized access to systems inside our organization and vulnerable to damage therefrom. The risk of a security breach or disruption, particularly through cyberattacks or cyber intrusion, including by computer hackers, foreign governments, and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. If such an event were to interrupt our operations, it could result in a material disruption of our product development programs. For example, the loss of clinical trial data from completed or ongoing or planned clinical trials 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 was to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur material legal claims and liability and damage to our reputation, and the further development of our product candidates could be delayed.

The effects of a security breach or privacy violation could be further amplified during the current COVID-19 pandemic. In addition, the cost and operational consequences of implementing further data protection measures could be significant and theft of our intellectual property or proprietary business information could require substantial expenditures to remedy. Further, we cannot be certain that (a) our liability insurance will be sufficient in type or amount to cover us against claims related to security breaches, cyberattacks and other related breaches; (b) such coverage will cover any indemnification claims against us relating to any incident, will continue to be available to us on economically reasonable terms, or at all; or (c) any insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could adversely affect our reputation, business, financial condition and results of operations.

We are subject to a variety of privacy and data security laws, and our failure to comply with them could harm our business.

We maintain a large quantity of sensitive information, including confidential business and personal information in connection with the conduct of our clinical trials and related to our employees, and we are subject to laws and regulations governing the privacy and security of such information. In the United States, there are numerous federal and state privacy and data security laws and regulations governing the collection, use, disclosure and protection of personal information, including federal and state health information privacy laws, federal and state security breach notification laws, and federal and state consumer protection laws. The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing focus on privacy and data protection issues, which may affect our business and is expected to increase our compliance costs and exposure to liability. In the United States, numerous federal and state laws and regulations could apply to our operations or the operations of our partners, including state data breach notification laws, state health information privacy laws, and federal and state consumer protection laws and regulations (e.g. Section 5 of the FTC Act), that govern the collection, use, disclosure, and protection of health-related and other personal information. In addition, we may obtain health information from third parties (including research institutions from which we obtain clinical trial data) that are subject to privacy and security requirements under the Health Insurance Portability and Accountability Act, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH,

and regulations promulgated thereunder. Depending on the facts and circumstances, we could be subject to significant penalties if we obtain, use, or disclose individually identifiable health information in a manner that is not authorized or permitted by HIPAA.

In Europe, the General Data Protection Regulation or the GDPR, took effect in May 2018. The GDPR governs the collection, use, disclosure, transfer or other processing of personal data of individuals within the European Economic Area, or the EEA, including clinical trial data. Among other things, the GDPR imposes requirements regarding the security of personal data and notification of data processing obligations to the competent national data processing authorities, requires having lawful bases on which personal data can be processed, and requires changes to informed consent practices, as well as more detailed notices for clinical trial subjects and investigators. In addition, the GDPR increases the scrutiny of transfers of personal data from the EEA to the United States and other jurisdictions that the European Commission does not recognize as having "adequate" data protection laws; in July 2020, the Court of Justice of the European Union limited how organizations could lawfully transfer personal data from the EEA to the United States by invalidating the EU-US Privacy Shield and imposing further restrictions on use of the standard contractual clauses, which could increase our costs and our ability to efficiently process personal data from the EEA. The GDPR imposes substantial fines for breaches and violations (up to the greater of €20 million or 4% of our consolidated annual worldwide gross revenue), and confers a private right of action on data subjects and consumer associations to lodge complaints with supervisory authorities, seek judicial remedies and obtain compensation for damages resulting from violations of the GDPR. Relatedly, following the United Kingdom's withdrawal from the European Economic Area and the European Union, and the expiry of the transition period, which ended on December 31, 2020, companies have to comply with both the GDPR and the GDPR as incorporated into United Kingdom national law, the latter regime having the ability to separately fine up to the greater of £17.5 million or 4% of global turnover. On January 1, 2021, the United Kingdom became a third country for the purposes of the GDPR.

While the relationship between the United Kingdom and the European Union in relation to certain aspects of data protection law remains unclear, transfers of personal data from the European Union to the United Kingdom may continue to take place without a need for additional safeguards as a result of the European Commission formally adopting its adequacy decision finding the United Kingdom to be adequate under the GDPR on June 28, 2021. Should the European Commission amend, suspend, or repeal its adequacy decision, we may need to put in place additional safeguards for transfers of personal data from the European Union to the United Kingdom, such as standard contractual clauses approved by the EU Commission.

Compliance with these and any other applicable privacy and data security laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the new data protection rules. If we fail to comply with any such laws or regulations, we may face significant fines and penalties that could adversely affect our business, financial condition and results of operations. Furthermore, the laws are not consistent, and compliance in the event of a widespread data breach is costly. In addition, states are constantly adopting new laws or amending existing laws, requiring attention to frequently changing regulatory requirements. For example, California enacted the California Consumer Privacy Act, or the CCPA, which took effect on January 1, 2020, became enforceable by the California Attorney General on July 1, 2020, and has been dubbed the first "GDPR-like" law in the United States. The CCPA gives California residents expanded rights to access and delete their personal information, opt out of certain personal information sharing and receive detailed information about how their personal information is used by requiring covered companies to provide new disclosures to California consumers (as that term is broadly defined) and provide such consumers new ways to opt-out of certain sales of personal information. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. Further, California voters passed the California Privacy Rights Act, or the CPRA, on November 3, 2020. The CPRA will impose additional data protection obligations on companies doing business in California, including additional consumer rights processes, limitations on data uses, new audit requirements for higher risk data, and opt outs for certain uses of sensitive data. It also created a new California data protection agency authorized to issue substantive regulations and could result in increased privacy and information security enforcement. The majority of the provisions will go into effect on January 1, 2023, and additional compliance investment and potential business process changes may be required. Although the CCPA currently exempts certain health-related information, including clinical trial data, the CCPA and the CPRA may increase our compliance costs and potential liability. Similar laws have been proposed in other states

and at the federal level, and if passed, such laws may have potentially conflicting requirements that would make compliance challenging.

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

We and any contract manufacturers and suppliers we engage are subject to numerous federal, state and local environmental, health, and safety laws, regulations, and permitting requirements, including those governing laboratory procedures; the generation, handling, use, storage, treatment and disposal of hazardous and regulated materials and wastes; the emission and discharge of hazardous materials into the ground, air and water; and employee health and safety. Our operations involve the use of hazardous and flammable materials, including chemicals and biological materials. Our operations also produce hazardous waste. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. In the event of contamination or injury resulting from our use of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. Under certain environmental laws, we could be held responsible for costs relating to any contamination at our current or past facilities and at third-party facilities. We also could incur significant costs associated with civil or criminal fines and penalties.

Compliance with applicable environmental laws and regulations may be expensive, and current or future environmental laws and regulations may impair our research, product development and manufacturing efforts. In addition, we cannot entirely eliminate the risk of accidental injury or contamination from these materials or wastes. Although we maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not carry specific biological or hazardous waste insurance coverage, and our property, casualty, and general liability insurance policies specifically exclude coverage for damages and fines arising from biological or hazardous waste exposure or contamination. Accordingly, in the event of contamination or injury, we could be held liable for damages or be penalized with fines in an amount exceeding our resources, and our clinical trials or regulatory approvals could be suspended, which could seriously harm our business.

Risks Related to Our Dependence on Third Parties

We intend to rely on third parties to conduct, supervise and monitor a significant portion of our research and preclinical testing and clinical trials for our product candidates, and if those third parties do not successfully carry out their contractual duties, comply with regulatory requirements or otherwise perform satisfactorily, we may not be able to obtain regulatory approval or commercialize product candidates, or such approval or commercialization may be delayed, and our business may be substantially harmed.

We intend to engage CROs and other third parties to conduct our planned preclinical studies or clinical trials and to monitor and manage data. We expect to continue to rely on third parties, including clinical data management organizations, medical institutions and clinical investigators, to conduct those clinical trials. Any of these third parties may terminate their engagements with us, some in the event of an uncured material breach and some at any time for convenience. If any of our relationships with these third parties terminate, we may not be able to timely enter into arrangements with alternative third parties or to do so on commercially reasonable terms, if at all. Switching or adding CROs involves substantial cost and requires management time and focus. In addition, there is a natural transition period when a new CRO commences work. As a result, delays occur, which can materially impact our ability to meet our desired clinical development timelines. Though we intend to carefully manage our relationships with our CROs, there can be no assurance that we will not encounter challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects. Further, the performance of our CROs and other third parties conducting our trials may also be interrupted by the ongoing COVID-19 pandemic, including due to travel or quarantine policies, heightened exposure of CRO or clinical site or other vendor staff who are healthcare providers to COVID-19 or prioritization of resources toward the pandemic.

In addition, any third parties conducting our clinical trials will not be our employees, and except for remedies available to us under our agreements with such third parties, we cannot control whether or not they devote sufficient time and resources to our clinical programs. If these third parties do not successfully carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates. Consequently, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase substantially and our ability to generate revenue could be delayed significantly.

We rely on these parties for execution of our preclinical studies and clinical trials, and generally do not control their activities. Our reliance on these third parties for research and development activities will reduce our control over these activities but will not relieve us of our responsibilities. For example, we will remain responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocols for the trial. Moreover, the FDA requires us to comply with standards, commonly referred to as good clinical practices, or GCPs, for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. If we or any of our CROs or other third parties, including trial sites, fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA, EMA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials complies with GCP regulations. In addition, our clinical trials must be conducted with product produced under cGMP conditions. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

We also are required to register certain ongoing clinical trials and post the results of certain completed clinical trials on a government-sponsored database, ClinicalTrials.gov, within specified timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions.

In addition, principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and receive compensation in connection with such services. Under certain circumstances, we may be required to report some of these relationships to the FDA. The FDA may conclude that a financial relationship between us and a principal investigator has created a conflict of interest or otherwise affected interpretation of the trial. The FDA may therefore question the integrity of the data generated at the applicable clinical trial site and the utility of the clinical trial itself may be jeopardized. This could result in a delay in approval, or rejection, of our marketing applications by the FDA and may ultimately lead to the denial of marketing approval for ITIL-168, ITIL-306 or any other product candidates.

We also expect to rely on other third parties to store and distribute product supplies for our clinical trials. Any performance failure on the part of our distributors could delay clinical development or marketing approval of our product candidates or commercialization of our products, producing additional losses and depriving us of potential revenue.

We may seek collaborations with third parties for the development or commercialization of our product candidates. If those collaborations are not successful, we may not be able to capitalize on the market potential of these product candidates.

We may seek third-party collaborators for the development and commercialization of our product candidates, including for the commercialization of any of our product candidates that are approved for marketing outside the United States. Our likely collaborators for any such arrangements include regional and national pharmaceutical companies and biotechnology companies. If we enter into any additional such arrangements with any third parties, we will likely have limited control over the amount and timing of resources that our collaborators dedicate to the development or commercialization of our product candidates. Our ability to generate revenue from these arrangements will depend on our collaborators' abilities to successfully perform the functions assigned to them in these arrangements.

Collaborations involving our product candidates would pose the following risks to us:

- collaborators have significant discretion in determining the efforts and resources that they will apply to these collaborations;
- collaborators may not perform their obligations as expected;
- collaborators may not pursue development and commercialization of any product candidates that achieve regulatory approval or may elect not to continue or renew development or commercialization programs based on clinical trial results, changes in the collaborators' strategic focus or available funding, or external factors, such as an acquisition, that divert resources or create competing priorities;
- collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a product candidate, repeat or conduct new clinical trials or require a new formulation of a product candidate for clinical testing;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our product candidates if the collaborators believe that competitive products are more likely to be successfully developed or can be commercialized under terms that are more economically attractive than ours;
- we could grant exclusive rights to our collaborators that would prevent us from collaborating with others;
- product candidates discovered in collaboration with us may be viewed by our collaborators as competitive with their own product candidates or drugs, which may cause collaborators to cease to devote resources to the commercialization of our product candidates;
- a collaborator with marketing and distribution rights to one or more of our product candidates that achieve regulatory approval may not commit sufficient resources to the marketing and distribution of such products;
- disagreements with collaborators, including disagreements over proprietary rights, contract interpretation or the preferred course of development, might cause delays or termination of the research, development or commercialization of product candidates, might lead to additional responsibilities for us with respect to product candidates, or might result in litigation or arbitration, any of which would be time-consuming and expensive;
- collaborators may not properly maintain or defend our or their intellectual property rights or may use our or their proprietary information in such a way as to invite litigation that could jeopardize or invalidate such intellectual property or proprietary information or expose us to potential litigation;
- collaborators may infringe the intellectual property rights of third parties, which may expose us to litigation and potential liability; and
- collaborations may be terminated for the convenience of the collaborator and, if terminated, we could be required to raise additional capital to pursue further development or commercialization of the applicable product candidates.

Collaboration agreements may not lead to development or commercialization of product candidates in the most efficient manner or at all. If any future collaborator of ours were to be involved in a business combination, the continued pursuit and emphasis on our product development or commercialization program could be delayed, diminished or terminated.

We face significant competition in seeking appropriate collaborators. Whether we reach a definitive agreement for any collaboration will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. Those factors may include the design or results of clinical trials, the likelihood of approval by the FDA, EMA or similar regulatory authorities outside the United States, the potential market for the subject product candidate, the costs and complexities of manufacturing and delivering such product candidate to patients, the potential of competing products, the existence of uncertainty with respect to our ownership of technology, which can exist if there is a challenge to such ownership without regard to the merits of the challenge and industry and market conditions generally. The collaborator may also consider alternative product candidates or technologies for similar

indications that may be available to collaborate on and whether such a collaboration could be more attractive than the one with us for our product candidate. Collaborations are complex and time-consuming to negotiate and document. In addition, there have been a significant number of recent business combinations among large pharmaceutical companies that have resulted in a reduced number of potential future collaborators.

We may not be able to negotiate additional collaborations on a timely basis, on acceptable terms, or at all. If we are unable to do so, we may have to curtail the development of such product candidate, reduce or delay its development program or one or more of our other development programs, delay its potential commercialization or reduce the scope of any sales or marketing activities, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to increase our expenditures to fund development or commercialization activities on our own, we may need to obtain additional capital, which may not be available to us on acceptable terms or at all. If we do not have sufficient funds, we may not be able to further develop our product candidates or bring them to market and generate revenue.

Risks Related to our Intellectual Property

If we are unable to obtain or protect intellectual property rights related to any of our product candidates, we may not be able to compete effectively in our market.

We rely upon a combination of patents, trade secret protection and confidentiality agreements to protect the intellectual property related to our product candidates and technologies. Our success depends in large part on our ability to obtain and maintain patent and other intellectual property protection in the United States and in other countries with respect to our proprietary technology and product candidates.

As of the date of this Quarterly Report on Form 10-Q, we do not currently in-license any intellectual property, but we may choose to do so in the future. The strength of patents in the biotechnology and pharmaceutical field involves complex legal and scientific questions and can be uncertain. We cannot offer any assurances about which of our patent applications will issue, the breadth of any resulting patent or whether any of the issued patents will be found invalid and unenforceable or will be threatened by third parties. We cannot offer any assurances that the breadth of our resulting or granted patents will be sufficient to stop a competitor from developing and commercializing a product, including a biosimilar product, that would be competitive with one or more of our product candidates. There is no assurance that all the potentially relevant prior art relating to our patent and patent applications has been found, which can invalidate a patent or prevent a patent from issuing from a pending patent application. Since patent applications in the United States and most other countries are confidential for a period of time after filing, we cannot be certain that we or our future licensors were the first to file any patent application related to our product candidates and technologies. Additionally, a derivation proceeding before the United States Patent and Trademark Office can be initiated by a third party to contest inventorship of the subject matter claimed in our applications.

Furthermore, any successful challenge to these patents or any other patents owned by or licensed to us after patent issuance could deprive us of rights necessary for the successful commercialization of any of our product candidates and technologies that we may develop. Even if they are unchallenged or such third-party challenges are unsuccessful, our patent and patent applications may not adequately protect our intellectual property, provide exclusivity for our product candidates and technologies, or prevent others from designing around our claims. If the breadth or strength of protection provided by the patent and patent applications we hold, obtain or pursue with respect to our product candidates and technologies is challenged, or if they fail to provide meaningful exclusivity for our product candidates and technologies, it could threaten our ability to commercialize our product candidates and technologies. Further, if we encounter delays in regulatory approvals, the period of time during which we could market a product candidate under patent protection, if approved, would be reduced.

The patent prosecution process is expensive and time-consuming. We may not be able to prepare, file and prosecute all necessary or desirable patent applications at a commercially reasonable cost, in a timely manner, or in all jurisdictions. It is also possible that we may fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection. Moreover, depending on the terms of any future in-licenses to which we may become a party, we may not have the right to control the

preparation, filing and prosecution of patent applications, or to maintain the patents, covering technology in-licensed from third parties. Therefore, these patents and patent applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. In addition to the protection provided by our patent estate, we rely on trade secret protection and confidentiality agreements to protect proprietary scientific, business and technical information and know-how that is not or may not be patentable or that we elect not to patent. We seek to protect our proprietary information, data and processes, in part, by confidentiality agreements and invention assignment agreements with our employees, consultants, scientific advisors, contractors and partners. Although these agreements are designed to protect our proprietary information, we cannot be certain that our trade secrets and other confidential proprietary information will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. Although we generally require all of our employees to assign their inventions to us, and all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information, or technology to enter into confidentiality agreements, we cannot provide any assurances that all such agreements have been duly executed with all third parties who may have helped to develop our intellectual property or who had access to our proprietary information, or that our agreements will not be breached. If any of the parties to these confidentiality agreements breaches or violates the terms of such agreements, we may not have adequate remedies for any such breach or violation, and we could lose our trade secrets as a result.

Enforcing a claim that a third party illegally obtained and is using our trade secrets, like patent litigation, is expensive and time-consuming, and the outcome is unpredictable. Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. The enforceability of confidentiality agreements may vary from jurisdiction to jurisdiction. As a result, we may encounter significant problems in protecting and defending our intellectual property both in the United States and abroad. Additionally, if the steps taken to maintain our trade secrets are deemed inadequate, we may have insufficient recourse against third parties for misappropriating the trade secret. We cannot guarantee that our employees, former employees or consultants will not file patent applications claiming our inventions. Because of the "first-to-file" laws in the United States and the uncertainties surrounding outcomes of derivation proceedings before the United States Patent and Trademark Office, such unauthorized patent application filings may defeat our attempts to obtain patents on our own inventions.

Trade secrets and know-how can be difficult to protect as trade secrets and know-how will over time be disseminated within the industry through independent development, the publication of journal articles, and the movement of personnel skilled in the art from company to company or academic to industry scientific positions. Moreover, our competitors may independently develop knowledge, methods and know-how equivalent to our trade secrets. Competitors could purchase our products and attempt to replicate some or all of the competitive advantages we derive from our development efforts, willfully infringe our intellectual property rights, design around our protected technology or develop their own technologies that fall outside of our intellectual property rights. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our trade secrets and proprietary know-how were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems. Monitoring unauthorized uses and disclosures is difficult, and we do not know whether the steps we have taken to protect our proprietary technologies will be effective.

While we have confidence in these individuals, organizations and systems, our agreements or security measures may be breached, and we may not have adequate remedies for any breach. Also, if the steps taken to maintain our trade secrets are deemed inadequate, we may have insufficient recourse against third parties for misappropriating the trade secret. In addition, others may independently discover our trade secrets and proprietary information. For example, the FDA is considering whether to make additional information publicly available on a routine basis, including information that we may consider to be trade secrets or other proprietary information, and it is not clear at the present time how the FDA's disclosure policies may change in the future. If we are unable to

prevent material disclosure of the non-patented intellectual property related to our technologies to third parties, and there is no guarantee that we will have any such enforceable trade secret protection, we may not be able to establish or maintain a competitive advantage in our market, which could materially adversely affect our business, results of operations and financial condition.

Patent terms may be inadequate to protect our competitive position on our products for an adequate amount of time, and if we do not obtain protection under the Hatch-Waxman Amendments and similar non-United States legislation for extending the term of patents covering each of our product candidates, our business may be materially harmed.

Patents have a limited lifespan. In the United States, the natural expiration of a patent is generally 20 years after its first effective filing date. Although various extensions may be available, the life of a patent, and the protection it affords, is limited. Even if patents covering our product candidates are obtained, once the patent life has expired for a product, we may be open to competition from generic medications. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates may expire before or shortly after such candidates are commercialized. Depending upon the timing, duration and conditions of FDA marketing approval of our product candidates, one or more of our United States patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984, referred to as the Hatch-Waxman Amendments, and similar legislation in the European Union. The Hatch-Waxman Amendments permit a patent term extension of up to five years for a patent covering an approved product as compensation for effective patent term lost during product development and the FDA regulatory review process. A patent term extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval. Only one patent may be extended, and only those claims covering the approved drug, a method for using it, or a method for manufacturing it may be extended. However, we may not receive an extension if we fail to apply within applicable deadlines, fail to apply prior to expiration of relevant patents or otherwise fail to satisfy applicable requirements. Moreover, the length of the extension could be less than we request. If we are unable to obtain patent term extension or the term of any such extension is less than we request, the period during which we can enforce our patent rights for that product will be shortened and our competitors may obtain approval to market competing products sooner. As a result, our revenue from applicable products could be reduced and could have a material adverse effect on our business.

If we fail to comply with our obligations imposed by any intellectual property licenses with third parties that we may need in the future, we could lose rights that are important to our business.

Although we do not currently have any intellectual property licenses with third parties, we may in the future require licenses to additional third-party technology and materials. Such licenses may not be available in the future or may not be available on commercially reasonable terms, or at all, which could have a material adverse effect on our business and financial condition. Even if we acquire the right to control the prosecution, maintenance and enforcement of the licensed and sublicensed intellectual property relating to our product candidates, we may require the cooperation of our licensors and any upstream licensor, which may not be forthcoming. Therefore, we cannot be certain that the prosecution, maintenance and enforcement of these patent rights will be in a manner consistent with the best interests of our business. If we or our licensor fail to maintain such patents, or if we or our licensor lose rights to those patents or patent applications, the rights we have licensed may be reduced or eliminated and our right to develop and commercialize any of our product candidates that are the subject of such licensed rights could be adversely affected. In addition to the foregoing, the risks associated with patent rights that we license from third parties will also apply to patent rights we may own in the future. Further, if we fail to comply with our development obligations under our license agreements, we may lose our patent rights with respect to such agreement, which would affect our patent rights worldwide.

Termination of any future license agreements would reduce or eliminate our rights under these agreements and may result in our having to negotiate new or reinstated agreements with less favorable terms or cause us to lose our rights under these agreements, including our rights to important intellectual property or technology. Any of the foregoing could prevent us from commercializing our other product candidates, which could have a material adverse effect on our operating results and overall financial condition.

In addition, intellectual property rights that we in-license in the future may be sublicenses under intellectual property owned by third parties, in some cases through multiple tiers. The actions of our licensors may therefore affect our rights to use our sublicensed intellectual property, even if we are in compliance with all of the obligations under our license agreements. Should our licensors or any of the upstream licensors fail to comply with their obligations under the agreements pursuant to which they obtain the rights that are sublicensed to us, or should such agreements be terminated or amended, our ability to develop and commercialize our product candidates may be materially harmed.

Patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our future patents.

Our ability to obtain patents is highly uncertain because, to date, some legal principles remain unresolved, and there has not been a consistent policy regarding the breadth or interpretation of claims allowed in patents in the United States. Furthermore, the specific content of patents and patent applications that are necessary to support and interpret patent claims is highly uncertain due to the complex nature of the relevant legal, scientific, and factual issues. Changes in either patent laws or 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.

For example, on September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act included a number of significant changes to United States patent law. These included provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. The USPTO has developed new and untested regulations and procedures to govern the full implementation of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first to file provisions, became effective in March 2013. The Leahy-Smith Act has also introduced procedures making it easier for third parties to challenge issued patents, as well as to intervene in the prosecution of patent applications. Finally, the Leahy-Smith Act contained new statutory provisions that require the USPTO to issue new regulations for their implementation, and it may take the courts years to interpret the provisions of the new statute. It is too early to tell what, if any, impact the Leahy-Smith Act will have on the operation of our business and the protection and enforcement of our intellectual property. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our future patents. Further, the United States Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on actions by the United States Congress, the federal courts and the USPTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce patents that we have owned or licensed or that we might obtain in the future. An inability to obtain, enforce, and defend patents covering our proprietary technologies would materially and adversely affect our business prospects and financial condition.

Similarly, changes in patent laws and regulations in other countries or jurisdictions, changes in the governmental bodies that enforce them or changes in how the relevant governmental authority enforces patent laws or regulations may weaken our ability to obtain new patents or to enforce patents that we may obtain in the future. Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we may encounter significant problems in protecting and defending our intellectual property both in the United States and abroad. For example, if the issuance in a given country of a patent covering an invention is not followed by the issuance in other countries of patents covering the same invention, or if any judicial interpretation of the validity, enforceability or scope of the claims or the written description or enablement, in a patent issued in one country is not similar to the interpretation given to the corresponding patent issued in another country, our ability to protect our intellectual property in those countries may be limited. Changes in either patent laws or in interpretations of patent laws in the United States and other countries may materially diminish the value of our intellectual property or narrow the scope of our patent protection.

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

Competitors may infringe our issued patents or any patents issued as a result of our pending or future patent applications. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours is not valid or is unenforceable, or may refuse to stop the other party in such infringement proceeding from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated, held unenforceable or interpreted narrowly, and could put any of our patent applications at risk of not yielding an issued patent.

If we initiate legal proceedings against a third party to enforce a patent covering one of our product candidates, the defendant could counterclaim that the patent covering our product or product candidate is invalid and/or unenforceable. In patent litigation in the United States, counterclaims alleging invalidity and/or unenforceability are common, and there are numerous grounds upon which a third party can assert invalidity or unenforceability of a patent. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the PTO, or made a misleading statement, during prosecution. Third parties may also raise similar claims before administrative bodies in the United States or abroad, even outside the context of litigation. Such mechanisms include re-examination, post grant review, inter partes review and equivalent proceedings in foreign jurisdictions (for example, opposition proceedings, nullity proceedings or litigation or invalidation trials or invalidation proceedings). Such proceedings could result in revocation of or amendment to our patents in such a way that they no longer cover our product candidates. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity of our patents, for example, we cannot be certain that there is no invalidating prior art of which we, our patent counsel, and the patent examiner were unaware during prosecution. If a defendant were to prevail on a legal assertion of invalidity and/or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our product candidates. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly, could put our patent applications at risk of not issuing and could have a material adverse impact on our business.

Derivation proceedings initiated by third parties or us may be necessary to determine the inventorship (and possibly also ownership) of inventions with respect to our patent applications or resulting patents, or patent applications or resulting patents of third parties. An unfavorable outcome could require us to cease using the related technology or force us to take a license under the patent rights of the prevailing party, if available. Furthermore, our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms. Our defense of litigation or interference proceedings may fail and, even if successful, may result in substantial costs and distract our management and other employees. We may not be able to prevent misappropriation of our intellectual property rights, particularly in countries where the laws may not protect those rights as fully as in the United States.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. There could also be public announcements of the results of hearings, motions, or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock.

We may not identify relevant third party patents or may incorrectly interpret the relevance, scope or expiration of a third party patent which might adversely affect our ability to develop and market our products.

We cannot guarantee that any of our patent searches or analyses, including the identification of relevant patents, the scope and validity of patent claims or the expiration of relevant patents, are complete or thorough, nor can we be certain that we have identified each and every third party patent and pending application in the United States and abroad that is relevant to or necessary for the commercialization of our product candidates in any jurisdiction.

The scope of a patent claim is determined by an interpretation of the law, the written disclosure in a patent and the patent's prosecution history. Our interpretation of the relevance or the scope of a patent or a pending application may be incorrect, which may negatively impact our ability to market our products. We may incorrectly determine that our products are not covered by a third party patent or may incorrectly predict whether a third party's pending application will issue with claims of relevant scope. Our determination of the expiration date of any patent in the United States or abroad that we consider relevant may be incorrect, which may negatively impact our ability to develop and market our product candidates. Our failure to identify and correctly interpret relevant patents may negatively impact our ability to develop and market our products.

We may be unsuccessful in licensing or acquiring intellectual property from third parties that may be required to develop and commercialize our product candidates.

A third party may hold intellectual property, including patent rights that are important or necessary to the development and commercialization of our product candidates. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize our product candidates, in which case we would be required to acquire or obtain a license to such intellectual property from these third parties, and we may be unable to do so on commercially reasonable terms or at all. The licensing or acquisition of third-party intellectual property rights is a competitive area, and several more established companies may pursue strategies to license or acquire third-party intellectual property rights that we may consider attractive or necessary. These established companies may have a competitive advantage over us due to their size, capital resources and greater clinical development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to license or acquire third-party intellectual property rights on terms that would allow us to make an appropriate return on our investment or at all. If we are unable to successfully obtain rights to required third-party intellectual property rights or maintain the existing intellectual property rights we have, we may have to abandon development of the relevant program or product candidate, which could have a material adverse effect on our business.

Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, the outcome of which would be uncertain.

Our commercial success depends in part on our ability to develop, manufacture, market and sell our drug candidates and use our proprietary technologies without infringing or otherwise violating the patents and proprietary rights of third parties. As our current and future product candidates progress toward commercialization, the possibility of a patent infringement claim against us increases. There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including patent infringement lawsuits, interferences, derivation proceedings, post grant reviews, inter partes reviews, and reexamination proceedings before the USPTO or oppositions and other comparable proceedings in foreign jurisdictions. Numerous United States and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing product candidates, and there may be third-party patents or patent applications with claims to materials, formulations, methods of manufacture or methods for treatment related to the use or manufacture of our product candidates and technologies. Third parties, including our competitors may initiate legal proceedings against us alleging that we are infringing or otherwise violating their patent or other intellectual property rights.

We cannot provide any assurance that our current and future product candidates do not infringe other parties' patents or other proprietary rights, and competitors or other parties may assert that we infringe their proprietary rights in any event. We may become party to, or threatened with, adversarial proceedings or litigation regarding intellectual property rights with respect to our current and future product candidates, including interference or derivation proceedings before the USPTO. Even if we believe such claims are without merit, a court of competent jurisdiction could hold that these third-party patents are valid, enforceable and infringed, which could have a negative impact on our ability to commercialize ITIL-168, ITIL-306 or any future product candidates. In order to successfully challenge the validity of any such United States patent in federal court, we would need to overcome a presumption of validity. As this burden is high and requires us to present clear and convincing evidence as to the invalidity of any such United States patent claim, there is no assurance that a court of competent jurisdiction would agree with us and invalidate the claims of any such United States patent. Moreover, given the vast number of patents

in our field of technology, we cannot be certain that we do not infringe existing patents or that we will not infringe patents that may be granted in the future.

While we may decide to initiate proceedings to challenge the validity of these or other patents in the future, we may be unsuccessful, and courts or patent offices in the United States and abroad could uphold the validity of any such patent. Furthermore, because patent applications can take many years to issue and may be confidential for 18 months or more after filing, and because pending patent claims can be revised before issuance, there may be applications now pending which may later result in issued patents that may be infringed by the manufacture, use or sale of our product candidates. Regardless of when filed, we may fail to identify relevant third-party patents or patent applications, or we may incorrectly conclude that a third-party patent is invalid or not infringed by our product candidates or activities. If a patent holder believes that one of our product candidates infringes its patent, the patent holder may sue us even if we have received patent protection for our technology. In addition, third parties may obtain patents in the future and claim that our product candidates or technologies infringe upon these patents. Moreover, we may face patent infringement claims from non-practicing entities that have no relevant drug revenue and against whom our own patent portfolio may thus have no deterrent effect. If a patent infringement suit were threatened or brought against us, we could be forced to stop or delay research, development, manufacturing or sales of the drug or product candidate that is the subject of the actual or threatened suit.

If we are found to infringe a third party's valid intellectual property rights, we could be required to obtain a license from such third party to continue commercializing our product candidates. However, we may not be able to obtain any required license on commercially reasonable terms or at all. Even if a license can be obtained on acceptable terms, the rights may be non-exclusive, which could give our competitors access to the same technology or intellectual property rights licensed to us. If we fail to obtain a required license, we may be unable to effectively market product candidates based on our technology, which could limit our ability to generate revenue or achieve profitability and possibly prevent us from generating revenue sufficient to sustain our operations. Alternatively, we may need to redesign our infringing products, which may be impossible or require substantial time and monetary expenditure. Under certain circumstances, we could be forced, including by court orders, to cease commercializing our product candidates. In addition, in any such proceeding or litigation, we could be found liable for substantial monetary damages, potentially including treble damages and attorneys' fees, if we are found to have willfully infringed the patent at issue. A finding of infringement could prevent us from commercializing our product candidates or force us to cease some of our business operations, which could harm our business. Any claims by third parties that we have misappropriated their confidential information or trade secrets could have a similar negative impact on our business.

The cost to us in defending or initiating any litigation or other proceeding relating to patent or other proprietary rights, even if resolved in our favor, could be substantial, and litigation would divert our management's attention. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could delay our research and development efforts and limit our ability to continue our operations.

We may be subject to claims that our employees, consultants, or independent contractors have wrongfully used or disclosed confidential information of third parties.

We employ individuals who were previously employed at other biotechnology or biopharmaceutical companies. Although we try to ensure that our employees, consultants and advisors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or our employees, consultants, or independent contractors have inadvertently or otherwise used or disclosed confidential information of our employees' former employers or other third parties. We may also be subject to claims that former employers or other third parties have an ownership interest in our future patents. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. There is no guarantee of success in defending these claims, and even if we are successful, litigation could result in substantial cost and be a distraction to our management and other employees.

We may be subject to claims challenging the inventorship or ownership of our future patents and other intellectual property.

We may also be subject to claims that former employees, collaborators, or other third parties have an ownership interest in our patent applications, our future patents issued as a result of our pending or future applications, or other intellectual property. We may be subject to ownership disputes in the future arising, for example, from conflicting obligations of consultants or others who are involved in developing our product candidates. Although it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own, and we cannot be certain that our agreements with such parties will be upheld in the face of a potential challenge, or that they will not be breached, for which we may not have an adequate remedy. The assignment of intellectual property rights may not be self-executing or the assignment agreements may be breached, and litigation may be necessary to defend against these and other claims challenging inventorship or ownership. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

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

If we rely on third parties to manufacture or commercialize our product candidates, or if we collaborate with additional third parties for the development of such product candidates, we must, at times, share trade secrets with them. We may also conduct joint research and development programs that may require us to share trade secrets under the terms of our research and development partnerships or similar agreements. We seek to protect our proprietary technology in part by entering into confidentiality agreements and, if applicable, material transfer agreements, consulting agreements or other similar agreements with our advisors, employees, third-party contractors and consultants prior to beginning research or disclosing proprietary information. These agreements typically limit the rights of the third parties to use or disclose our confidential information, including our trade secrets. Despite the contractual provisions employed when working with third parties, the need to share trade secrets and other confidential information increases the risk that such trade secrets become known by our competitors, are inadvertently incorporated into the technology of others, or are disclosed or used in violation of these agreements. Given that our proprietary position is based, in part, on our know-how and trade secrets, a competitor's discovery of our trade secrets or other unauthorized use or disclosure could have an adverse effect on our business and results of operations.

In addition, these agreements typically restrict the ability of our advisors, employees, third-party contractors and consultants to publish data potentially relating to our trade secrets. Despite our efforts to protect our trade secrets, we may not be able to prevent the unauthorized disclosure or use of our technical know-how or other trade secrets by the parties to these agreements. Moreover, we cannot guarantee that we have entered into such agreements with each party that may have or have had access to our confidential information or proprietary technology and processes. Monitoring unauthorized uses and disclosures is difficult, and we do not know whether the steps we have taken to protect our proprietary technologies will be effective. If any of the collaborators, scientific advisors, employees, contractors and consultants who are parties to these agreements breaches or violates the terms of any of these agreements, we may not have adequate remedies for any such breach or violation, and we could lose our trade secrets as a result. Moreover, if confidential information that is licensed or disclosed to us by our partners, collaborators, or others is inadvertently disclosed or subject to a breach or violation, we may be exposed to liability to the owner of that confidential information. Enforcing a claim that a third party illegally obtained and is using our trade secrets, like patent litigation, is expensive and time-consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets.

We may enjoy only limited geographical protection with respect to certain patents and we may not be able to protect our intellectual property rights throughout the world.

Filing and prosecuting patent applications and defending patents covering our product candidates in all countries throughout the world would be prohibitively expensive. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we have patent protection, but enforcement rights are not as strong as that in the United States or Europe. These products may compete with our product candidates, and our future patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

In addition, we may decide to abandon national and regional patent applications before they are granted. The examination of each national or regional patent application is an independent proceeding. As a result, patent applications in the same family may issue as patents in some jurisdictions, such as in the United States, but may issue as patents with claims of different scope or may even be refused in other jurisdictions. It is also quite common that depending on the country, the scope of patent protection may vary for the same product candidate or technology.

While we intend to protect our intellectual property rights in our expected significant markets, we cannot ensure that we will be able to initiate or maintain similar efforts in all jurisdictions in which we may wish to market our product candidates. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate, which may have an adverse effect on our ability to successfully commercialize our product candidates in all of our expected significant foreign markets. If we encounter difficulties in protecting, or are otherwise precluded from effectively protecting, the intellectual property rights important for our business in such jurisdictions, the value of these rights may be diminished, and we may face additional competition from others in those jurisdictions.

The laws of some jurisdictions do not protect intellectual property rights to the same extent as the laws or rules and regulations in the United States and Europe and many companies have encountered significant difficulties in protecting and defending such rights in such jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets, and other intellectual property rights, especially those relating to life sciences, which could make it difficult for us to stop the infringement of our future patents or marketing of competing products in violation of our proprietary rights generally. In addition, many countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit. Moreover, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in foreign intellectual property laws.

Proceedings to enforce our patent rights in other jurisdictions, whether or not successful, could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our future patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing as patents, and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Furthermore, while we intend to protect our intellectual property rights in our expected significant markets, we cannot ensure that we will be able to initiate or maintain similar efforts in all jurisdictions in which we may wish to market our product candidates. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license from third parties.

Some countries also have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, some countries limit the enforceability of patents against government agencies or government contractors. In those countries, the patent owner may have limited remedies, which could materially diminish the value of such patents. If we are forced to grant a license to third parties with respect to any patents relevant to our business, our competitive position may be impaired.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment, and other requirements imposed by government patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees, renewal fees, annuity fees and various other government fees on patents and/or applications will be due to be paid to the USPTO and various government patent agencies outside of the United

States over the lifetime of our patents and/or applications and any patent rights we may obtain in the future. Furthermore, the USPTO and various non-United States government patent agencies require compliance with several procedural, documentary, fee payment and other similar provisions during the patent application process. We employ reputable law firms and other professionals and rely on such third parties to help us comply with these requirements and effect payment of these fees with respect to the patent and patent applications that we own, and if we in-license intellectual property, we may have to rely upon our licensors to comply with these requirements and effect payment of these fees with respect to any patents and patent applications that we license. In many cases, an inadvertent lapse of a patent or patent application can be cured by payment of a late fee or by other means in accordance with the applicable rules. There are situations, however, in which non-compliance can result in abandonment or lapse of the patents or patent applications, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, potential competitors might be able to enter the market, which could have a material adverse effect on our business.

Any trademarks we have obtained or may obtain may be infringed or otherwise violated, or successfully challenged, resulting in harm to our business.

We expect to rely on trademarks as one means to distinguish our product candidates, if approved for marketing, from the drugs of our competitors. Once we select new trademarks and apply to register them, our trademark applications may not be approved. Although we would be given an opportunity to respond to those rejections, we may be unable to overcome such rejections. Third parties may oppose or attempt to cancel our trademark applications or trademarks, or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our drugs, which could result in loss of brand recognition and could require us to devote resources to advertising and marketing new brands. Our competitors may infringe or otherwise violate our trademarks and we may not have adequate resources to enforce our trademarks. Any of the foregoing events may have a material adverse effect on our business. Moreover, any name we propose to use with our product candidates in the United States must be approved by the FDA, regardless of whether we have registered it, or applied to register it, as a trademark. The FDA typically conducts a review of proposed product names, including an evaluation of potential for confusion with other product names. If the FDA objects to any of our proposed proprietary product names, we may be required to expend significant additional resources in an effort to identify a suitable substitute name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA.

Any collaboration arrangements that we may enter into in the future may not be successful, which could adversely affect our ability to develop and commercialize our product candidates.

We may seek collaboration arrangements with pharmaceutical or biotechnology companies for the development or commercialization of our product candidates depending on the merits of retaining commercialization rights for ourselves as compared to entering into collaboration arrangements. We will face, to the extent that we decide to enter into collaboration agreements, significant competition in seeking appropriate collaborators. Moreover, collaboration arrangements are complex and time-consuming to negotiate, document, implement and maintain. We may not be successful in our efforts to establish and implement collaborations or other alternative arrangements should we so chose to enter into such arrangements. The terms of any collaborations or other arrangements that we may establish may not be favorable to us.

Any future collaborations that we enter into may not be successful. The success of our collaboration arrangements will depend heavily on the efforts and activities of our collaborators. Collaborations are subject to numerous risks, which may include that:

- collaborators have significant discretion in determining the efforts and resources that they will apply to collaborations;
- collaborators may not pursue development and commercialization of our product candidates or may elect not to continue or renew development or commercialization programs based on clinical trial results, changes in their strategic focus due to the acquisition of competitive products, availability of funding or other external factors, such as a business combination that diverts resources or creates competing priorities;

- collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial, abandon a product candidate, repeat or conduct new clinical trials or require a new formulation of a product candidate for clinical testing;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our products or product candidates;
- a collaborator with marketing, manufacturing and distribution rights to one or more products may not commit sufficient resources to or otherwise not perform satisfactorily in carrying out these activities;
- we could grant exclusive rights to our collaborators that would prevent us from collaborating with others;
- collaborators may not properly maintain or defend our intellectual property rights or may use our intellectual property or proprietary information in a way that gives rise to actual or threatened litigation that could jeopardize or invalidate our intellectual property or proprietary information or expose us to potential liability;
- disputes may arise between us and a collaborator that causes the delay or termination of the research, development or commercialization of our current or future products or that results in costly litigation or arbitration that diverts management attention and resources;
- collaborations may be terminated, and, if terminated, may result in a need for additional capital to pursue further development or commercialization of the applicable current or future products;
- collaborators may own or co-own intellectual property covering our products that results from our collaborating with them, and in such cases, we would not have the exclusive right to develop or commercialize such intellectual property; and
- a collaborator's sales and marketing activities or other operations may not be in compliance with applicable laws resulting in civil or criminal proceedings.

Intellectual property rights do not necessarily address all potential threats to our competitive advantage.

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations and may not adequately protect our business or permit us to maintain our competitive advantage. The following examples are illustrative:

- others may be able to make products that are similar to or otherwise competitive with our product candidates but that are not covered by the claims of our current or future patents;
- an in-license necessary for the manufacture, use, sale, offer for sale or importation of one or more of our product candidates may be terminated by the licensor;
- we or future collaborators might not have been the first to make the inventions covered by our issued or future issued patents or our pending patent applications;
- we or future collaborators might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- it is possible that our pending patent applications will not lead to issued patents;
- issued patents that we own or in-license may be held invalid or unenforceable as a result of legal challenges by our competitors;
- issued patents that we own or in-license may not provide coverage for all aspects of our product candidates in all countries;

- our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we may not develop additional proprietary technologies that are patentable; and
- the patents of others may have an adverse effect on our business.

Should any of these events occur, they could significantly harm our business, results of operations and prospects.

Risks Related to Legal and Regulatory Compliance Matters

Our relationships with customers, healthcare providers, including physicians, and third-party payors are subject, directly or indirectly, to federal and state healthcare fraud and abuse laws, false claims laws, and other healthcare laws and regulations. If we are unable to comply, or have not fully complied, with such laws, we could face substantial penalties.

Healthcare providers, including physicians, and third-party payors in the United States and elsewhere will play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our current and future arrangements with healthcare professionals, principal investigators, consultants, customers and third-party payors subject us to various federal and state fraud and abuse laws and other healthcare laws, including, without limitation, the federal Anti-Kickback Statute, the federal civil and criminal false claims laws and the law commonly referred to as the Physician Payments Sunshine Act and regulations promulgated under such laws. These laws will impact, among other things, our clinical research, proposed sales, marketing and educational programs, and other interactions with healthcare professionals. In addition, we may be subject to patient privacy laws by both the federal government and the states in which we conduct or may conduct our business. The laws that will affect our operations include, but are not limited to:

- the federal Anti-Kickback Statute, which prohibits, among other things, individuals or entities from knowingly and willfully soliciting, receiving, offering or paying any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind in return for, or to induce, either the referral of an individual, or the purchase, lease, order or arrangement for or recommendation of the purchase, lease, order or arrangement for any good, facility, item or service for which payment may be made, in whole or in part, under a federal healthcare program, such as the Medicare and Medicaid programs. The term "remuneration" has been broadly interpreted to include anything of value. Although there are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution, the exceptions and safe harbors are drawn narrowly. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exception or safe harbor. A person does not need to have actual knowledge of this statute or specific intent to violate it in order to have committed a violation;
- the federal civil and criminal false claims laws, including, without limitation, the federal False Claims Act, which can be enforced by private citizens through civil whistleblower or qui tam actions, and civil monetary penalty laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment or approval from the federal government, including Medicare, Medicaid and other government payors, that are false or fraudulent or knowingly making, using or causing to be made or used a false record or statement material to a false or fraudulent claim or to avoid, decrease or conceal an obligation to pay money to the federal government. A claim includes "any request or demand" for money or property presented to the United States federal government. Several pharmaceutical and other healthcare companies have been prosecuted under these laws for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product.

Other companies have been prosecuted for causing false claims to be submitted because of the companies' marketing of products for unapproved, and thus non-reimbursable, uses. In addition, 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 federal False Claims Act;

- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created additional federal criminal statutes which prohibit, among other things, a person from knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors 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. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;
- HIPAA, as amended by Health Information Technology for Economic and Clinical Health Act , or HITECH, and its implementing regulations, which imposes certain obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information without the appropriate authorization by entities subject to the law, such as health plans, healthcare clearinghouses and healthcare providers and their respective business associates and their covered subcontractors;
- the federal transparency laws, including the federal Physician Payments Sunshine Act, which requires certain manufacturers of drugs, medical devices, biologicals and medical supplies for which payment is available under Medicare, Medicaid or the State Children's Health Insurance Program, with specific exceptions, to report annually to the Centers for Medicare & Medicaid Services, or CMS, information related to: (i) payments or other "transfers of value" made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), other health care professionals (such as physician assistants and nurse practitioners), and teaching hospitals, and (ii) ownership and investment interests held by physicians and their immediate family members; and
- analogous state and foreign laws and regulations; state laws that require manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers, marketing expenditures or drug pricing; state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government, or that otherwise restrict payments that may be made to healthcare providers; and state and local laws that require the registration of pharmaceutical sales representatives.

Because of the breadth of these laws and the narrowness of the statutory exceptions and regulatory safe harbors available, it is possible that some of our business activities could be subject to challenge under one or more of such laws. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant penalties, including, without limitation, civil, criminal and administrative penalties, damages, fines, disgorgement, imprisonment, exclusion from participating in federal and state funded healthcare programs, such as Medicare and Medicaid, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, contractual damages, diminished profits and future earnings, reputational harm and the curtailment or restructuring of our operations, any of which could harm our business.

The risk of our being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations will involve substantial costs. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. The shifting compliance environment and the need to build and

maintain robust and expandable systems to comply with multiple jurisdictions with different compliance and/or reporting requirements increases the possibility that a healthcare company may run afoul of one or more of the requirements.

Even if we obtain regulatory approval for ITIL-168, ITIL-306 or any future product candidates, they will remain subject to ongoing regulatory oversight, which may result in significant additional expense.

Even if we obtain any regulatory approval for ITIL-168, ITIL-306 or any future product candidates, such product candidates, they will be subject to ongoing regulatory requirements applicable to manufacturing, labeling, packaging, storage, advertising, promoting, sampling, record-keeping and submission of safety and other post-market information, among other things. Any regulatory approvals that we receive for ITIL-168, ITIL-306 or any future product candidates may also be subject to a risk evaluation and mitigation strategy, limitations on the approved indicated uses for which the drug may be marketed or to the conditions of approval, or requirements that we conduct potentially costly post-marketing testing and surveillance studies, including Phase 4 trials and surveillance to monitor the quality, safety and efficacy of the drug. An unsuccessful post-marketing study or failure to complete such a study could result in the withdrawal of marketing approval. We will further be required to immediately report any serious and unexpected adverse events and certain quality or production problems with our products to regulatory authorities along with other periodic reports.

Any new legislation addressing drug safety issues could result in delays in product development or commercialization, or increased costs to assure compliance. We will also have to comply with requirements concerning advertising and promotion for our products. Promotional communications with respect to prescription drug products are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the product's approved label. As such, we will not be allowed to promote our products for indications or uses for which they do not have approval, commonly known as off-label promotion. The holder of an approved BLA must submit new or supplemental applications and obtain prior approval for certain changes to the approved product, product labeling, or manufacturing process. A company that is found to have improperly promoted off-label uses of their products may be subject to significant civil, criminal and administrative penalties.

In addition, drug manufacturers are subject to payment of user fees and continual review and periodic inspections by the FDA and other regulatory authorities for compliance with cGMP requirements and adherence to commitments made in the BLA or foreign marketing application. If we, or a regulatory authority, discover previously unknown problems with a drug, such as adverse events of unanticipated severity or frequency, or problems with the facility where the drug is manufactured or if a regulatory authority disagrees with the promotion, marketing or labeling of that drug, a regulatory authority may impose restrictions relative to that drug, the manufacturing facility or us, including requesting a recall or requiring withdrawal of the drug from the market or suspension of manufacturing.

If we fail to comply with applicable regulatory requirements following approval of ITIL-168, ITIL-306 or any future product candidates, a regulatory authority may:

- issue an untitled letter or warning letter asserting that we are in violation of the law;
- seek an injunction or impose administrative, civil or criminal penalties or monetary fines;
- suspend or withdraw regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve a pending marketing application or supplement to an approved application or comparable foreign marketing application (or any supplements thereto) submitted by us or our strategic partners;
- restrict the marketing or manufacturing of the drug;
- seize or detain the drug or otherwise require the withdrawal of the drug from the market;
- refuse to permit the import or export of products or product candidates; or
- refuse to allow us to enter into supply contracts, including government contracts.

Any government investigation of alleged violations of law could require us to expend significant time and resources in response and could generate negative publicity. The occurrence of any event or penalty described above

may inhibit our ability to commercialize ITIL-168, ITIL-306 or any future product candidates and harm our business, financial condition, results of operations and prospects.

Even if we obtain FDA or EMA approval any of our product candidates in the United States or European Union, we may never obtain approval for or commercialize any of them in any other jurisdiction, which would limit our ability to realize their full market potential.

In order to market any products in any particular jurisdiction, we must establish and comply with numerous and varying regulatory requirements on a country-by-country basis regarding safety and efficacy.

Approval by the FDA in the United States or the EMA in the European Union does not ensure approval by regulatory authorities in other countries or jurisdictions. However, the failure to obtain approval in one jurisdiction may negatively impact our ability to obtain approval elsewhere. In addition, clinical trials conducted in one country may not be accepted by regulatory authorities in other countries, and regulatory approval in one country does not guarantee regulatory approval in any other country.

Approval processes vary among countries and can involve additional product testing and validation and additional administrative review periods. Seeking foreign regulatory approval could result in difficulties and increased costs for us and require additional preclinical studies or clinical trials which could be costly and time consuming. Regulatory requirements can vary widely from country to country and could delay or prevent the introduction of our products in those countries. We do not have any product candidates approved for sale in any jurisdiction, including in foreign markets, and we do not have experience in obtaining regulatory approval in any jurisdiction, including in foreign markets. If we fail to comply with regulatory requirements in foreign markets or to obtain and maintain required approvals, or if regulatory approvals in foreign markets are delayed, our target market will be reduced and our ability to realize the full market potential of any product we develop will be unrealized.

Healthcare legislative or regulatory reform measures may have a negative impact on our business and results of operations.

In the United States and some foreign jurisdictions, there have been, and continue to be, several legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval of product candidates, restrict or regulate post-approval activities, and affect our ability to profitably sell any product candidates for which we obtain marketing approval.

Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. For example, in March 2010, the ACA was passed, which substantially changed the way healthcare is financed by both the government and private insurers, and significantly impacts the United States pharmaceutical industry. The ACA, among other things: (i) established an annual, nondeductible fee on any entity that manufactures or imports certain specified branded prescription drugs and biologic agents apportioned among these entities according to their market share in some government healthcare programs; (ii) expanded the entities eligible for discounts under the 340B drug pricing program; (iii) increased the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program to 23.1% and 13% of the average manufacturer price for most branded and generic drugs, respectively, and capped the total rebate amount for innovator drugs at 100% of the Average Manufacturer Price, or AMP; (iv) expanded the eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals and by adding new eligibility categories for individuals with income at or below 133% (as calculated, it constitutes 138%) of the federal poverty level, thereby potentially increasing manufacturers' Medicaid rebate liability; (v) addressed a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for certain drugs and biologics that are inhaled, infused, instilled, implanted or injected; (vi) introduced a new Medicare Part D coverage gap discount program in which manufacturers must now agree to offer 70% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D (increased from 50%, effective January 1, 2019, pursuant to the Bipartisan Budget Act of 2018); (vii) created a new

Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research; and (viii) established the Center for Medicare and Medicaid Innovation at CMS to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug.

There have been executive, judicial and Congressional challenges to certain aspects of the ACA. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of certain taxes under the ACA have been signed into law. The Tax Cuts and Jobs Act of 2017, or Tax Act, included a provision that repealed, effective January 1, 2019, the tax-based shared responsibility payment imposed by the ACA 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." On June 17, 2021, the U.S. Supreme Court dismissed the most recent judicial challenge the ACA brought by several states without specifically ruling on the constitutionality of the ACA. Prior to the Supreme Court's decision, President Biden issued an executive order that initiated a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace, which began on February 15, 2021 and remained open through August 15, 2021. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. It is possible that the ACA will be subject to judicial or congressional challenges in the future. It is unclear how such challenges and the healthcare reform measures of the Biden administration will impact the ACA or our business.

Other legislative changes have been proposed and adopted since the ACA was enacted. These changes include aggregate reductions to Medicare payments to providers of 2% per fiscal year pursuant to the Budget Control Act of 2011, which began in 2013, and due to subsequent legislative amendments to the statute, will remain in effect through 2030 unless additional Congressional action is taken. However, COVID-19 relief legislation suspended the 2% Medicare sequester from May 1, 2020 through March 31, 2022. Under current legislation the actual reduction in Medicare payments will vary from 1% in 2022 to up to 3% in the final fiscal year of this sequester. The American Taxpayer Relief Act of 2012, among other things, further reduced Medicare payments to several providers, including hospitals and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Additionally, on March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law, which eliminates the statutory Medicaid drug rebate cap, currently set at 100% of a drug's average manufacturer price, for single source and innovator multiple source drugs, beginning January 1, 2024. These laws may result in additional reductions in Medicare, Medicaid and other healthcare funding, which could have an adverse effect on customers for our product candidates, if approved, and, accordingly, our financial operations.

Additionally, there has been heightened governmental scrutiny in the United States of pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. At the federal level, the Trump administration used several means to propose or implement drug pricing reform, including through federal budget proposals, executive orders and policy initiatives. For example, on July 24, 2020 and September 13, 2020, the Trump administration announced several executive orders related to prescription drug pricing that seek to implement several of the administration's proposals. As a result, the FDA concurrently released a final rule and guidance in September 2020, implementing a portion of the importation executive order providing pathways for states to build and submit importation plans for drugs from Canada. Further, on November 20, 2020, HHS finalized a regulation removing safe harbor protection for price reductions from pharmaceutical manufacturers to plan sponsors under Part D, either directly or through pharmacy benefit managers, unless the price reduction is required by law. The rule also creates a new safe harbor for price reductions reflected at the point-of-sale, as well as a safe harbor for certain fixed fee arrangements between pharmacy benefit managers and manufacturers. The implementation of the rule has been delayed until January 1, 2027. Further, in November 2020, CMS issued an interim final rule implementing the Most Favored Nation, or MFN, Model under which Medicare Part B reimbursement rates will be calculated for certain drugs and biologicals based on the lowest price drug manufacturers receive in Organization for Economic

Cooperation and Development countries with a similar gross domestic product per capita. The MFN Model regulations mandate participation by identified Part B providers and will apply in all United States and territories for a seven-year period beginning January 1, 2021, and ending December 31, 2027. As a result of litigation challenging the MFN Model, on December 27, 2021, CMS published a final rule that rescinded the Most Favored Nation model interim final rule. In July 2021, the Biden administration released an executive order, "Promoting Competition in the American Economy," with multiple provisions aimed at prescription drugs. In response to Biden's executive order, on September 9, 2021, HHS released a Comprehensive Plan for Addressing High Drug Prices that outlines principles for drug pricing reform and sets out a variety of potential legislative policies that Congress could pursue to advance these principles. No legislation or administrative actions have been finalized to implement these principles. In addition, Congress is considering drug pricing as part of other reform initiatives. Similar reform measures have been considered and adopted at the state level as well.

We expect that these and other healthcare reform measures that may be adopted in the future may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for any approved drug. Any reduction in reimbursement from Medicare or other government 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. It is also possible that additional governmental action is taken in response to the COVID-19 pandemic

In addition, FDA regulations and guidance may be revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new regulations or guidance, or revisions or reinterpretations of existing regulations or guidance, may impose additional costs or lengthen FDA review times for ITIL-168, ITIL-306 or any future product candidates. We cannot determine how changes in regulations, statutes, policies, or interpretations when and if issued, enacted or adopted, may affect our business in the future. Such changes could, among other things, require:

- additional clinical trials to be conducted prior to obtaining approval;
- changes to manufacturing methods;
- recalls, replacements, or discontinuance of one or more of our products; and
- additional recordkeeping.

Such changes would likely require substantial time and impose significant costs, or could reduce the potential commercial value of ITIL-168, ITIL-306 or other product candidates, and could materially harm our business and our financial results. In addition, delays in receipt of or failure to receive regulatory clearances or approvals for any other products would harm our business, financial condition, and results of operations.

Risks Related to Employee Matters and Managing our Growth

Our future success depends on our ability to retain key executives and to attract, retain and motivate qualified personnel.

We are highly dependent on the management, development, clinical, financial and business development expertise of our executive officers. Each of our executive officers may currently terminate their employment with us at any time. We do not maintain “key person” insurance for any of our executives or employees.

Recruiting and retaining qualified scientific and clinical personnel and, if we progress the development of our product pipeline toward scaling up for commercialization, manufacturing and sales and marketing personnel, will also be critical to our success. The loss of the services of our executive officers or other key employees could impede the achievement of our development and commercialization objectives and seriously harm our ability to successfully implement our business strategy. Furthermore, replacing executive officers and key employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to successfully develop, gain regulatory approval of and commercialize

products. Competition to hire from this limited pool is intense, and we may be unable to hire, train, retain or motivate these key personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. We also experience competition for the hiring of scientific and clinical personnel from universities and research institutions. In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us. If we are unable to continue to attract and retain high quality personnel, our ability to pursue our growth strategy will be limited.

We expect to expand our clinical development and regulatory capabilities and potentially implement sales, marketing and distribution capabilities, and as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.

As of June 30, 2022, we had 463 employees. As our development progresses, we expect to experience significant growth in the number of our employees and the scope of our operations, particularly in the areas of clinical product development, regulatory affairs, manufacturing and, if any of our product candidates receives marketing approval, sales, marketing and distribution. 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 financial resources and the limited experience of our management team in managing a company with such anticipated growth, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

Our employees, independent contractors, consultants, collaborators, principal investigators, CROs, suppliers and vendors may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements.

We are exposed to the risk that our employees, independent contractors, consultants, collaborators, principal investigators, CROs, suppliers and vendors may engage in fraudulent conduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct that violates FDA regulations, including those laws requiring the reporting of true, complete and accurate information to the FDA, manufacturing standards, federal and state healthcare laws and regulations, and laws that require the true, complete and accurate reporting of financial information or data. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Misconduct by these parties could also involve the improper use of individually identifiable information, including, without limitation, information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, including, without limitation, damages, fines, disgorgement, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations.

Risks Related to Ownership of our Common Stock and our Status as a Public Company

An active trading market for our common stock may not continue to be developed or sustained.

Prior to our initial public offering, there was no public market for our common stock. Although our common stock is listed on The Nasdaq Global Market, if an active trading market for our shares does not continue to be developed or sustained, it may be difficult for you to sell shares of our common stock at an attractive price or at all.

The trading price of the shares of our common stock may be volatile, and purchasers of our common stock could incur substantial losses.

Our stock price has been, and may continue to be volatile. The stock market in general and the market for biopharmaceutical companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. As a result of this volatility, investors may not be able to sell their common stock at or above the price paid for the shares. The market price for our common stock may be influenced by many factors, including:

- the commencement, enrollment or results of our clinical trials of ITIL-168, ITIL-306 or any future clinical trials we may conduct, or changes in the development status of our product candidates;
- any delay in our regulatory filings for ITIL-168, ITIL-306 or any other product candidate we may develop, and any adverse development or perceived adverse development with respect to the applicable regulatory authority's review of such filings, including without limitation the FDA's issuance of a "refusal to file" letter or a request for additional information;
- delays in or termination of clinical trials;
- adverse regulatory decisions, including failure to receive regulatory approval of our product candidates;
- unanticipated serious safety concerns related to the use of ITIL-168, ITIL-306 or any other product candidate;
- changes in financial estimates by us or by any equity research analysts who might cover our stock;
- conditions or trends in our industry;
- changes in the market valuations of similar companies;
- announcements by our competitors of new product candidates or technologies, or the results of clinical trials or regulatory decisions;
- stock market price and volume fluctuations of comparable companies and, in particular, those that operate in the biopharmaceutical industry;
- publication of research reports about us or our industry or positive or negative recommendations or withdrawal of research coverage by securities analysts;
- announcements by us or our competitors of significant acquisitions, strategic partnerships or divestitures;
- our relationships with our collaborators;
- announcements of investigations or regulatory scrutiny of our operations or lawsuits filed against us;
- investors' general perception of our company and our business;
- recruitment or departure of key personnel;
- overall performance of the equity markets;
- trading volume of our common stock;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- significant lawsuits, including patent or stockholder litigation;
- changes in the structure of healthcare payment systems;
- general political and economic conditions; and
- other events or factors, many of which are beyond our control.

The stock market in general, and the Nasdaq Global Select Market and biotechnology companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies, which has resulted in decreased stock prices for many companies notwithstanding the lack of a fundamental change in their underlying business models or prospects. Broad market and industry factors, including the ongoing armed conflict between Russia and Ukraine, supply chain disruptions,

rising inflation and interest rate increases and potentially worsening economic conditions and other adverse effects or developments relating to the ongoing COVID-19 pandemic, may negatively affect the market price of our common stock, regardless of our actual operating performance. The realization of any of the above risks or any of a broad range of other risks, including those described in this section, could have a significant and material adverse impact on the market price of our common stock.

In addition, in the past, stockholders have initiated class action lawsuits against pharmaceutical and biotechnology companies following periods of volatility in the market prices of these companies' stock. Such litigation, if instituted against us, could cause us to incur substantial costs and divert management's attention and resources from our business.

If equity research analysts do not publish research or reports, or publish unfavorable research or reports, about us, our business or our market, our stock price and trading volume could decline.

The trading market for our common stock is influenced by the research and reports that equity research analysts publish about us and our business. As a recently public company, we have only limited research coverage by equity research analysts. Equity research analysts may elect not to provide research coverage of our common stock, and such lack of research coverage may adversely affect the market price of our common stock. In the event we do have equity research analyst coverage, we will not have any control over the analysts or the content and opinions included in their reports. The price of our stock could decline if one or more equity research analysts downgrade our stock or issue other unfavorable commentary or research. If one or more equity research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which in turn could cause our stock price or trading volume to decline.

A significant portion of our total outstanding shares are available for immediate resale. This could cause the market price of our common stock to drop significantly, even if our business is doing well.

Sales of a substantial number of shares of our common stock in the public market could occur at any time. If our stockholders sell, or the market perceives that our stockholders intend to sell, substantial amounts of our common stock in the public market, the market price of our common stock could decline significantly.

As of August 10, 2022, we had outstanding 129,694,369 shares of common stock.

In addition, we have filed a registration statement on Form S-8 under the Securities Act of 1933, as amended, or the Securities Act, registering the issuance of approximately 31.8 million shares of common stock subject to options or other equity awards issued or reserved for future issuance under our equity incentive plans. Shares registered under these registration statements on Form S-8 will be available for sale in the public market subject to vesting arrangements and exercise of options, the lock-up agreements described above and the restrictions of Rule 144 in the case of our affiliates.

Additionally, as of June 30, 2022 the holders of approximately 57.7 million shares of our common stock, or their transferees, have rights, subject to some conditions, to require us to file one or more registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. If we were to register the resale of these shares, they could be freely sold in the public market. If these additional shares are sold, or if it is perceived that they will be sold, in the public market, the trading price of our common stock could decline.

Provisions in our corporate charter documents and under Delaware law may prevent or frustrate attempts by our stockholders to change our management and hinder efforts to acquire a controlling interest in us, and the market price of our common stock may be lower as a result.

There are provisions in our certificate of incorporation and bylaws that may make it difficult for a third party to acquire, or attempt to acquire, control of our company, even if a change of control was considered favorable by you and other stockholders. For example, our board of directors has the authority to issue up to 10,000,000 shares of preferred stock. The board of directors can fix the price, rights, preferences, privileges, and restrictions of the

preferred stock without any further vote or action by our stockholders. The issuance of shares of preferred stock may delay or prevent a change of control transaction. As a result, the market price of our common stock and the voting and other rights of our stockholders may be adversely affected. An issuance of shares of preferred stock may result in the loss of voting control to other stockholders.

Our charter documents also contain other provisions that could have an anti-takeover effect, including:

- only one of our three classes of directors will be elected each year;
- stockholders will not be entitled to remove directors other than by a 66 2/3% vote and only for cause;
- stockholders will not be permitted to take actions by written consent;
- stockholders cannot call a special meeting of stockholders; and
- stockholders must give advance notice to nominate directors or submit proposals for consideration at stockholder meetings.

In addition, we are subject to the anti-takeover provisions of Section 203 of the Delaware General Corporation Law, which regulates corporate acquisitions by prohibiting Delaware corporations from engaging in specified business combinations with particular stockholders of those companies. These provisions could discourage potential acquisition proposals and could delay or prevent a change of control transaction. They could also have the effect of discouraging others from making tender offers for our common stock, including transactions that may be in your best interests. These provisions may also prevent changes in our management or limit the price that investors are willing to pay for our stock.

Concentration of ownership of our common stock among our existing executive officers, directors and principal stockholders may prevent new investors from influencing significant corporate decisions.

Our executive officers, directors and current beneficial owners of 5% or more of our common stock and their respective affiliates beneficially own a majority of our outstanding common stock. As a result, these persons, acting together, would be able to significantly influence all matters requiring stockholder approval, including the election and removal of directors, any merger, consolidation, sale of all or substantially all of our assets, or other significant corporate transactions.

Some of these persons or entities may have interests different than yours. For example, because many of these stockholders purchased their shares at prices substantially below the current market price of our common stock and have held their shares for a longer period, they may be more interested in selling our company to an acquirer than other investors, or they may want us to pursue strategies that deviate from the interests of other stockholders.

We are an "emerging growth company" and a "smaller reporting company" and as a result of the reduced disclosure and governance requirements applicable to emerging growth companies and smaller reporting companies, our common stock may be less attractive to investors.

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, and we intend to take advantage of some of the exemptions from reporting requirements that are applicable to other public companies that are not emerging growth companies, including:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "Management's Discussion and Analysis of Financial Condition and Results of Operations" disclosure;
- not being required to comply with the auditor attestation requirements in the assessment of our internal control over financial reporting;

- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements;
- reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements; and
- not being required to hold a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile. We may take advantage of these reporting exemptions until we are no longer an emerging growth company. We will remain an emerging growth company until the earliest of (i) December 31, 2026, (ii) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion, (iii) the last day of the fiscal year in which we are deemed to be a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock held by non-affiliates exceeded $700.0 million as of the last business day of the second fiscal quarter of such year or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

Even after we no longer qualify as an emerging growth company, we may, under certain circumstances, still qualify as a "smaller reporting company," which would allow us to take advantage of many of the same exemptions from disclosure requirements, including reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements.

We will have broad discretion in the use of our cash and cash equivalents, including the net proceeds from our initial public offering.

We have broad discretion over the use of our cash and cash equivalents, including the net proceeds from our recent initial public offering. You may not agree with our decisions, and our use of the proceeds may not yield any return on your investment. Our failure to apply our cash and cash equivalents effectively could compromise our ability to pursue our growth strategy and we might not be able to yield a significant return, if any, on our investment of these net proceeds. You will not have the opportunity to influence our decisions on how to use our cash and cash equivalents.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be your sole source of gains and you may never receive a return on your investment.

You should not rely on an investment in our common stock to provide dividend income. We have not declared or paid cash dividends on our common stock to date. We currently intend to retain our future earnings, if any, to fund the development and growth of our business. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future. Investors seeking cash dividends should not purchase our common stock.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware and the federal district courts of the United States of America will be the exclusive forums for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law:

- any derivative action or proceeding brought on our behalf;

- any action asserting a breach of fiduciary duty;
- any action asserting a claim against us arising under the Delaware General Corporation Law, our amended and restated certificate of incorporation, or our amended and restated bylaws; and
- any action asserting a claim against us that is governed by the internal-affairs doctrine.

This provision would not apply to suits brought to enforce a duty or liability created by the Exchange Act. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated certificate of incorporation further provides that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. In such instance, we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions of our amended and restated certificate of incorporation. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions.

These exclusive forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers and other employees. If a court were to find either exclusive-forum provision in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur further significant additional costs associated with resolving the dispute in other jurisdictions, all of which could seriously harm our business.

General Risk Factors

We have incurred and will continue to incur increased costs and demands upon management as a result of being a public company.

As a public company listed in the United States, we incur significant additional legal, accounting and other costs, which we anticipate could be between $1.0 million and $2.0 million annually. These additional costs could negatively affect our financial results. In addition, changing laws, regulations and standards relating to corporate governance and public disclosure, including regulations implemented by the SEC and the Nasdaq Stock Market, may increase legal and financial compliance costs and make some activities more time-consuming. These laws, regulations and standards are subject to varying interpretations and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies.

We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If notwithstanding our efforts to comply with new laws, regulations and standards, we fail to comply, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

Failure to comply with these rules might also make it more difficult for us to obtain some types of insurance, including director and officer liability insurance, and we might be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, on committees of our board of directors or as members of senior management.

If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements on a timely basis could be impaired.

We are subject to the reporting requirements of the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, and the rules and regulations of the stock market on which our common stock is listed. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting.

As of our current fiscal year ending December 31, 2022, we must perform system and process evaluation and testing of our internal control over financial reporting to allow management to report on the effectiveness of our internal control over financial reporting in our Form 10-K filing for that year, as required by Section 404 of the Sarbanes-Oxley Act. This requires that we incur substantial additional professional fees and internal costs to expand our accounting and finance functions and that we expend significant management efforts. Prior to our initial public offering, we had never been required to test our internal control within a specified period, and, as a result, we may experience difficulty in meeting these reporting requirements in a timely manner.

We may identify weaknesses in our system of internal financial and accounting controls and procedures that could result in a material misstatement of our financial statements. Our internal control over financial reporting will not prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud will be detected.

If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner, or if we are unable to maintain proper and effective internal controls, we may not be able to produce timely and accurate financial statements. If that were to happen, the market price of our stock could decline and we could be subject to sanctions or investigations by the stock exchange on which our common stock is listed, the Securities and Exchange Commission or other regulatory authorities.

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

We are subject to taxation in more than one tax jurisdiction. As a result, 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 newly enacted tax legislation, changes in the mix of our profitability from jurisdiction to jurisdiction, 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.

We might not be able to utilize a significant portion of our net operating loss carryforwards.

We have generated and expect to continue to generate in the future significant federal and state net operating loss, or NOL, carryforwards. These NOL carryforwards could expire unused and be unavailable to offset future income tax liabilities. Under the Tax Act, as modified by the CARES Act, federal NOLs incurred in taxable years beginning after December 31, 2017 may be carried forward indefinitely, but the deductibility of such federal NOLs is limited. It is uncertain how various states will respond to the Tax Act and CARES Act. In addition, under Section 382 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 tax attributes to offset its post-change income or taxes may be limited. Our initial public offering, together with private placements and other transactions that have occurred since our inception, may have triggered such an ownership change pursuant to Section 382. We have not yet completed a Section 382 analysis. We may experience ownership changes as a result of subsequent shifts in our stock ownership, some of which may be outside of our control. If an ownership change occurs and our ability to use our NOL carryforwards is materially limited, it would

harm our future operating results by effectively increasing our future tax obligations. We have a full valuation allowance for deferred tax assets including NOLs.

Our business activities will be subject to the Foreign Corrupt Practices Act, or FCPA, and similar anti-bribery and anti-corruption laws.

As we expand our business activities outside of the United States, including our clinical trial efforts, we will be subject to the FCPA and similar anti-bribery or anti-corruption laws, regulations or rules of other countries in which we operate. The FCPA generally prohibits offering, promising, giving, or authorizing others to give anything of value, either directly or indirectly, to a non-United States government official in order to influence official action, or otherwise obtain or retain business. The FCPA also requires public companies to make and keep books and records that accurately and fairly reflect the transactions of the corporation and to devise and maintain an adequate system of internal accounting controls. Our business is heavily regulated and therefore involves significant interaction with public officials, including officials of non-United States governments. Additionally, in many other countries, the healthcare providers who prescribe pharmaceuticals are employed by their government, and the purchasers of pharmaceuticals are government entities; therefore, our dealings with these prescribers and purchasers will be subject to regulation under the FCPA. Recently the SEC and Department of Justice have increased their FCPA enforcement activities with respect to biotechnology and pharmaceutical companies. There is no certainty that all of our employees, agents, suppliers, manufacturers, contractors, or collaborators, or those of our affiliates, will comply with all applicable laws and regulations, particularly given the high level of complexity of these laws. Violations of these laws and regulations could result in fines, criminal sanctions against us, our officers, or our employees, the closing down of facilities, including those of our suppliers and manufacturers, requirements to obtain export licenses, cessation of business activities in sanctioned countries, implementation of compliance programs, and prohibitions on the conduct of our business. Any such violations could include prohibitions on our ability to offer our products in one or more countries as well as difficulties in manufacturing or continuing to develop our products, and could materially damage our reputation, our brand, our international expansion efforts, our ability to attract and retain employees, and our business, prospects, operating results, and financial condition.

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

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

Disruptions at the FDA and other agencies may also slow the time necessary for new drugs or biologics to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years, including most recently from December 22, 2018 to January 25, 2019, the United States government has shut down several times and certain regulatory agencies, such as the FDA and the SEC, have had to furlough critical FDA, SEC and other government employees and stop critical activities. If a prolonged government shutdown occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

Separately, in response to the COVID-19 pandemic, the FDA has periodically had to postpone inspections of foreign and domestic manufacturing facilities and products. While such inspections have resumed, the FDA may use remote interactive evaluations where in-person inspections are not feasible or may defer action due to factors including travel restrictions. Regulatory authorities outside the United States have adopted similar restrictions or other policy measures in response to the COVID-19 pandemic and may experience delays in their regulatory activities. If a prolonged government shutdown occurs, or if global health concerns continue to prevent the FDA or

other regulatory authorities from conducting business as usual or conducting inspections, reviews or other regulatory activities, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

Unfavorable global economic and political conditions could adversely affect our business, financial condition or results of operations.

Our results of operations could be adversely affected by general conditions in the global economy, the global financial markets and the global political conditions. The financial markets and the global economy may also be adversely affected by the current or anticipated impact of military conflict, including the ongoing conflict between Russia and Ukraine, terrorism or other geopolitical events. Sanctions imposed by the United States and other countries in response to such conflicts, including the one in Ukraine, may also adversely impact our business, the financial markets and the global economy, and any economic countermeasures by the affected countries or others could exacerbate market and economic instability. Portions of our future clinical trials may be conducted outside of the United States and unfavorable economic conditions resulting in the weakening of the United States dollar would make those clinical trials more costly to operate. Furthermore, a severe or prolonged economic downturn, including a recession or depression resulting from the current COVID-19 pandemic or political disruption, could result in a variety of risks to our business, including weakened demand for our product candidates or any future product candidates, if approved, and our ability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy or political disruption, including any international trade disputes, could also strain our manufacturers or suppliers, possibly resulting in supply disruption, or cause our customers to delay making payments for our potential products. Any of the foregoing could seriously harm our business, and we cannot anticipate all of the ways in which the political or economic climate and financial market conditions could seriously harm our business.

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

(a) Recent Sales of Unregistered Equity Securities

None.

(b) Use of Proceeds

On March 18, 2021, our Registration Statement on Form S-1, as amended (File No. 333-253620), was declared effective in connection with our initial public offering, pursuant to which we sold an aggregate of 18,400,000 shares of our common stock for aggregate net proceeds of $339.0 million

There has been no material change in the actual use of proceeds from our initial public offering from the planned use of proceeds described in our prospectus filed pursuant to Rule 424(b)(4) under the Securities Act with the SEC on March 22, 2021.

(c) Issuer Purchases of Equity Securities

None.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

The exhibits listed on the Exhibit Index are either filed or furnished with this report or incorporated herein by reference.

Exhibit Number	Description of Exhibit
3.1	Amended and Restated Certificate of Incorporation (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-40215), filed with the SEC on March 23, 2021).
3.2	Amended and Restated Bylaws (incorporated herein by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K (File No. 001-40215), filed with the SEC on March 23, 2021).
4.1	Second Amended and Restated Investors' Rights Agreement, by and among the Company and certain of its stockholders, dated December 30, 2020 (incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1 (File No. 333-253620), filed with the SEC on February 26, 2021).
10.1*^	Loan Agreement, by and between Complex Therapeutics LLC and OPG Hermes Investments (DE) LLC, dated June 10, 2022.
10.2*^	Mezzanine Loan Agreement, by and between Complex Therapeutics Mezzanine LLC and OPG Hermes Investments (DE) LLC, dated June 10, 2022.
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*#	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*#	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101	The following financial information from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 formatted in Inline XBRL (Extensible Business Reporting Language) includes: (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Operations and Comprehensive Loss, (iii) the Consolidated Statements of Preferred Stock and of Stockholders Equity, (v) the Condensed Consolidated Statements of Cash Flows, and (vi) Notes to the Condensed Consolidated Financial Statements.
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

* Filed herewith.
^ Portions of this exhibit have been omitted because they are not material and are the type that the Company treats as private or confidential, in accordance with Item 601(b)(10) of Regulation S-K.
\+ Indicates a management contract or compensatory plan.
\# These certifications are being furnished solely to accompany this quarterly report on Form 10-Q pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" by the registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Signatures

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

INSTIL BIO, INC.

August 12, 2022

By: /s/ Sandeep Laumas

Sandeep Laumas
Chief Financial Officer and Chief Business Officer
(On behalf of the registrant and in his capacity as Principal Financial Officer and Principal Accounting Officer)

[***] Certain information in this document has been omitted from this exhibit because it is both (i) not material and (ii) is the type that the Registrant treats as private or confidential.

LOAN AGREEMENT

Dated as of June 10, 2022

Between

COMPLEX THERAPEUTICS LLC,
as Borrower

and

OPG HERMES INVESTMENTS (DE) LLC,
as Lender

Property: 18408-18412 Oxnard Street, Los Angeles, California

Loan Amount: $55,000,000

TABLE OF CONTENTS

EXHIBITS & SCHEDULES

LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of June 10, 2022 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), is made by and between OPG HERMES INVESTMENTS (DE) LLC, a Delaware limited liability company (together with its successors and assigns, "Lender"), and COMPLEX THERAPEUTICS LLC, a Delaware limited liability company ("Borrower").

RECITALS

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms and conditions of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

SECTION 1.1. Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"Acceptable Counterparty" means a counterparty to an Interest Rate Cap Agreement, or the guarantor of such counterparty's obligations under an Interest Rate Cap Agreement (provided that the form and substance of such guaranty is acceptable to Lender) that has a long-term unsecured debt rating of not less than "A" by S&P and "A2" from Moody's, which rating shall not include a "t" or otherwise reflect a termination risk.

"Acceptable LLC" has the meaning set forth in the definition of Special Purpose Entity.

"Account Collateral" has the meaning set forth in Section 3.6 hereof.

"Accounts" means, collectively, the Clearing Account, the Cash Management Account, and each of the Reserve Accounts.

"Act" has the meaning set forth in the definition of Special Purpose Entity.

"Additional Advance" has the meaning set forth in Section 2.1.3 hereof.

"Advance Date" means, with respect to each Additional Advance, the date on which such Additional Advance is disbursed to Borrower pursuant to this Agreement.

"Advance Item" means, individually and collectively as the context may require, Approved Project Expenditures and Interest and Carry Costs.

"Affiliate" means, as to any Person, any other Person that (a) directly or indirectly owns twenty percent (20%) or more of the Equity Interests in such Person, and/or (b) is in Control of, is Controlled by

or is under common Control with such Person, and/or (c) is a director, partner, officer or employee of such Person, and/or (d) is the spouse, issue, parent or officer of such Person.

"Affiliated Manager" means any Manager that is an Affiliate of Borrower.

"Agreement" has the meaning set forth in the introductory paragraph hereto.

"Alternate Rate" means, with respect to each Interest Accrual Period, the per annum rate of interest of the Alternate Rate Index determined as of the Determination Date immediately preceding the commencement of such Interest Accrual Period plus the Alternate Rate Spread; provided that in no event will the Alternate Rate be less than the Minimum Rate.

"Alternate Rate Index" means a floating rate index determined by Lender in its sole but good faith discretion (a) that is commonly accepted by market participants in commercial real estate loans as an alternative to Term SOFR and (b) that is publicly recognized by the International Swaps and Derivatives Association (ISDA) as an alternative to Term SOFR; provided that in no event will the Alternate Rate Index be less than the Rate Index Floor.

"Alternate Rate Loan" means the Loan at such time as interest thereon accrues at a rate of interest based upon the Alternate Rate.

"Alternate Rate Spread" means, in connection with any conversion of the Loan from (a) a Term SOFR Loan to an Alternate Rate Loan, the difference (expressed as the number of basis points) of (i) Term SOFR as of the Determination Date for which Term SOFR was last applicable to the Loan plus the Spread minus (ii) the Alternate Rate Index as of such Determination Date, or (b) a Prime Rate Loan to an Alternate Rate Loan, the difference (expressed as the number of basis points) of (i) the Prime Rate Index as of the Determination Date for which the Prime Rate Index was last applicable to the Loan plus the Prime Rate Spread minus (ii) the Alternate Rate Index as of such Determination Date; provided, however, that in either such case, if such difference is a negative number, then the Alternate Rate Spread shall be zero.

"Applicable Rate Index" means (i) Term SOFR for so long as the Loan is a Term SOFR Rate Loan, (ii) the Alternate Rate Index for so long as the Loan is an Alternate Rate Loan or (iii) the Prime Rate Index for so long as the Loan is a Prime Rate Loan.

"Appraisal" means a written statement setting forth an opinion of the market value of the Property that (i) has been independently and impartially prepared by an appraiser directly engaged by Lender, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, including the minimum appraisal standards for national banks promulgated by the Comptroller of the Currency pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (FIRREA), (iii) has been prepared on "as-stabilized" basis, (iv) has been prepared not more than sixty (60) days prior to the relevant date and (v) has been reviewed as to form and content and approved by Lender, in its reasonable discretion.

"Approved Accounting Method" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination, consistently applied.

"Approved Annual Budget" has the meaning set forth in Section 5.1.1(f)(iv) hereof.

"Approved Bank" means a bank or other financial institution that has a minimum long term unsecured debt rating of at least "A" by S&P or "A2" by Moody's.

"Approved Extraordinary Expenses" has the meaning set forth in Section 3.1.(b) hereof.

"Approved Project Expenditures" means all Costs (other than Interest and Carry Costs) incurred by Borrower with respect to the Project (a) in accordance with the Construction Budget or the applicable Approved Annual Budget, as applicable, or (b) as may otherwise be reasonably approved by Lender from time to time.

"Architect" means Ewing Cole, Inc., the architect engaged by (or on behalf of) Borrower with respect to the design and construction of the Project, together with any successor or additional architect engaged by (or on behalf of) Borrower in accordance with Section 5.1.3(k).

"Architect Agreement" means that certain AIA Document B101-Standard Form of Agreement Between Owner and Architect, dated February 25, 2021 and any other agreements for architectural services which Borrower may enter into with any Architect in accordance with Section 5.1.3(k), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Architect Consent" means any consents and agreements required pursuant to the terms of this Agreement to be executed and delivered by an Architect to Lender with respect to any Architect Agreements entered into by and between Borrower and any Architect, which, in each case, shall be, in form and substance reasonably acceptable to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"As-Stabilized Loan-to-Value Ratio" means as of the date of its calculation, the ratio of (a) the sum of (x) the Outstanding Principal Balance as of the date of such calculation, and (y) the Mezzanine Loan Outstanding Principal Balance as of the date of such calculation, to (b) the "as-stabilized" value of the Property, as determined by an Appraisal ordered by Lender.

"Assignment of Agreements" means that certain Assignment of Agreements, Plans, Licenses and Permits, dated as of the Closing Date, by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Assignment of General Contractor Agreement" means that certain Assignment of General Contractor Agreement, Consent of General Contractor and Subordination of Fees, dated as of the Closing Date, executed and delivered by Borrower and General Contractor to Lender, as the same may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Assignment of Interest Rate Cap Agreement" has the meaning set forth in Section 2.2.7(a) hereof.

"Assignment of Management Agreement" means any Assignment of Management Agreement and Subordination of Management Fees, entered into among Lender, Borrower and Manager in accordance with the terms of this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

"Bankruptcy Action" means with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due, or (f) such Person commencing (or have commenced against it) a proceeding for the dissolution or liquidation of it.

"Bankruptcy Code" means 11 U.S.C. § 101 et seq., as the same may be amended from time to time.

"Bond" means a payment bond and a performance bond (i) in the form of AIA Document A312, or in such other form as may be reasonably acceptable to Lender, (ii) with dual obligee riders that name Lender as a co-obligee with Borrower, and (iii) issued by a surety reasonably satisfactory to Lender.

"Borrower" has the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

"Borrower Party" means, individually and collectively, (i) Borrower, SPE Component Entity (if any), Guarantor, Mezzanine Borrower, Mezzanine Borrower SPE Component Entity (if any), Master Tenant, and any Affiliated Manager, (ii) any Affiliate of any of the foregoing, and (iii) any officers, directors, employees, or agents of any of the foregoing.

"Building A" has the meaning set forth in the Master Lease.

"Building B" has the meaning set forth in the Master Lease.

"Business Day" means any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, are not open for business.

"Carry Costs Guaranty" means that certain Carry Costs Guaranty, dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Cash Expenses" means, for any period, the operating expenses for the operation of the Property as set forth in the Construction Budget or the then-effective Approved Annual Budget or, to the extent an annual budget has not been approved by Lender in accordance with the terms of this Agreement, to the extent that such expenses are actually incurred by Borrower (excluding (i) any deposits into the Tax Reserve Account and the Insurance Reserve Account that are being applied by Lender for payment of Taxes and

Insurance Premiums, as applicable, in accordance with the terms of this Agreement, (ii) any expenses which Master Tenant reimburses Borrower for pursuant to the Master Lease, and (iii) any expenses that Master Tenant pays in accordance with the express terms of the Master Lease, provided, that, in the case of the immediately preceding clause (iii), there is no event of default by Master Tenant under the Master Lease.

"Cash Management Account" means the deposit account established pursuant to the Cash Management Agreement.

"Cash Management Agreement" means that certain Cash Management Agreement, dated as of the Closing Date by and among Cash Management Bank, Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Cash Management Bank" means, initially, Signature Bank, or such other bank or banks selected by Lender to maintain the Cash Management Account (or any Reserve Accounts to the extent they are not subaccounts of the Cash Management Account).

"Cash Management Event" means the existence of any of the following: (a) the Closing Date; (b) an Event of Default; (c) any Bankruptcy Action with respect to Borrower, Mezzanine Borrower, Master Tenant, Guarantor, or any Affiliated Manager; or (d) the determination by Lender at any time that the Debt Yield is not at least eight and one-half percent (8.5%) (provided, that in the event of a failure of Borrower to deliver the information and documentation required under Section 5.1.1(f) by the required delivery date hereunder, at Lender's option the Debt Yield will be presumed to be less than the levels required above unless and until such information and documentation are provided to Lender and demonstrate otherwise).

"Cash Management Period" means the period commencing upon the occurrence of a Cash Management Event and terminating upon the occurrence of a Cash Management Termination Event with respect to all then existing Cash Management Events.

"Cash Management Termination Event" means the occurrence of any of the following: (a) in the event the related Cash Management Event occurred as a result of an Event of Default, such Event of Default shall no longer exists (without implying that Borrower has a right to cure an Event of Default), no other Default or Event of Default then exists, and Lender shall not have otherwise accelerated the Loan, moved for a receiver, commenced foreclosure proceedings, or otherwise begun exercising remedies; (b) (i) in the event that the related Cash Management Event occurred as a result of a Bankruptcy Action relating to Borrower, Mezzanine Borrower, Master Tenant or Guarantor, as applicable, such Bankruptcy Action no longer exists and there has been no Material Adverse Effect as a result thereof, and (ii) in the event that the related Cash Management Event occurred as a result of a Bankruptcy Action relating to any Affiliated Manager, the replacement of such Affiliated Manager in accordance with the terms and conditions of this Agreement, and (c) with respect to the Cash Management Event described in clause (a) or (d) of the definition thereof, (i) Substantial Completion shall have occurred and (ii) Lender has determined that the Debt Yield is at least eight and one-half percent (8.5%) for two (2) consecutive calendar quarters.

"Casualty" has the meaning set forth in Section 6.2 hereof.

"Cause" means, with respect to an Independent Director or Independent Manager, (a) acts or omissions by such Person that constitute fraud, bad faith, gross negligence or willful disregard of such Person's duties under the applicable agreements, (b) that such Person has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a felony under any law applicable to such Person, (c) that such Independent Director or Independent Manager is unable to perform his or her duties as an Independent Director or Independent Manager due to death, disability, or incapacity, or (d) that such

Independent Director or Independent Manager no longer meets the definition of "Independent Director" or "Independent Manager".

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) all requests, rules, guidelines or directives thereunder or issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act or any amendments thereto after the Closing Date, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change Order" means any amendment, supplement or other modification from and after the Closing Date in any respect to (i) the Plans and Specifications, (ii) the Construction Schedule, (iii) the Construction Budget or (iv) any Construction Contract.

"Clearing Account" means the deposit account established pursuant to the Clearing Account Agreement.

"Clearing Account Agreement" means any deposit account control agreement entered into among Clearing Bank, Borrower, Manager (if any) and Lender in accordance with the terms of this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Clearing Bank" means a bank or banks selected by Borrower and approved in writing by Lender in Lender's sole discretion.

"Closing Certificate" means that certain Closing Certificate executed by Borrower as of the Closing Date.

"Closing Date" means the date of this Agreement.

"Closing Date Minimum Equity Requirement" means the direct and indirect owners in Borrower, in the aggregate, have invested at least $50,059,031 of cash equity in the Property (including the acquisition cost thereof) as determined by Lender.

"Closing Date Term SOFR" means 1.19944%.

"Code" means the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Co-Lender Agreement" has the meaning set forth in Section 10.29(b) hereof.

"Combined Advance" means, as of any date, (a) the Additional Advance being made or to be made by Lender pursuant to this Agreement, plus (b) the Mezzanine Loan Additional Advance being made or to be made by Mezzanine Lender pursuant to the Mezzanine Loan Agreement.

"Commercially Reasonable Efforts" means, with respect to Borrower or Guarantor, as applicable, the continuous and diligent use of all commercially reasonable efforts in good faith taking into account the interests of Lender, including, if commercially reasonable, the commencement and prosecution of litigation or other enforcement of Borrower's and/or Guarantor's rights under applicable agreements, at law or in equity. The use of commercially reasonable efforts shall require Borrower and Guarantor to disregard the interests of its Affiliates. Borrower's or Guarantor's lack of funds to pay for usual and customary reasonable legal and other costs and expenses related to Borrower's or Guarantor's efforts to perform shall not excuse Borrower or Guarantor from fully pursuing such efforts.

"Complete" means, with respect to the Approved Project Expenditures, that (i) Substantial Completion has occurred, (ii) all Punchlist Items have been completed, (iii) the Property is free of all mechanics', materialmen's, and other similar Liens (or such liens have otherwise been bonded over to Lender's reasonable satisfaction), (iv) Master Tenant has commenced paying full unabated rent with respect to the entire Property, including without limitation "Building A" and "Building B" (as each such term is defined in the Master Lease), (v) Lender has received evidence acceptable to Lender that all Legal Requirements and all private restrictions and covenants relating to the Property have been complied with or satisfied and that all necessary approvals from Governmental Authorities with respect to the Improvements have been obtained, (vi) Lender has received copies of all warranties from suppliers covering materials, equipment and appliances included within the applicable component of the work, and (vii) the conditions set forth in Section 2.1.19 have been satisfied to the satisfaction of Lender. The terms "Completed" and "Completion" shall have the same meaning when used in the Loan Documents.

"Completion Due Date" means December 1, 2023.

"Completion Guaranty" means that certain Completion Guaranty Agreement, dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Condemnation" means a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Alternate Rate Index or the Prime Rate Index, any technical, administrative or operational changes (including, without limitation, changes to the definitions of "Business Day", "Determination Date", "Interest Accrual Period", "Payment Date" "U.S. Government Securities Business Day", preceding and succeeding business day conventions, rounding of amounts, timing and frequency of determining rates and making payments of interest, the applicability and length of lookback periods, and other technical, administrative or operational matters) that Lender decides in good faith, from time to time, may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Lender in a manner substantially consistent with market practice for floating rate loans held on Lender's balance sheet and secured by U.S. commercial real estate assets (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

"Construction Budget" means the construction and development budget prepared by, or on behalf of, Borrower for the construction and development of the Project, as the same may be adjusted due to changes or reallocations made in accordance with Section 2.1.7 and Section 5.1.3(c) hereof, and which, (A) shall contain Line Items with respect to the Approved Project Expenditures and setting forth (i) the Line Items for all direct and indirect Costs estimated to be incurred in connection with the Completion of the Approved Project Expenditures (including the Contingency with respect to the Approved Project Expenditures), and (ii) whether each such Line Item constitutes a Hard Cost or a Soft Cost, (B) shall contain a Line Item with respect to the estimated Interest and Carry Costs and setting forth the Line Items for all direct and indirect Costs estimated to be incurred in connection with the payment in full of the Interest and Carry Costs and (C) in any event (i) sets forth Borrower's estimates for budgeted construction categories of all items of direct and indirect Costs to be incurred or payable with respect to the foregoing (including monthly interest on the Loan) and (ii) specifies each direct and indirect Cost that is to be funded from proceeds of each of the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms of this Agreement. The initial Construction Budget is attached hereto as Exhibit L.

"Construction Consultant" means CBRE, Inc., or such other Person as may be designated and engaged by Lender in its sole discretion from to time as construction consultant to advise, consult and render reports to Lender concerning the status of the development and construction of the Project.

"Construction Contract" means the Architect Agreement, the General Contractor Agreement, each Major Trade Contract, any other Trade Contract to which Borrower, General Contractor or an Affiliate of Borrower is a party, and each agreement to which a Design Professional is party, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time to time in accordance with the terms and conditions of this Agreement.

"Construction Documents" means, collectively, all Construction Contracts, the Plans and Specifications, the Construction Budget, the Construction Permits and all Change Orders, as the same may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Construction Drawings" means the drawings, calculations and final specifications acceptable for permitting, bidding and construction of the Required Improvements.

"Construction Permits" means, collectively, all authorizations, consents and approvals, licenses and permits given or issued by Governmental Authorities which are required, from time to time, for the development and construction of the Project substantially in accordance with all Legal Requirements and the Plans and Specifications, as the same may be amended, replaced, supplemented, assigned or otherwise modified from time to time in accordance with the terms of this Agreement and applicable Legal Requirements.

"Construction Schedule" means a schedule for the projected progress of the development and construction of the Project, setting forth a construction progress schedule reflecting, among other things, the anticipated dates of completion, which shall include a trade-by-trade breakdown of the estimated periods of commencement and completion of the specific work to be completed in connection with the completion of the Project substantially in accordance with the Plans and Specifications and Legal Requirements, as the same may be amended, restated, replaced, supplemented, updated or otherwise modified from time to time in accordance with the terms of this Agreement. The initial Construction Schedule is attached hereto as Exhibit M.

"Contingency" means the contingency line item set forth in the Construction Budget, initially in the amount of $3,106,237 and available for Costs, pursuant to this Agreement, subject to compliance at all times with the Lien Law.

"Contractor" means any contractor, subcontractor, sub-subcontractor, supplier or provider of labor, materials, equipment and/or services in connection with the construction of the Project or any Design Professional.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. "Controlled" and "Controlling" shall have correlative meanings.

"Cost Saving" has the meaning set forth in Section 2.1.11(d) hereof.

"Costs" means, collectively, all costs and expenses of constructing the Project (or, with respect to Reimbursable Costs, all costs and expenses of construction of the Project prior to the Closing Date, not to exceed $33,432,725) and operating the Property (including, without limitation, all Approved Project Expenditures and Interest and Carry Costs) through the Maturity Date whether or not set forth in the Construction Budget or the Approved Annual Budget.

"Debt" means the Outstanding Principal Balance, together with all interest accrued and unpaid thereon, and all other sums (including the Prepayment Premium) due from Borrower under the Loan Documents to which it is a party.

"Debt Service" means, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement.

"Debt Yield" means, as of any date of determination, the amount (expressed as a percentage) determined by dividing the UNOI by the sum of (a) the Outstanding Principal Balance and (b) the Mezzanine Loan Outstanding Principal Balance.

"Default" means the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"Default Rate" means a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) five percent (5%) above the Interest Rate.

"Deficiency" means, as of any date of determination, the amount by which the sum of (i) such portion of the Loan and the Mezzanine Loan (so long as Mezzanine Lender is not in default of its obligations to fund Mezzanine Loan Additional Advances thereunder), in each case, as remains to be advanced as of such date in respect of Approved Project Expenditures (but only to the extent such unadvanced amounts are permitted (or would be permitted, upon satisfaction of applicable conditions precedent) pursuant to the Loan Documents to be applied to the applicable Costs and excluding undisbursed amounts in the Construction Budget for Interest and Carry Costs and other sums to be advanced to pay non-construction costs such as marketing costs), plus (ii) amounts that are guaranteed pursuant to the Equity Funding Guaranty (provided that no claim is then being pursued by Lender in respect of any of the Guarantees and Guarantor is not then in default or in breach of any of its obligations in respect of any of the Guarantees) with respect to Approved Project Expenditures, plus (iii) any unused Deficiency Collateral as of such date, is less than the actual sum, as estimated by Lender or Construction Consultant in its good faith judgment, which will be required to Complete the Project substantially in accordance with the Plans and Specifications (taking into account all Landlord Requested Changes and all Tenant Requested Changes (each such term

as defined in the Master Lease), in each case, approved in accordance with the Master Lease and the Loan Documents, and as the Plans and Specifications may otherwise be amended as provided herein), in substantial accordance with the then current Construction Schedule (as the same may be amended as provided herein), and all Legal Requirements and this Agreement, and to pay all unpaid Costs in connection therewith, in each case, exclusive of any Interest and Carry Costs and other sums to be advanced to pay non-construction costs such as marketing expenses. Such estimate shall be binding and conclusive, provided that it is made in good faith and absent manifest error.

"Deficiency Account" has the meaning set forth in Section 2.1.12(b) hereof

"Deficiency Collateral" has the meaning set forth in Section 2.1.12(b) hereof.

"Design Drawings" means the drawings and outline specifications that illustrate and describe the refinement of the design of the Required Improvements, establishing the scope, relationships, forms, size, materials, systems and appearance of the Required Improvements by means of plans, sections and elevations, typical construction details and equipment layouts.

"Design Professionals" means, collectively, all architects, engineers, consultants, and similar professionals retained by or on behalf of Borrower or its Affiliates in connection with the design of the Project (including the Architect), all of which shall be licensed professionals in the State (if so required by the Legal Requirements) and shall be subject to approval by Lender prior to such engagement in connection with the Project, not to be unreasonably withheld, conditioned or delayed. Lender has approved the Design Professions listed on Schedule IV.

"Determination Date" means, with respect to any determination of the Applicable Rate Index applicable to an Interest Accrual Period, the date that is two (2) U.S. Government Securities Business Days preceding the first day of the applicable Interest Accrual Period.

"Downgraded Counterparty" means a counterparty to an Interest Rate Cap Agreement, or the guarantor of such counterparty's obligations under an Interest Rate Cap Agreement that has a long-term unsecured debt rating of "A-" or lower by S&P and "A3" or lower from Moody's.

"Draw Request" has the meaning set forth in Section 2.1.5(a) hereof.

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

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

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

"Eligible Account" means a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a

segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least $50,000,000.00 and is subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

"Eligible Institution" means a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least "A-1" by S&P, "P-1" by Moody's, and "F-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less or, in the case of letters of credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "A" by Fitch and S&P and "A2" by Moody's.

"Embargoed Person" means any Person (a) that is subject to trade restrictions under United States law, including the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated under any such United States laws, with the result that transacting business with such Person (whether directly or indirectly) is or would be prohibited by law; (b) that is listed in the annex to, or who is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (as amended or supplemented, the "Executive Order") or any other Prescribed Laws; (c) that is owned or Controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order or any other Prescribed Laws; (d) with whom a Person is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order and any other Prescribed Laws; (e) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order or any other Prescribed Laws; (f) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or at any replacement website or other replacement official publication of such list; (g) that is named on any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC, or on any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America; (h) that has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any violation of Prescribed Laws, or is currently under investigation by any Governmental Authority for alleged criminal activity; or (i) who is an Affiliate of a Person listed in clauses (a) through (h) above.

"Engineer" means each engineer with respect to the Project on the date hereof, together with any successor or additional engineers engaged by (or on behalf of) Borrower or its Affiliate to perform any structural, mechanical, electrical and/or soil engineering services with respect to all or any portion of the Project.

"Engineer Agreement" means each agreement for engineering services which Borrower has entered into or may enter into with any Engineer in accordance with Section 5.1.3(k), as the same may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Engineer Consent" means any consents and agreements required pursuant to the terms of this Agreement to be executed and delivered by an Engineer to Lender with respect to any Engineer Agreements

entered into by and between Borrower and any Engineer, which, in each case, shall be, in form and substance reasonably acceptable to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Environmental Indemnity" means that certain Environmental Indemnity Agreement, dated as of the Closing Date, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Environmental Report" means that certain Phase I Environmental Site Assessment Report, dated as of May 6, 2022, prepared by Partner Engineering and Science, Inc., as Project No. 22-366205.1.

"Equity Funding Guaranty" means that certain Guaranty of Equity Obligations, dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Equity Interests" means (a) partnership interests (general or limited) in a partnership; (b) membership interests in a limited liability company; (c) shares or stock interests in a corporation, and (d) the beneficial ownership interests in a trust.

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

"Estimated Interest and Carry Available Amount" has the meaning set forth in Section 2.1.9(d) hereof.

"Estimated Interest and Carry Costs" has the meaning set forth in Section 2.1.9(d) hereof.

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

"Event of Default" has the meaning set forth in Section 7.1 hereof.

"Excess Cash Flow" has the meaning set forth in Section 3.1(b) hereof.

"Excess Cash Flow Reserve Account" has the meaning set forth in Section 3.1(b) hereof.

"Exchange Act" means the Securities and Exchange Act of 1934, as amended.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Lender being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or commitment, or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.2.3(a), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Lender's failure to comply with Section 2.2.3(b); and (d) any withholding Taxes imposed under FATCA.

"Excusable Delay" means any delay or number of delays due to conditions beyond the reasonable control of Borrower and/or its Affiliates (in each case, so long as Borrower continuously and diligently uses all Commercially Reasonable Efforts to mitigate the effect thereof), including, without limitation, strikes, stays, judgments, orders, decrees, labor disputes, governmental restrictions, acts of God, the elements, enemy action, civil commotion, fire, casualty, accidents, shortages of, or inability to obtain, labor, utilities or material, actual or threatened health emergency (including, without limitation, epidemic, pandemic (including, for the avoidance of doubt, the ongoing COVID-19 pandemic), famine, disease, plague, quarantine, and other health risk); provided, however, that (i) any lack of funds in and of itself shall not be deemed to be a condition beyond the reasonable control of Borrower and (ii) any failure by any contractor or sub-contractor to perform its obligations under any contractor or sub-contractor agreement in and of itself shall not be deemed to be a condition beyond the reasonable control of Borrower (unless due to the bankruptcy or insolvency of such contractor or sub-contractor); provided that in no event shall Excusable Delay exceed sixty (60) consecutive calendar days or ninety (90) days in the aggregate.

"Executive Order" has the meaning set forth in the definition of "Embargoed Person".

"Existing Construction Documents" means, collectively, the Construction Documents in effect as of the Closing Date, as more particularly described on Schedule I hereto.

"Extension Option" has the meaning set forth in Section 2.3.1 hereof.

"Extension Shortfall" has the meaning set forth in Section 2.3.1(k) hereof.

"Extension Term" has the meaning set forth in Section 2.3.1 hereof.

"Extraordinary Expenses" has the meaning set forth in Section 5.1.1(f)(iv).

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

"Financial Covenant Requirements" means, collectively, the Guarantor Net Worth and Liquid Assets (each such term as defined in the Recourse Guaranty) requirements set forth in the Recourse Guaranty.

"Fitch" means Fitch, Inc.

"Foreign Lender" means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes.

"General Contractor" means (i) Turner Construction Company or (ii) any other bondable general contractor or construction manager, as the case may be, licensed in the State, engaged by Borrower or its Affiliate with respect to the construction of the Project and approved by Lender, such approval not to be unreasonably withheld, conditioned or delayed, and for which Lender has received a general contractor in the form of the Assignment of General Contractor Agreement.

"General Contractor Agreement" means (i) that certain AIA Document A133-Standard Form Agreement Between Owner and Construction Manager as Constructor, dated as of October 26, 2020, between Borrower and General Contractor, as amended by those two (2) certain Guaranteed Maximum Price Amendments, dated as of December 17, 2020, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of December 31, 2020, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of January 27, 2021, by those two (2) certain Guaranteed Maximum Price Amendment, dated March 5, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of March 30, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of April 20, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of April 26, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of May 13, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of May 21, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of May 27, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of June 20, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of July 23, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of August 25, 2021, and as further amended by that certain Guaranteed Maximum Price Amendment, dated as of September 15, 2021, (b) any other documentation executed by and between Borrower and General Contractor evidencing or relating to the guaranteed maximum price thereunder and (c) any guaranty of General Contractor's obligations under the General Contractor Agreement provided by any Person, and (ii) any general contractor or other agreement which may be entered into by (or on behalf of) Borrower or its Affiliate with any successor or additional or other General Contractor subject to the requirements of Section 5.1.3(k), as each of the foregoing in (i) and (ii) may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Governmental Authority" means any court, board, agency, bureau, department, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

"Guarantor" means Instil Sponsor, together with its successors and permitted assigns.

"Guarantees" means, collectively, the Recourse Guaranty, the Carry Cost Guaranty, the Completion Guaranty and the Equity Funding Guaranty, each dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Hard Costs" means, collectively, all costs and expenses constituting Costs of the Project set forth in the Construction Budget which are denominated in the Construction Budget as "Hard Costs".

"HVCRE" means any loan classified as a Highly Volatile Commercial Real Estate Loan by the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) including the rules, guidelines and directives promulgated pursuant to Basel III.

"Improvements" has the meaning set forth in the granting clause of the Security Instrument.

"In Balance" has the meaning set forth in Section 2.1.11(a) hereof.

"Increased Costs" has the meaning set forth in Section 2.2.5(a) hereof.

"Indebtedness" means for any Person, on a particular date, the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including amounts for borrowed money and

indebtedness in the form of mezzanine debt and preferred equity); (b) obligations of such Person that are evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations of such Person for the deferred purchase price of property or services (including trade obligations for which such Person is liable); (d) obligations of such Person under letters of credit; (e) obligations of such Person under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; (g) obligations secured by any liens granted by such Person, whether or not the obligations have been assumed or are those of any other Person, and (h) without duplication of the foregoing, any contingent obligations of such Person (determined in accordance with the Approved Accounting Method).

"**Indemnified Party**" has the meaning set forth in Section 10.13(b) hereof.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document, and (b) to the extent not otherwise described in clause (a), Other Taxes.

"**Independent**" means, when used with respect to any Person, a Person that: (a) does not have any direct financial interest or any material indirect financial interest in Borrower or in any Affiliate of Borrower; (b) is not connected with Borrower or any Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer, or person performing similar functions; and (c) is not a member of the immediate family of a Person defined in clause (a) or (b) above.

"**Independent Accountant**" means a "Big Four" accounting firm or another accounting firm of nationally recognized, certified public accountants which is Independent and which is selected by Borrower and reasonably acceptable to Lender.

"**Independent Director**" or "**Independent Manager**" means, of any Special Purpose Entity, or if such Special Purpose Entity is a limited partnership, the general partner of such Special Purpose Entity, an individual who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience and who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc. (or its affiliate NRAI Entity Services, LLC), Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors or Independent Managers, another nationally-recognized company reasonably approved by Lender, in each case that is not an Affiliate of the Borrower Parties and that provides professional Independent Directors and Independent Managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Manager or Independent Director, or as a member of the board of directors or board of managers of such corporation or limited liability company, as applicable, and for the five-year period prior to his or her appointment as an Independent Director has not been and during the continuation of his or her serving as an Independent Director will not be, any of the following:

(a) a member (other than a Special Member), manager, director, trustee, officer, employee, attorney, or counsel of any of the Borrower Parties or their Affiliates (provided that such person may be an Independent Director or Independent Manager of Borrower as long as they are not a member, manager, director, trustee, officer, employee, attorney, or counsel of any other Borrower Party or Affiliate of a Borrower Party, except that a Person who otherwise satisfies the definition of Independent Director or Independent Manager other than this subparagraph (a) by reason of being the independent director or independent manager of a "special purpose entity" that is an Affiliate of Borrower shall not be disqualified from serving as an Independent Director or Independent Manager of Borrower if such Person is either (i)

a professional Independent Director or Independent Manager or (ii) the fees that such individual earns from serving as independent director or independent manager of Affiliates of Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year);

(b) a creditor, customer, supplier, service provider (including provider of professional services) or other Person who derives any of its purchases or revenues from its activities with any Borrower Party or any Affiliate of a Borrower Party (other than an Independent Manager or Independent Director provided by a nationally-recognized company that routinely provides professional Independent Directors or Independent Managers and other corporate services to any Borrower Party or any Affiliate of a Borrower Party in the ordinary course of business);

(c) a direct or indirect legal or beneficial owner in any Borrower Party or any Affiliate of a Borrower Party;

(d) a member of the immediate family of any member, manager, employee, attorney, customer, supplier or other Person referred to above; and

(e) a Person Controlling or under the common Control of anyone listed in subparagraphs (a) through (d) above.

"**Initial Advance**" has the meaning set forth in Section 2.1.2 hereof.

"**Initial Maturity Date**" means the Payment Date in July 9, 2025.

"**Initial Payment Date**" means the Payment Date occurring in July, 2022.

"**Instil Sponsor**" means Instil Bio, Inc., a Delaware corporation.

"**Insurance Reserve Account**" has the meaning set forth in Section 3.2.2(a) hereof.

"**Insurance Premiums**" has the meaning set forth in Section 6.1(b) hereof.

"**Interest Accrual Period**" means, (i) with respect to the Initial Payment Date, the period commencing on the Closing Date up to but not including the Initial Payment Date, and (ii) with respect to any other Payment Date, the period commencing on and including the ninth (9th) day of the preceding calendar month and ending on and including the eighth (8th) day of the calendar month in which such Payment Date occurs.

"**Interest and Carry Costs**" means all amounts required to be deposited or paid (as applicable) pursuant to Section 3.1(b)(i) through (ix) hereof (including, without limitation, all fees, costs and expenses payable to Lender under the Loan Documents or Mezzanine Lender under the Mezzanine Loan Documents).

"**Interest and Carry Costs Advance Amount**" means an amount equal to $399,422.

"**Interest and Carry Cost Line Item**" means the Line Item or Line Items set forth in the Construction Budget in an amount equal to $1,210,369 and available for Interest and Carry Costs pursuant to this Agreement.

"**Interest and Carry Cost Shortfall**" has the meaning set forth in Section 2.1.9(d) hereof.

"Interest Rate" means, for any Interest Accrual Period, (i) the Term SOFR Rate for so long as the Loan is a Term SOFR Rate Loan, (ii) the Alternate Rate for so long as the Loan is an Alternate Rate Loan or (iii) the Prime Rate for so long as the Loan is a Prime Rate Loan.

"Interest Rate Cap Agreement" has the meaning set forth in Section 2.2.7(a); provided, that, after delivery of a Replacement Interest Rate Cap Agreement or a Substitute Interest Rate Cap Agreement to Lender, the term "Interest Rate Cap Agreement" shall be deemed to include such Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement and such Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement shall be subject to all requirements applicable to the Interest Rate Cap Agreement.

"Late Payment Charge" has the meaning set forth in Section 2.4.2 hereof.

"Lead Lender" has the meaning set forth in Section 10.29(a) hereof.

"Lease" means the Master Lease any other lease, sublease or sub-sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and (a) every modification, amendment or other agreement relating to such lease, sublease, sub-sublease, or other agreement entered into in connection with such lease, sublease, sub-sublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Legal Requirements" means all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, building codes, land laws, judgments, decrees and injunctions of Governmental Authorities affecting the Loan, any Secondary Market Transaction with respect to the Loan, Borrower, Master Tenant, Guarantor and/or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including the Securities Act, the Exchange Act, Regulation AB, and regulations promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any statute replacing or amending the same), the Americans with Disabilities Act of 1990, as amended, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower, Master Tenant, Guarantor, the Property or any part thereof, including any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

"Lender" has the meaning set forth in the introductory paragraph hereto, together with its successors and assigns (including the holder of each Note).

"Letter of Credit" means an irrevocable, unconditional, freely transferable (without cost to Lender), clean sight draft letter of credit, as the same may be replaced, split, substituted, modified, amended, supplemented, assigned or otherwise restated from time to time, which (a) names a Person other than Borrower as the account party, (b) either does not expire sooner than, or can be renewed for successive one (1) year periods ending not sooner than, thirty (30) days after the Maturity Date (or such earlier date as is thirty (30) days after such Letter of Credit is no longer required pursuant to the terms of this Agreement), (c) entitles Lender to draw thereon in New York City based solely on a statement purportedly executed by an officer of Lender stating that it has the right to draw thereon, (d) is issued by a domestic Approved Bank or the U.S. agency or branch of a foreign Approved Bank, or if there are no domestic Approved Banks or U.S. agencies or branches of a foreign Approved Bank then issuing letters of credit, then such letter of credit may be issued by a domestic bank, the long term unsecured debt rating of which is the highest such rating then given by the Rating Agency or Rating Agencies, as applicable, to a domestic commercial bank,

in any event having an office in New York City where presentation may be made by Lender, and (e) is otherwise in form and substance acceptable to Lender. If at any time the bank issuing any such Letter of Credit shall cease to be an Approved Bank, or if Borrower fails to cause such Letter of Credit to be renewed or replaced no later than thirty (30) days prior to any annual expiration thereof, Lender shall have the right immediately to draw down the same in full (or in part) and hold the proceeds of such draw as collateral for the Loan in a Reserve Account.

"Lien" means any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect interest in Borrower or SPE Component Entity, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialman's and other similar liens and encumbrances.

"Lien Law" means the lien law of the State as in effect from time to time, with respect to mechanic's liens and lien priority.

"Line Item" means a line item of cost or expense set forth in the Construction Budget, as the same may be adjusted in compliance with Section 2.1.11 or Section 5.1.3(c).

"Loan" means the loan in the maximum principal amount of the Loan Amount made by Lender to Borrower pursuant to this Agreement.

"Loan Amount" means the sum of $55,000,000.

"Loan Documents" means, collectively, this Agreement, the Note, the Security Instrument, the Guarantees, the Environmental Indemnity, the Assignment of Management Agreement, the Assignment of Agreements, the Assignment of General Contractor Agreement, each Architect Consent, each Engineer Consent, each Major Trade Contractor Consent, the Cash Management Agreement, the Clearing Account Agreement, any Assignment of Interest Rate Cap Agreement, the Closing Certificate, the Master Lease SNDA and all other certificates, documents, agreements or instruments now or hereafter executed and/or delivered in connection with the Loan (as each may be amended, modified, extended, consolidated or supplemented from time to time).

"Loss" or "Losses" means, with respect to any Person, all liabilities, obligations, losses, damages, fines, penalties, actions, proceedings, judgments, suits, claims, debts, costs, expenses, charges, fees, awards, amounts paid in settlement, demands, and disbursements of any kind or nature whatsoever (including reasonable attorneys' fees) of or suffered or incurred by such Person in connection with or relating to the Loan, the Property, or any other collateral for the Loan (but not including (a) special, speculative, exemplary, or punitive damages, or (b) consequential damages in the nature of alleged "lost profits" or "lost opportunities", in each case with respect to the foregoing clauses (a) and (b) except to the extent that a party seeking indemnification of such amount has paid or is required to pay such measure of damages other than as a result of (and to the extent of) its own gross negligence, willful misconduct or fraud).

"Major Milestones" means the fulfillment of the following milestones for the Project as determined by Lender in its sole but good faith discretion: (i) Substantial Completion shall have occurred no later than the Substantial Completion Due Date; and (ii) Completion shall have occurred no later than the Completion Due Date.

"Major Trade Contract" means, (a) each of those certain agreements, dated as of August 1, 2020 and November 1, 2020, between Borrower and Project Manager, or (b) each Trade Contract, (i) if such Trade Contract has been executed prior to the Closing Date, under which there are Costs remaining to complete after the Closing Date equal to or in excess of $1,000,000, and (ii) if such Trade Contract is executed from and after the Closing Date, that has a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any Change Order or Change Orders, equal to or in excess of $1,000,000; provided that, for purposes of this definition, multiple Trade Contracts with a single Trade Contractor, or an Affiliate thereof, as the case may be, shall be deemed to be one Trade Contract.

"Major Trade Contractor" means any Trade Contractor under a Major Trade Contract.

"Major Trade Contractor Consent" means each consent and agreement required pursuant to the terms of this Agreement to be executed and delivered by a Major Trade Contractor to Lender in substantially the form attached hereto as Exhibit B with respect to any Major Trade Contracts entered into by and between Borrower and any Major Trade Contractor, which, in each case, shall be, in form and substance reasonably acceptable to Lender and the applicable Major Trade Contractor, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Management Agreement" means any property management agreement entered into in accordance with the terms of this Agreement between Borrower and a Qualified Manager that is reasonably acceptable to Lender, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof.

"Manager" means a Qualified Manager that enters into a Management Agreement and delivers to Lender an Assignment of Management Agreement, in each case, in accordance with the terms and provisions of this Agreement.

"Master Lease" means that certain Instil Bio Life Science Campus Lease, dated as of the Closing Date, between Borrower, as landlord, and Master Tenant, as tenant, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof.

"Master Lease Payment Outside Date" has the meaning set forth in Section 4.1.2(I)(i).

"Master Lease Payments" means all Rent (as defined in the Master Lease) paid by Master Tenant pursuant to the Master Lease.

"Master Lease SNDA" means that certain Subordination, Non-Disturbance and Attornment Agreement, dated as of the Closing Date, among Lender, Borrower and Master Tenant, with respect to the Master Lease, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof.

"Master Tenant" means Instil Sponsor.

"Material Adverse Effect" means a material adverse effect on (a) the Property or the value or use thereof, (b) the business, profits, management, operations or condition (financial or otherwise) of Borrower, SPE Component Entity, Master Tenant, and Guarantor, taken as a whole, or the Property, (c) the enforceability, validity, perfection or priority of the lien of the Security Instrument or the other Loan Documents, or (d) the ability of any Borrower Party to perform its obligations under the Loan Documents to which it is a party; provided, however, that current financial and market conditions engendered by the SARS-CoV-2 global pandemic shall not be given effect in determining whether a Material Adverse Effect

has occurred with respect to a Borrower Party unless such conditions result in a material adverse effect specific to the business, condition (financial or otherwise), the Property or operations of Borrower, Guarantor and their respective Affiliates, taken as a whole, after the Closing Date.

"Material Agreements" means each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, other than the Management Agreement, the Construction Documents, the Master Lease and the other Leases, as to which either (i) there is an obligation of Borrower to pay more than $100,000 per annum; or (ii) the term thereof extends beyond one (1) year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments).

"Maturity Date" means the Initial Maturity Date or, if applicable, the applicable date to which the Initial Maturity Date has been extended pursuant to Section 2.3 hereof, or such other date on which the final payment of the Debt becomes due and payable as herein provided, whether at the stated maturity date, by declaration of acceleration, or otherwise.

"Maximum Legal Rate" means the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Loan and as provided for herein or the other Loan Documents, under the laws of the state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Mezzanine Borrower" means Complex Therapeutics Mezzanine LLC, a Delaware limited liability company.

"Mezzanine Borrower SPE Component Entity" means the SPE Component Entity (as defined in the Mezzanine Loan Agreement).

"Mezzanine Debt" means the Debt (as defined under the Mezzanine Loan Agreement).

"Mezzanine Funding Share" means 35.29%.

"Mezzanine Lender" means OPG Hermes Investments (DE) LLC, a Delaware limited liability company, together with its successors and assigns.

"Mezzanine Loan" means that certain loan in the original principal amount of $30,000,000 made of even date herewith by Mezzanine Lender to Mezzanine Borrower.

"Mezzanine Loan Agreement" means that certain Mezzanine Loan Agreement, dated as of the date hereof, by and between Mezzanine Borrower and Mezzanine Lender, as the same may be amended, modified and/or supplemented from time to time.

"Mezzanine Loan Additional Advance" means Additional Advance (as defined in the Mezzanine Loan Agreement).

"Mezzanine Loan Amount" means the Loan Amount (as defined in the Mezzanine Loan Agreement).

"Mezzanine Loan Debt Service" means, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mezzanine Loan Agreement.

"Mezzanine Loan Documents" means all documents evidencing and/or securing the Mezzanine Loan and all documents executed and/or delivered in connection therewith, as the same may be amended, modified and/or supplemented from time to time.

"Mezzanine Loan Event of Default" means an "Event of Default" as defined in the Mezzanine Loan Agreement.

"Mezzanine Loan Monthly Debt Service Payment Amount" means the Monthly Debt Service Payment Amount (as defined in the Mezzanine Loan Agreement).

"Mezzanine Loan Outstanding Principal Balance" means, as of any date, the outstanding principal balance of the Mezzanine Loan.

"Mezzanine Loan Unfunded Loan Proceeds Account" means the "Unfunded Loan Proceeds Account" under and as defined in the Mezzanine Loan Agreement.

"Milestone Non-Compliance Event" means that any Major Milestone has not been timely satisfied as provided in the definition of "Major Milestones".

"Minimum Rate" means the Rate Index Floor plus the Spread.

"Monthly Debt Service Payment Amount" means, as of any Payment Date, all accrued and unpaid interest that has accrued on the Outstanding Principal Balance at the Interest Rate for the Interest Accrual Period in effect as of the day immediately preceding such Payment Date.

"**Moody's**" means Moody's Investors Service, Inc.

"Mortgage Funding Share" means 64.71%.

"Net Operating Income" means, for any period, the amount obtained by subtracting Operating Expenses for such period from Operating Income for such period.

"Net Proceeds" means (a) with respect to the occurrence of a Casualty, the net amount of all insurance proceeds payable under the Policies required pursuant to Section 6.1(a) hereof as a result of the applicable damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable legal fees), if any, in collecting same (but not including the proceeds of any business interruption insurance), and (b) with respect to the occurrence of a Condemnation, the net amount of any payments received from the applicable Governmental Authority on account of such Condemnation, or in any transaction or proceeding in lieu thereof, after deduction of Borrower's and Lender's reasonable costs and expenses (including reasonable legal fees), if any, in collecting same.

"Net Proceeds Reserve Account" has the meaning set forth in Section 6.4 hereof.

"Net Proceeds Threshold" means the sum of One Million and No/100 Dollars ($1,000,000).

"Non-Lienable Work" means work conducted at, or for the benefit of, the Property, with respect to which work, no Person shall have the right under applicable Legal Requirements to file or record a Lien against the Property in respect of any non-payment of amounts due and owing to such Person.

"Note" means one or more loan promissory note(s) made by Borrower in favor of a Lender, as the same may be amended, restated, replaced, supplemented, extended or otherwise modified from time to time.

"Obligations" means, collectively, Borrower's obligations for the payment of the Debt and the performance of the all obligations of Borrower contained in the Loan Documents.

"OFAC" has the meaning set forth in the definition of "Prescribed Laws".

"**Officer's Certificate**" means a certificate delivered to Lender by Borrower that is signed by an authorized senior officer of Borrower or of the entity that Controls Borrower, as applicable, in the form attached hereto as Exhibit C.

"Off-Site Materials" has the meaning assigned to such term in the definition of Stored Materials.

"Operating Expenses" means, for any period, the total of all expenditures, computed in accordance with the Approved Accounting Method, of whatever kind during such period relating to the operation, maintenance and/or management of the Property that are incurred on a regular monthly or other periodic basis (including utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments, and other similar costs), but excluding (a) non-cash charges such as depreciation and amortization, (b) Debt Service and Mezzanine Loan Debt Service, (c) any Reserve Funds required under the Loan Documents, (d) costs of restoration following a Casualty or Condemnation, (e) any payment or expense for which Borrower or Mezzanine Borrower was or is to be reimbursed from proceeds of the Loan or the Mezzanine Loan (respectively)), by insurance, or by any third party, (f) any expenses which are paid directly (or reimbursed to Borrower) by Master Tenant pursuant to the Master Lease, and (g) federal, state or local income taxes.

"Operating Income" means all Revenues received or paid to or for the account or benefit of Borrower resulting from or attributable to the ownership or operation of the Property, determined in accordance with the Approved Accounting Method (but excluding (a) income and proceeds from the sale or other disposition of goods, capital assets and other items, in each case, to the extent such sales are not in the ordinary course of the Property operation; (b) any insurance proceeds paid by reason of a Casualty (except for proceeds of business interruption or other loss of income or insurance as set forth in the definition of Revenues); (c) any proceeds received in connection with a Condemnation; (d) payment of rents from tenants more than one (1) month in advance or deposits paid in advance for the use of the Property until such time as such payments or deposits become due; (e) Lease termination or modification payments; (f) sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority; (g) Loan proceeds and disbursements to Borrower from the Reserve Funds or to Mezzanine Borrower from the Reserve Funds (as defined in the Mezzanine Loan Agreement), if any; (h) gross receipts received by lessees, licensees or concessionaires of the Property; (i) sales of furniture, fixtures and equipment; (j) refunds of amounts not included in Operating Expenses at any time and uncollectible accounts; (k) reimbursements by Master Tenant of any expenses paid by Borrower; and (l) Revenues from any other events not related to the ordinary course of operation of the Property.

"Operating Permits" means, collectively, all authorizations, consents and approvals given by and licenses and permits issued by Governmental Authorities which are required for the ownership, use and occupancy of the Property in accordance with all Legal Requirements (other than Construction Permits) and for the performance and observance of all obligations and agreements of Borrower contained herein or in the other Loan Documents that relate to the ownership, use and occupancy of the Property, including the ownership, use and occupancy of the Project following Completion of the same.

"Other Charges" means all ground rents, assessments, maintenance charges, impositions other than Property Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

"Other Connection Taxes" means, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

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

"Outstanding Principal Balance" means, as of any date, the outstanding principal balance of the Loan.

"Oxford Acquisition" means the acquisition of the Property by any Oxford Entity (excluding any acquisition of the Property by any Person in connection with the exercise by Lender of any of its rights and/or remedies under this Agreement or the other Loan Documents) during the period commencing on the Closing Date and ending on the date that is twelve (12) months following the Closing Date.

"Oxford Entity" means Oxford Properties Group or any Affiliate (pursuant to clause (b) of the definition thereof) of Oxford Properties Group.

"Payment Date" means the ninth (9^{th}) day of each calendar month during the term of the Loan or, if such day is not a Business Day, the immediately preceding Business Day.

"Permitted Encumbrances" means, (a) with respect to the Property, collectively (i) the Liens and security interests created by the Loan Documents, (ii) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy or Survey, (iii) Liens, if any, for Taxes or Other Charges imposed by any Governmental Authority not yet due or delinquent or which are being contested by Borrower in accordance with the terms and conditions of this Agreement, (iv) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's reasonable discretion, (v) inchoate mechanics' and materialmens' liens, (vi) actual mechanics' and materialmens' liens provided same are discharged or bonded within thirty (30) days of the filing thereof (but in any case prior to the date on which any foreclosure or other realization thereon is scheduled to occur if sooner than such 30-day period) or which are otherwise being contested by Borrower in accordance with the terms and conditions of this Agreement, (vii) the Master Lease, (viii) Liens arising in connection with Permitted Equipment Leases, (ix) other than the Master Lease, the Leases entered into prior to the Closing Date or after the Closing Date in accordance with the terms and conditions of this Agreement, and (x) immaterial Transfers and grants of easements, restrictions, covenants, reservations and rights of way in the ordinary course of business, which, in each case, are (A) permitted by the terms of Section 5.1.1(d)(iii) and (B) entered into in full compliance with the terms of Section 5.1.1(d)(iii), and (xi) Liens (1) of the Clearing Bank and Cash Management Bank arising under Section 4-210 of the UCC on items in the course of collection and (2) in favor of Clearing Bank and Cash Management Bank arising as a matter of law encumbering deposits (including the right of set-off) arising

in the ordinary course of business in connection with the maintenance of such accounts, and (b) with respect to the direct or indirect Equity Interests in Borrower, the Liens of the Mezzanine Loan Documents.

"Permitted Equipment Leases" means equipment leases or other similar instruments entered into with respect to equipment and/or Personal Property provided, that, in each case, such equipment leases or similar instruments (i) are entered into on commercially reasonable terms and conditions in the ordinary course of Borrower's business, (ii) relate to equipment and/or Personal Property which is (A) used in connection with the operation and maintenance of the Property in the ordinary course of Borrower's business and (B) readily replaceable without material interference or interruption to the operation of the Property, and (iii) have annual payments not exceeding $100,000 in the aggregate.

"Permitted Indebtedness" means (a) in the case of Borrower, (i) the Debt, and (ii) unsecured trade and operational debt incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of Borrower, in amounts not to exceed 2% of the sum of the Loan Amount and the Mezzanine Loan Amount, which liabilities are not payable more than sixty (60) days past the date incurred, are paid when due and are not evidenced by a note, (iii) intentionally omitted, and (iv) Taxes imposed by any Governmental Authority not yet delinquent or which are being contested in accordance with the terms and conditions of this Agreement, and (b) in the case of any applicable SPE Component Entity, unsecured trade and operational debt incurred in the ordinary course of business relating to the ownership of its Equity Interest in Borrower, in amounts not to exceed $25,000, which liabilities are not paid more than sixty (60) days past the date incurred, are not evidenced by a note, and are paid when due.

"Permitted Transfers" has the meaning set forth in Section 5.1.1(d) hereof.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Personal Property" has the meaning set forth in the granting clause of the Security Instrument.

"Plans and Specifications" means the plans and specifications for the construction of the Project approved by Lender as of the Closing Date and any other plans and specifications for the construction of the Project prepared or to be prepared by (or on behalf of) Borrower after the Closing Date, including any other architectural, structural, foundation and elevator plans and specifications prepared by Architect and any other mechanical, electrical, plumbing and fire protection plans and specifications prepared by any Person retained or to be retained by Borrower, Architect or General Contractor as approved in writing by Lender and Construction Consultant, to the extent such approval is required by the terms of this Agreement, in each case, as the same may be amended by Change Orders applicable thereto, provided that such Change Orders have been approved to the extent required pursuant to Section 5.1.3(g), in each case as the same may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

"PLL Policy" has the meaning set forth in Section 6.1(a)(ix) hereof.

"Policy" and "Policies" has the meaning set forth in Section 6.1(b) hereof.

"Prepaid Revenues" has the meaning set forth in Section 3.1(b) hereof.

"Prepayment Date" has the meaning set forth in Section 2.5.1 hereof.

"Prepayment Premium" means, with respect to the principal amount of the Loan being prepaid on or prior to the applicable Prepayment Premium End Date, other than in connection with Oxford Acquisition, a payment to Lender in an amount equal to the product of (a) the Interest Rate as of the date of the prepayment), (b) the portion of the Loan being repaid, and (c) a fraction, the numerator of which is the number of days between the date through which interest on the amount being prepaid has been paid in full and the Prepayment Premium End Date and the denominator of which is 360. Notwithstanding the foregoing, with respect to any prepayment made after the Prepayment Premium End Date, the amount of the Prepayment Premium shall be zero.

"Prepayment Premium End Date" means, (a) if the determination of the Prepayment Premium is being made with respect to a prepayment in connection with a Third Party Sale, June 9, 2023, and (b) if the determination of the Prepayment Premium is being made in any case other than with respect to a prepayment in connection with a Third Party Sale, December 9, 2023.

"Prescribed Laws" means, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. § 1701 et. seq., (d) the Racketeer Influenced and Corrupt Organizations Act, (e) all requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC"), and (f) all other Legal Requirements relating to money laundering, anti-bribery and corruption or terrorism.

"Prime Rate" means a fluctuating rate per annum equal to the Prime Rate Index plus the Prime Rate Spread; provided, however in no event shall the Prime Rate be deemed to be less than the Minimum Rate.

"Prime Rate Index" means the annual rate of interest published in The Wall Street Journal from time to time as the "Prime Rate." If The Wall Street Journal ceases to publish the "Prime Rate," Lender shall select an equivalent publication that publishes such "Prime Rate," and if such "Prime Rates" are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index. Notwithstanding the foregoing, in no event shall Prime Rate Index be less than the Rate Index Floor.

"Prime Rate Loan" means the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

"Prime Rate Spread" means, in connection with the conversion of the Loan from a Term SOFR Loan to a Prime Rate Loan, the difference (expressed as the number of basis points) of (a) Term SOFR as of the Determination Date for which Term SOFR was last applicable to the Loan plus the Spread minus (b) the Prime Rate as of such Determination Date; provided, however, that if such difference is a negative number, the Prime Rate Spread shall be zero.

"Project" means the construction, development, Completion and payment in full of all work relating to the Required Improvements as more specifically set forth herein and in accordance with the Plans and Specifications, all Legal Requirements and all other applicable requirements of the Loan Documents.

"Project Advance Amount" means an amount equal to $20,887,353.

"Project Manager" means Savills, Inc.

"Property" means each parcel of real property described on Exhibit A attached hereto, the Improvements thereon and all Personal Property owned by Borrower and encumbered by the Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clause of the Security Instrument and referred to therein as the "Property".

"Property Taxes" means all real estate and personal property taxes, assessments, water rates or sewer rents (excluding income taxes), now or hereafter levied or assessed or imposed against the Property or part thereof, together with all interest and penalties thereon.

"Punchlist Items" means, individually and/or collectively, as the context may require, minor or insubstantial details of construction, decoration, mechanical adjustment or installation the non-completion of which does not prevent the use, occupancy or operation of the Required Improvements for their intended purposes and does not result in a violation of any Management Agreement, the Master Lease or any other Lease.

"Qualified Manager" means, in the judgment of Lender, a reputable and experienced management organization possessing experience in managing ten (10) or more properties of similar type, quality and size as the Property and approved by Lender.

"Rate Conversion" means conversion of the Loan to an Alternate Rate Loan or Prime Rate Loan.

"Rate Index Floor" means Closing Date Term SOFR.

"Rating Agencies" means each of S&P, Moody's, Fitch, DBRS, Inc., Morningstar, Inc., or Kroll Bond Ratings, or any other nationally recognized statistical rating agency which has been approved by Lender.

"REA" means, collectively, as the same may be amended, restated, supplemented or otherwise modified from time to time, any reciprocal easement agreement or similar document affecting the Property now or hereafter of record, as more particularly described on Schedule VI hereto.

"Recourse Guaranty" means that certain Guaranty Agreement, dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Recourse Liabilities" has the meaning set forth in Section 8.2 hereof.

"Reimbursable Costs" has the meaning set forth in Section 2.1.2 hereof.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York or any successor thereto.

"Replacement Interest Rate Cap Agreement" has the meaning set forth in Section 2.2.7(b).

"Required Borrower Equity Advance" means, with respect to each Combined Advance, non-borrowed cash equity in an amount equal to forty-nine percent (49%) of the total Costs that are the subject of such Combined Advance.

"Required Equity/Control Requirements" means, collectively, (i) Guarantor owns 100% of the direct equity interest in Mezzanine Borrower, (ii) Mezzanine Borrower owns 100% of the direct equity interest in Borrower, and (iii) Guarantor Controls Borrower and Mezzanine Borrower.

"Required Improvements" means the construction on the Land (as defined in the Security Instrument), in accordance with the Plans and Specifications, the Master Lease and all applicable Legal Requirements, of Building B, consisting of an approximately 70,930 square foot, two-story lab manufacturing and warehouse building, including all site improvements, utility work and other improvements appurtenant thereto.

"Reserve Accounts" means, collectively, the Tax Reserve Account, the Insurance Reserve Account, the Excess Cash Flow Reserve Account, the Net Proceeds Reserve Account, the Unfunded Loan Proceeds Account, the Deficiency Account, the Shortfall Account and any other reserve or escrow account established under the Loan Documents from time to time.

"Reserve Funds" means, collectively, any and all funds held in any Reserve Account from time to time.

"Reserve Item" means, individually and collectively as the context may require, (i) Insurance Premiums and/or (ii) Taxes and Other Charges.

"Restoration" means the repair and restoration of the Property after a Casualty or Condemnation as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation (subject to changes in zoning codes, building codes, or other applicable laws), with such alterations as may be reasonably approved by Lender.

"Restricted Party" means, collectively, Borrower, any SPE Component Entity, Mezzanine Borrower, any Mezzanine Borrower SPE Component Entity, any Affiliated Manager and Guarantor.

"Retainage" means the total amount actually held back by Borrower or General Contractor, as the case may be, from each Trade Contractor with respect to the value of its work in place with respect to the Project, equal to ten percent (10%) (unless a greater retainage amount is provided for in any applicable Construction Contract) of the value of such Trade Contractor's work incurred by Borrower with respect to such Trade Contractor for work in place as of the date of the Draw Request in question, as verified from time to time by Construction Consultant pursuant to the provisions of this Agreement, provided that (i) from and after such time as such Trade Contract has achieved 50% Completion (as shown on an Architect's certificate, in form and substance reasonably satisfactory to Lender, submitted with a Draw Request), the portion of each subsequent Draw Request applicable to such Trade Contract to be held back by Borrower as "Retainage" for the General Contractor Agreement shall be reduced to five percent (5%) (unless a greater retainage percentage is provided for in any applicable Construction Contract) and (ii) all "Retainage" is disbursed only in accordance with the provisions of Section 2.1.15.

"Revenues" means, without duplication, all rents (including percentage rents), rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents (including payments by reason of the rejection of a Lease in a Bankruptcy Action), all income and proceeds from judgments, settlements and other resolutions of disputes with respect to matters which would be includable in this definition of "Revenues" if received in the ordinary course of the Property operation, royalties (including all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, fees, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to the Property (including utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license

fees, parking fees, rent concessions or credits), other required pass-throughs or reimbursements paid by tenants under Leases of any nature, and interest on Reserve Funds, if any), business interruption or other loss of income or rental insurance proceeds, and other income or consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower, Manager or any of their respective agents or employees from any and all sources arising from or attributable to the Property.

"Shortfall Account" has the meaning set forth in Section 2.1.9(d) hereof.

"Soft Costs" means, collectively, all costs and expenses set forth in the Construction Budget which are denominated as "Soft Costs".

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC company

"Secondary Market Transaction" has the meaning set forth in Section 9.1 hereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Instrument" means that certain first priority Construction Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing dated as of the Closing Date, executed and delivered by Borrower as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Servicer" has the meaning set forth in Section 10.28 hereof.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator and as published on the SOFR Administrator's Website.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**SOFR Administrator's Website**" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SPE Component Entity" means: (i) if Borrower is a limited partnership, the Special Purpose Entity that is the general partner of Borrower; or (ii) if Borrower is a limited liability company other than an Acceptable LLC, the Special Purpose Entity that is the managing member of Borrower; provided, however, if Borrower is an Acceptable LLC or a corporation, the term "SPE Component Entity" shall have no meaning when used in this Agreement.

"Special Member" has the meaning set forth in the definition of "Special Purpose Entity".

"Special Purpose Entity" means a Person, other than an individual, which, since the date of its formation and at all times prior to, on and after the date thereof, has complied with and shall at all times comply with the following requirements:

(a) was, is and will be formed solely for the purpose of (i) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, financing, managing and operating the Property, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) in the case of any applicable SPE Component Entity, acting as the general

partner or managing member (as applicable) of Borrower;

(b) has not been, is not, and will not be engaged in any business unrelated to (i) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, financing managing and operating the Property, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, or (ii) in the case of any applicable SPE Component Entity, acting as the general partner or managing member (as applicable) of Borrower;

(c) has not had, does not have and will not have any assets other than (i) in the case of Borrower, the Property and those related to the ownership and operation of the Property (including, without limitation, replacement thereof as permitted by the Loan Documents) or, (ii) in the case of any applicable SPE Component Entity, its Equity Interest in Borrower;

(d) has not engaged in, sought or consented to, and will, to the fullest extent permitted by law, not engage in, seek or consent to, (i) any dissolution, winding up, liquidation, consolidation, merger, or sale of all or substantially all of its assets, (ii) except as permitted under the terms of this Agreement, any transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company), or (iii) any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition without the written consent of Lender;

(e) has been, is, and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same have or shall become due, and has maintained, is currently maintaining and will endeavor to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, the foregoing shall not require any owner of Borrower to make any additional capital contributions;

(f) has not failed, and will not fail, to correct any known misunderstanding regarding the separate identity of such entity;

(g) has maintained and will maintain its accounts, financial statements, books, and records separate from any other Person and has not permitted, and will not permit, its assets to be listed as assets on the financial statement of any other entity except as required by the Approved Accounting Method (provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (ii) such assets shall be listed on Borrower's own separate balance sheet;

(h) has filed and will file its own tax returns, except to the extent that it (i) has been or is required to file consolidated tax returns by law or (ii) is treated as a disregarded entity for federal or state tax purposes;

(i) other than as permitted in this Agreement, (i) has not commingled, and will not commingle, its funds or assets with those of any other Person and (ii) has not participated and will not participate in any cash management system with any other Person;

(j) has held and will hold its assets in its own name;

(k) has maintained and will maintain an arm's-length relationship with its Affiliates;

(l) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations; provided, however, the foregoing shall not require any owner of Borrower to make any additional capital contributions;

(m) has observed and will observe in all material respects all partnership, corporate or limited liability company formalities, as applicable;

(n) has not had, and will not have, any Indebtedness other than Permitted Indebtedness;

(o) except in connection with the Loan Documents, has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for, the debts of any other Person (except to the extent SPE Component Entity is liable for the debts and obligations of Borrower by virtue of being the general partner of Borrower) and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except, in each case, as permitted pursuant to this Agreement;

(p) has not acquired and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate (other than the securities of Borrower held by any applicable SPE Component Entity);

(q) has allocated and will allocate, fairly and reasonably, any overhead expenses that are shared with any Affiliate, including paying for shared office space and services performed by any employee of an Affiliate;

(r) has maintained and used, now maintains and uses, and will maintain and use, separate stationery, invoices and checks bearing its name, and all stationery, invoices, and checks utilized by such Person or utilized to collect its funds or pay its expenses have borne and shall bear its own name and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being such Person's agent;

(s) has not pledged and will not pledge its assets for the benefit of any other Person other than Lender in connection with the Loan;

(t) has conducted and will conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower, and has held itself out and identified itself, and will hold itself out and identify itself, as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person, except in each case for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in Subsection (x) below, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(u) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(v) has not made and will not make loans to any Person or hold evidence of Indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(w) has not identified and will not identify its constituent partners, members or shareholders (as applicable), or any Affiliate of any of them, as a division or part of it, and has not identified itself, and shall not identify itself, as a division of any other Person;

(x) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, and (ii) in connection with this Agreement;

(y) has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify, its partners, officers, directors, managers or members, as the case may be, unless such an obligation is, as of the Closing Date, fully subordinated to the Obligations and will continue at all times to constitute a claim against such Special Purpose Entity that is subordinated to the Obligations in the event that cash flow in excess of the amount required to pay the Obligations is insufficient to pay such obligation;

(z) except as provided in the Loan Documents, does not and will not have any of its obligations guaranteed by any Affiliate;

(aa) if such entity is a limited partnership, has had, now has and will have (i) as its only general partners, Special Purpose Entities that are corporations or Acceptable LLCs that own at least one percent (1%) of the equity of the limited partnership, and (ii) a partnership agreement providing that (A) such entity will not dissolve upon the bankruptcy of any partner, including any general partner, (B) the vote of a majority-in-interest of the remaining partners is sufficient to, and such partners shall, continue the life of the partnership in the event of such bankruptcy of the general partner, and (C) if the vote of a majority-in-interest of the remaining partners to continue the life of the partnership following the bankruptcy of the general partner is not obtained, the partnership may not liquidate the Property without the consent of the Lender for as long as the Loan is outstanding;

(bb) if such entity is a corporation, has had, now has and will have at least one (1) Independent Director, and has not caused or allowed, and will not cause or allow, the board of directors of such entity to take any Bankruptcy Action (or to collude with, or otherwise assist, solicit, or cause to be solicited an involuntary Bankruptcy Action) or any other action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless at least one (1) Independent Director shall have participated in such vote and all of the directors have participated in such vote;

(cc) except as provided in clause (dd) below, if such entity is a limited liability company, has been, now is, and will be a limited liability company formed under the laws of the State of Delaware that will have an operating agreement which provides that as long as any portion of the Debt remains outstanding: (i) the company shall have at least one (1) Independent Manager that shall be a duly-appointed "manager" of the limited liability company within the meaning of Section 18-101(10) of the Delaware Limited Liability Company Act (the "Act"), and the limited liability company shall not take any Bankruptcy Action (or to collude with, or otherwise assist, solicit, or cause to be solicited an involuntary Bankruptcy Action) unless (A) such Bankruptcy Action is approved by the prior unanimous written consent of all members and managers thereof (including any Independent Manager), and (B) at the time of such action such limited liability company has at least one (1) manager who is an Independent Manager (provided, however, the managers shall only have the rights and duties expressly set forth in the limited liability company agreement); (ii) upon the occurrence of any event that causes the last member of the limited liability company to cease to be a member of such limited liability company (other than upon an assignment by such member of all of its limited liability company interest in such limited liability company

and the admission of the transferee in accordance with the limited liability company agreement), (A) the person(s) acting as Independent Manager of such limited liability company shall, without any action of any Person and simultaneously with such member ceasing to be a member of such limited liability company, automatically be admitted as the "Special Member" (an Independent Manager in such capacity, a "Special Member") and shall preserve and continue the existence of such limited liability company without dissolution, and (B) without limiting the provisions of clause (A), upon the occurrence of any event that causes the last remaining member of the limited liability company to cease to be a member of the limited liability company or that causes the sole member to cease to be a member of the limited liability company (other than upon continuation of the limited liability company without dissolution upon an assignment by the member of all of its limited liability company interest in the limited liability company and the admission of the transferee in accordance with the limited liability company agreement), to the fullest extent permitted by law, the personal representative of such member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in such limited liability company, agree in writing to continue the limited liability company without dissolution and to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of such limited liability company, effective as of the occurrence of the event that terminated the continued membership of such member in such limited liability company; (iii) no Special Member may resign or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to such limited liability company as a Special Member, and (B) such successor Special Member has also accepted its appointment as an Independent Manager and executed a counterpart to the limited liability company agreement; provided, however, the Special Member shall automatically cease to be a member of the limited liability company upon the admission to the limited liability company of a substitute member; (iv) the Special Member shall be a member of the limited liability company that has no interest in the profits, losses and capital of the limited liability company and has no right to receive any distributions of limited liability company assets; pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the limited liability company and shall not receive a limited liability company interest in the limited liability company; (v) a Special Member, in its capacity as Special Member, may not bind the limited liability company; (vi) except as required by any mandatory provision of the Act, a Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the limited liability company, including the merger, consolidation or conversion of the limited liability company; (vii) in order to implement the admission to the limited liability company of each Special Member, each Person acting as an Independent Manager shall execute a counterpart to the limited liability company agreement; (viii) prior to its admission to the limited liability company as Special Member, each Person acting as an Independent Manager shall not be a member of the limited liability company; (ix) such limited liability company shall be dissolved, and its affairs shall be wound up only upon the first to occur of the following (but subject to clause (ii) above): (A) the termination of the legal existence of the last remaining member of such limited liability company or the occurrence of any other event which terminates the continued membership of the last remaining member of such limited liability company in such limited liability company unless the business of such limited liability company is continued in a manner permitted by its limited liability company agreement or the Act, or (B) the entry of a decree of judicial dissolution of the limited liability company under Section 18-802 of the Act; (x) neither the bankruptcy of any member of the limited liability company or the Special Member shall cause such member or Special Member, respectively, to cease to be a member of such limited liability company and upon the occurrence of such an event, the business of such limited liability company shall continue without dissolution; (xi) in the event of dissolution of such limited liability company, such limited liability company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of such limited liability company in an orderly manner), and the assets of such limited liability company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (xii) to the fullest extent permitted by law, except as otherwise expressly provided in the limited liability company agreement, each member of the limited liability company and the Special Members shall irrevocably waive any right or power that they might have to cause such limited liability company or any

of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of such limited liability company, to compel any sale of all or any portion of the assets of such limited liability company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of such limited liability company (a limited liability company meeting the criteria of this clause (cc) is referred to herein as an "Acceptable LLC");

(dd) if such entity is a limited liability company that is not an Acceptable LLC, has had, now has and will have at least one (1) member that is a Special Purpose Entity that is a corporation or an Acceptable LLC that owns at least one percent (1%) of the Equity Interests in such limited liability company;

(ee) the organizational documents of such entity shall further provide that: (i) such entity shall not be permitted take any action which, under the terms of any organizational documents of such entity, requires a unanimous written consent of the board of directors or managers of such entity unless at the time of such action there shall be at least one (1) Independent Manager or Independent Director serving in such capacity as required by the terms hereof; (ii) no Independent Director or Independent Manager may be removed or replaced except for Cause; (iii) any resignation, removal or replacement of any Independent Director or Independent Manager shall not be effective without five (5) Business Days prior written notice to Lender accompanied by a statement as to the reasons for such removal, the identity of the proposed replacement Independent Director or Independent Manager, and a certificate that the replacement Independent Director or Independent Manager satisfies the applicable terms and conditions of the definition of "Independent Director" or "Independent Manager"; (iv) to the fullest extent permitted by applicable law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Director or Independent Manager shall consider only the interests of the constituent owners of such entity and such entity (including such entity's creditors) in acting or otherwise voting on a Bankruptcy Action (which such fiduciary duties to the owners of such entity and such entity's creditors, in each case, shall be deemed to apply solely to the extent of their respective economic interests in such entity exclusive of (A) all other interests, (B) the interests of other affiliates of the owners of such entity and such entity, and (C) the interests of any group of affiliates of which the owners of such entity or such entity is a part); (v) other than as provided in clause (iv) above, to the fullest extent permitted by law the Independent Director or Independent Manager shall not have any fiduciary duties to any owners of such entity, any directors of such entity, or any other Person; (vi) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (vii) to the fullest extent permitted by applicable law, including Section 18-1101(e) of the Act, an Independent Director or Independent Manager shall not be liable to such entity, any owners of such entity, or any other Person bound by the limited liability company agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director or Independent Manager acted in bad faith or engaged in gross negligence or willful misconduct;

(ff) has complied and will comply with all of the terms and provisions contained in its organizational documents;

(gg) the statement of facts contained in its organizational documents are true and correct and will remain true and correct;

(hh) has and will have an express acknowledgment in its organizational documents that Lender is an intended third-party beneficiary of the "special purpose/separateness/bankruptcy remote" provisions (as applicable) of such organizational documents; and

(ii) has not and will not consent to any other Person (i) operating its business in the

name of such Person, (ii) acting in the name of such Person, (iii) using such Person's stationery or business forms, (iv) holding out its credit as being available to satisfy the obligations of such Person, (v) having contractual liability for the payment of any of the liabilities of such Person (except pursuant to the limited extent provided under the Loan Documents), or (vi) failing to at all times specify to all relevant third parties that it is acting in a capacity other than as the applicable Special Purpose Entity.

"Spread" means three hundred twenty-five (325) basis points (i.e., 3.25%).

"Springing Recourse Event" has the meaning set forth in Section 8.3 hereof

"State" means the State of California.

"Stored Materials" means materials purchased by Borrower at or prior to the date of a Draw Request for use in the Project, but either (i) stored at a bonded warehouse, and not yet installed or incorporated into the Project ("Unincorporated Materials") or (ii) not yet delivered to the Property ("Off-Site Materials"), in each of the foregoing cases, other than operating supplies, operating equipment and furniture, fixtures, equipment and machinery for the Property. Stored Materials shall cease to be Stored Materials only when the same are installed or incorporated into the Property.

"Stored Materials Cap" has the meaning set forth in Section 2.1.10 hereof.

"Substantially Complete" means (i) the Approved Project Expenditures have been completed in substantial accordance with the Plans and Specifications and all Legal Requirements, subject only to the completion of all Punchlist Items, as evidenced by a written statement or certificate executed by General Contractor or the Architect, as applicable, and verified by the Construction Consultant, (ii) if applicable, a valid certificate of occupancy (or equivalent document, including without limitation, evidence that the applicable Governmental Authority has inspected and approved the completion of the Approved Project Expenditures, or a temporary certificate of occupancy) has been issued by the applicable Governmental Authority permitting the full use of the Property for its intended purposes, (iii) the Property is free of all mechanics', materialmen's, and other similar Liens (or such liens have otherwise been bonded over to Lender's reasonable satisfaction), and (iv) Borrower has delivered to Lender reasonable evidence that the applicable Governmental Authorities have conducted a final inspection of the Property and approved the completion of such work. The terms "Substantially Completed" and "Substantial Completion" shall have the same meaning when used in the Loan Documents.

"Substantial Completion Due Date" means June 1, 2023.

"Substitute Interest Rate Cap Agreement" means an index rate derivative product comparable to the Interest Rate Cap Agreement described in Section 2.2.7(a), which product caps exposure to fluctuations in, as applicable, the Alternate Rate Index or the Prime Rate Index, and which otherwise satisfies all of the conditions set forth in Section 2.2.7 hereof; provided that references in such Section 2.2.7 to the previously applicable Applicable Rate Index shall be replaced with, as applicable, the Alternate Rate Index or the Prime Rate Index; and provided further that the strike rate for such derivative product shall be as determined by Lender (in its sole but good faith direction) as providing a hedge against rising interest rates that is no less beneficial to Borrower and Lender than the Interest Rate Cap Agreement being replaced or required to be purchased, as applicable.

"Survey" means the survey delivered to (and approved by) Lender in connection with the closing of the Loan.

"Tax Reserve Account" has the meaning set forth in Section 3.2.1(a) hereof.

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

"Tenant Direction Letter" means an irrevocable written instruction to all tenants under Leases to deliver all Revenues payable thereunder directly to the Clearing Account in form and substance reasonably acceptable to Lender.

"Third Party Sale" means the sale by Borrower of all of its right, title and interest in the Property to a Person that is not Borrower, Mezzanine Borrower, Master Tenant, Guarantor or Instil Sponsor or any Affiliate of any of the forgoing pursuant to a bona fide, arms' length sale on market terms, as reasonably determined by Lender.

"Term SOFR" means the Term SOFR Reference Rate for a tenor of one month on the Determination Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Determination Date the Term SOFR Reference Rate for a tenor of one month has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Determination Date. Notwithstanding the foregoing or anything herein to the contrary, in no event shall Term SOFR be less than the Rate Index Floor.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Lender).

"Term SOFR Loan" means the Loan at such time as interest thereon accrues at a rate of interest based upon the Term SOFR Rate.

"Term SOFR Rate" means, with respect to each Interest Accrual Period, the per annum rate of interest of Term SOFR determined as of the Determination Date immediately preceding the commencement of such Interest Accrual Period plus the Spread; provided that in no event will the Term SOFR Rate be less than the Minimum Rate.

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Title Company" means Fidelity National Title Insurance Company or any successor title company acceptable to Lender and licensed to issue title insurance in the State in which the Property is located.

"Title Insurance Policy" means the title insurance policy obtained by Lender in connection with the closing of the Loan.

"Trade Contract" means any agreement, contract or purchase order between Borrower, an Affiliate of Borrower or General Contractor, on the one hand, and any Trade Contractor, on the other hand, pursuant to which such Trade Contractor agrees to provide labor, materials, equipment and/or services in connection with the construction of the Project, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement. The term "Trade Contract" shall not include the Architect Agreement, the General Contractor

Agreement or any other agreement, contract or purchase order pertaining solely to professional services to be provided by any other Design Professional.

"Trade Contractor" means any Person that is a contractor, subcontractor, sub-subcontractor, supplier or provider of labor, materials, equipment and/or services in connection with the construction of the Project or any subsidiary and/or affiliate of any of the foregoing, under a Trade Contract.

"Transfer" means any sale, conveyance, transfer, lease, assignment, grant, mortgage, option, encumbrance, hypothecation, pledge, or Lien, in each case whether by operation of law or otherwise, and with respect to an entity shall include the merger of such entity with or into any other entity; provided, however, that this definition shall not include any Condemnation.

"Tranche" has the meaning set forth in Section 9.2(a) hereof.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

"Unfunded Loan Amount" has the meaning set forth in Section 2.3.2.

"Unfunded Loan Proceeds Account" has the meaning set forth in Section 2.3.2.

"UNOI" means the underwritten net operating income for the Property determined by Lender as the sum of (a) Operating Income for the trailing twelve (12) month period, less (b) actual Operating Expenses incurred in connection with the Property during the twelve (12) month period preceding the date of calculation, with adjustments for any anticipated increases in such Operating Expenses projected to occur during the twelve (12) month period following the date of calculation.

"Unincorporated Materials" has the meaning assigned to such term in the definition of Stored Materials.

"U.S. Government Securities Business Day" means any day except for a Saturday, a Sunday or a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning set forth in Section 2.2.3(e)(ii)(B)(3) hereof.

"WARN Act" shall mean the Worker Adjustment and Retraining Notification Act or any other applicable similar state law.

"Withdrawal Liability" has the meaning given to such term under Part I of Subtitle E of Title IV of ERISA.

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

SECTION 1.2. Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with the Approved Accounting Method. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" means "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. The words "to Borrower's knowledge" or "to the knowledge of Borrower" (or words of similar meaning) shall mean "to the knowledge Borrower and its Affiliates".

ARTICLE II

GENERAL TERMS

SECTION 2.1. The Loan.

2.1.1 Use of Loan Proceeds. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make, and Borrower hereby agrees to borrow and accept, the Loan on the Closing Date. Any amount borrowed and repaid hereunder may not be reborrowed.

2.1.2 Initial Advance. Borrower shall receive, on the Closing Date, one (1) borrowing hereunder with respect to the Loan in the amount of $33,713,225 (such borrowing hereinafter, the "Initial Advance"). Borrower shall use the proceeds of the Initial Advance only to (a) reimburse certain Costs incurred by Borrower in advance of the Closing Date and approved by Lender (such Costs, the "Reimbursable Costs"), (b) make initial deposits into the Reserve Accounts in the amounts provided herein, and (c) pay costs, fees and expenses incurred in connection with the closing of the Loan, as reasonably approved by Lender.

2.1.3 Additional Advances. Lender agrees to fund additional advances of the Loan Amount requested by Borrower from time to time (each, an "Additional Advance") subject to the satisfaction of the applicable terms and conditions of this Section 2.1. Borrower shall use the proceeds of the Additional Advances only to pay, in accordance with the terms and conditions of this Agreement, (a) Interest and Carry Costs and (b) Approved Project Expenditures.

2.1.4 Disbursement of Additional Advances. Subject to the satisfaction of the terms and conditions set forth below, Borrower shall be entitled to receive Additional Advances in an aggregate amount not to exceed (i) the Project Advance Amount to fund Approved Project Expenditures and (ii) the Interest and Carry Costs Advance Amount to pay for Interest and Carry Costs. All disbursements shall be applied by Borrower solely for the purposes for which the funds have been disbursed. All Additional Advances, once advanced, shall bear interest at the Interest Rate. It is hereby agreed that Lender shall have no obligation to advance more than the Mortgage Funding Share of the amount of each Combined Advance required to be disbursed under this Agreement.

2.1.5 Additional Advance Borrowing Procedures.

(a) Draw Requests. In connection with a request for each Additional Advance, Borrower shall submit to Lender and Construction Consultant a draw request (each, a "Draw Request")

substantially in the form required pursuant to Section 2.1.5(b) not less than ten (10) Business Days (but not more than sixty (60) days) prior to the applicable Advance Date; provided that there shall be no more than one Draw Request for Approved Project Expenditures and no more than one Draw Request for Interest and Carry Cost in each calendar month. Each Draw Request for Approved Project Expenditures shall specify the Hard Costs (which shall not exceed the value of work in place and Stored Materials as supported by invoices and other supporting documentation, as reasonably approved by Construction Consultant, less any Retainage), including deposits paid to any Contractor or Trade Contractor, and Soft Costs (including deposits required to be paid pursuant to any agreement covering Soft Costs)) and Interest and Carry Costs to be paid from the proceeds of the requested Additional Advance. No Additional Advance with respect to the payment of any Advance Item constituting Approved Project Expenditure shall be requested or advanced (x) for an amount that, together with the amount of Additional Advance with respect to the payment of all other Advance Items constituting Approved Project Expenditure then being requested hereunder and under the Mezzanine Loan Agreement, is less than $150,000 (other than the last requested Additional Advance with respect to such Advance Item if less) or (y) more frequently than once in any calendar month. Each Draw Request in connection with an Additional Advance for the payment of Hard Costs shall specify the amount of any Retainage previously withheld and which has then become payable by Borrower, with supporting documentation describing in reasonable detail the basis for any such disbursements. All Draw Requests shall be approved by Lender, not to be unreasonably withheld, and, with respect to Hard Costs, reasonably approved for payment by Construction Consultant.

(b) Required Documentation. Each Draw Request submitted hereunder shall include the following:

(i) a requisition letter in the form set forth on Exhibit E attached hereto;

(ii) an Officer's Certificate in the form set forth on Exhibit C attached hereto;

(iii) proof of payment to (x) General Contractor and (y) each Trade Contractor with respect to such Trade Contractor's Non-Lienable Work (which proof of payment, in the case of each such Trade Contractor, shall include, without limitation, copies of all applicable invoices and wire confirmations), as the case may be, evidencing payment in full for all work performed and/or material supplied to the date of the preceding Additional Advance, except for Retainage and any disputed amounts being contested by Borrower in accordance with Section 5.1.2(b) hereof;

(iv) with respect to any Draw Request for payment of Hard Costs, the following:

(A) a completed Application and Certificate for Payment (AIA Documents G702 and G703) that is executed by the General Contractor, Architect (or, if such Application and Certificate for Payment is not executed by Architect, then the Draw Request shall include an Architect's certificate in form and substance reasonably satisfactory to Lender) and/or the Major Trade Contractors, as applicable, each of which shall be certified as true and complete by Borrower and shall be verified by the Construction Consultant;

(B) unconditional or conditional (conditioned only upon payment from the requested disbursement) waivers of liens from General Contractor and all Trade Contractors with respect to all Costs (other than Interest and Carry Costs) incurred in connection with the Project since the Closing Date or the last Advance Date, as applicable, dated on or about the date of such Draw Request, in form and

substance reasonably acceptable to Lender, covering all work done and all sums received by such Persons through the date such waiver is signed and noting the amounts then due and owing (other than any Retainage), each of which shall be verified by Construction Consultant;

(C) a list of all Trade Contracts executed since the date of the then last preceding Additional Advance, together with a certification by Borrower that copies of such Trade Contracts have been submitted to Construction Consultant prior to the date of such Draw Request, together with, unless previously provided to Lender and to the extent required herein, executed Major Trade Contractor Consents for each new Major Trade Contractor who is to receive proceeds of the applicable Additional Advance;

(D) a list of all Construction Contracts (to the extent not previously provided, including pursuant to clause (C) above) in effect as of such Advance Date and copies of any Construction Contracts (to the extent not previously provided, including pursuant to clause (C) above) and any amendments, restatements, replacements, supplements or other modifications to any Construction Contracts, in each case, executed after the Closing Date or the date of the last Draw Request, as the case may be, in accordance with the terms and conditions of this Agreement;

(E) to the extent not previously delivered to Lender, copies of Change Orders that have not been submitted to Lender prior to the date of such Draw Request, together with (I) a statement by Borrower that copies of the same have been submitted to Construction Consultant simultaneously with or prior to the date of such Draw Request and (II) a list of all Change Orders then to date and a list of all contemplated or pending Change Orders;

(F) evidence reasonably satisfactory to Lender (which evidence may, in Lender's discretion, be in the form of an Officer's Certificate, in form and substance reasonably acceptable to Lender, stating) that the full amount of the applicable portion of the proceeds of the then last preceding Additional Advance have been paid out by Borrower or General Contractor to the Persons with respect to whom the Additional Advance was disbursed and otherwise in accordance with this Agreement; and

(G) such other information and documentation as may be reasonably requested by Lender or Construction Consultant with respect to the Hard Costs covered by such Draw Request; and

(v) with respect to any Draw Request for payment of Soft Costs, the following:

(A) current requisitions for payment from Trade Contractors to the extent allocable to the Project;

(B) such evidence as Lender reasonably requests that such Soft Costs have been properly incurred and are due and payable and are in amounts set forth in the Construction Budget;

(C) evidence reasonably satisfactory to Lender that the full amount of the portion of the proceeds of the then last preceding Additional Advance have been paid out by Borrower or General Contractor to the Persons with respect to whom such Additional Advance was disbursed and otherwise in accordance with this Agreement; and

(D) invoices, statements or such other information and documentation as Lender reasonably requests with respect to such Soft Costs covered by such Draw Request.

2.1.6 General Conditions Precedent to Additional Advances. Lender shall not be obligated to make an Additional Advance unless all of the following conditions are satisfied:

(a) No Event of Default. No Default or Event of Default exists at the time the Additional Advance is requested or as of the Advance Date;

(b) Draw Request. Lender shall have received a Draw Request in accordance with the requirements of Section 2.1.5(a) hereof, together with all applicable documents required to be delivered with such Draw Request pursuant to Section 2.1.5(b) hereof;

(c) Additional Advance Maximum Amount. No Additional Advance required to be made hereunder shall be in an amount that is more than the lesser of (i) the amount that, together with all previous Additional Advances, equals the Loan Amount, and (ii) with respect to Additional Advances for any Advance Item, the Advance Amount applicable to such Advance Item;

(d) Required Borrower Equity Advance. Lender shall have received evidence reasonably satisfactory to it that Borrower shall have funded (or will simultaneously fund) the Required Borrower Equity Advance applicable to such Additional Advance;

(e) Security Instrument. The Security Instrument shall constitute a valid first lien on the Property in an amount equal to the full Loan Amount, free and clear of all Liens except for Permitted Encumbrances that are not Permitted Encumbrances set forth in clause (vi) of the definition thereof;

(f) Construction Consultant Certification. With respect to each Draw Request relating to Hard Costs, Lender shall have received a certificate or report of Construction Consultant based upon a site observation of the Property made by Construction Consultant not more than thirty (30) days prior to such Advance Date, in which Construction Consultant shall in substance (i) verify that the portion of the Project completed as of the date of such site observation has been substantially completed in accordance with the Plans and Specifications and (ii) state Construction Consultant's estimate of (A) the percentage of the construction of the Project completed as of the date of such site observation on the basis of work in place as part of the Project and the Construction Budget, (B) the Hard Costs actually incurred for work in place as part of the Project as of the date of such site observation, (C) the sum necessary to complete construction of the Project substantially in accordance with the Plans and Specifications, and (D) the amount of time from the date of such site inspection that will be required to achieve Completion of the Project;

(g) Plans and Specifications. Borrower shall have delivered to Construction Consultant a complete set of any amendments, replacements, supplements or other modifications made to the Plans and Specifications, in each case, made after the Closing Date or the date of the last Draw Request, as the case may be, in accordance with the terms and conditions of this Agreement, and Lender shall have received a list identifying the Plans and Specifications as in effect as of such Advance Date;

(h) Title Date Down. Borrower shall cause the Title Company (or Borrower shall have obtained a commitment from the Title Company) to issue an ALTA 33 Disbursement Endorsement to the Title Insurance Policy, to be dated and effective on the date of disbursement of the Additional Advance which evidences (i) no new exceptions to the Title Insurance Policy other than Permitted Encumbrances (other than Permitted Encumbrances set forth in clause (vi) of the definition thereof unless actually bonded or discharged) since the date of the last Additional Advance (with affirmative insurance that no Taxes or Other Charges (other than Taxes and Other Charges being contested in accordance with this Agreement) are delinquent, and (ii) increases the Title Insurance Policy liability amount by the amount of the Additional Advance as of the new Date of Coverage (as defined in the ALTA 33 Disbursement Endorsement);

(i) Mezzanine Loan Advance. Mezzanine Lender shall have advanced (or be simultaneously advancing) the Mezzanine Funding Share of the amount of the applicable Combined Advance with respect to which Lender is making an Additional Advance hereunder from proceeds of the Mezzanine Loan in accordance with the terms of the Mezzanine Loan Agreement;

(j) Environmental Compliance. Lender shall have received evidence of Borrower's compliance with all recommendations set forth in the Environmental Report or any future environmental report or assessment requested by Lender under the terms of the Environmental Indemnity; provided, that, by undertaking the measures identified in and pursuant to this Section 2.1.6(j), Lender shall not be deemed to be exercising any control over operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor;

(k) Representations and Warranties. Each of the representations and warranties of Borrower and Guarantor contained in each of the Loan Documents shall be true, complete and correct in all material respects as if made on (and with respect to facts and circumstances existing as of) the Advance Date, except for any changes in facts or circumstances occurring since the Closing Date that do not constitute a Default or Event of Default or were not caused by the occurrence of a Default or Event of Default and, in any event, do not result in a Material Adverse Effect;

(l) Construction Permits. Borrower shall have obtained all Construction Permits then-required under Legal Requirements for the actual stage of construction on the Property and delivered to Lender a copy of each of the Construction Permits;

(m) Payment of Fees. Borrower shall have paid or reimbursed all of Lender's outstanding fees and expenses (including fees and expenses of the Construction Consultant, and all other fees, costs and expenses of (including fees and expenses of outside legal counsel) relating to the Loan to the extent then due and payable, pursuant to the applicable provisions of this Agreement and the other Loan Documents;

(n) No Other Security Instruments. Except as otherwise permitted under the Loan Documents, all material and fixtures incorporated in the construction of the Project shall have been purchased so that their absolute ownership shall have vested in Borrower immediately upon delivery to the Property and Borrower shall have produced and furnished, if required by Lender, the contracts, bills of sale or other agreements under which title to such materials and fixtures is claim;

(o) Loan Balancing. The Loan shall be In Balance as provided in Section 2.1.11;

(p) Shortfall. No Interest and Carry Cost Shortfall exists;

(q) Compliance with Laws. Other than matters fully disclosed to Lender which are curable and are being cured as part of the work comprising the Required Improvements, and subject to

Borrower's right to contest in accordance with Section 5.1.2(b), the Property shall comply in all material respects with all Legal Requirements;

(r) Pending Litigation. There shall be no pending or threatened litigation known to Borrower or its counsel against Borrower, Master Tenant, Guarantor, Manager, General Contractor or the Property which, if decided unfavorably, could reasonably be expected to result in (i) a change in Control of Borrower, Master Tenant or Manager, (ii) a Material Adverse Effect, or (iii) the failure of Guarantor to satisfy the Financial Covenant Requirement;

(s) No Casualty or Condemnation. (i) Other than matters being cured as part of the work comprising the Required Improvements, the Property shall comply in all material respects with all Legal Requirements, (ii) if any Restoration is then continuing, Borrower is diligently pursuing such Restoration and Lender has determined that the non-completion of such Restoration prior to the making of the Additional Advance is not reasonably likely to have a Material Adverse Effect, and (iii) no Casualty or Condemnation shall have occurred that permits any tenant party to a Lease a termination right (or such right shall have been waived or lapsed);

(t) Milestones. On the Advance Date, no event shall have occurred that would reasonably be expected to result in Borrower being unable to achieve any Major Milestone within the time period applicable to such Major Milestone, as determined by Lender.

(u) HVCRE. Notwithstanding anything to the contrary set forth herein or in any other Loan Document, Lender shall not be obligated to authorize an Additional Advance hereunder which could, in Lender's sole but good faith discretion, cause the Loan to be classified as an HVCRE;

(v) Payment and Performance Bonds; Sub-Guard Insurance. Borrower shall cause, at Lender's election, either (i) payment and performance Bonds, in form and substance reasonably satisfactory to Lender and issued by sureties satisfactory to Lender to be maintained with respect to the obligations of each Trade Contractor; and/or (ii) a sub-guard insurance policy in form and substance reasonably acceptable to Lender to be maintained with respect to the obligations of each Trade Contractor, provided, that the Bonds shall be in an amount not less than the full contract price for each such Trade Contract required to be bonded pursuant to this Section 2.1.6(v);

(w) Closing Date Minimum Equity Requirement. Lender shall have received satisfactory evidence that the Closing Date Minimum Equity Requirement remains satisfied, which evidence may be in the form of an Officer's Certificate, in form and substance reasonably acceptable to Lender, stating that no distributions have been made;

(x) Master Lease. The Master Lease shall remain in full force and effect and no default shall have occurred under the Master Lease that remains uncured; and

(y) Miscellaneous. Lender shall have received all documents, reports, certificates, affidavits and other information, in form and substance reasonably satisfactory to Lender or Construction Consultant, as each may reasonably require, to evidence compliance by Borrower with the terms and conditions to be complied with by Borrower in connection with the disbursement of the applicable Additional Advance.

2.1.7 Additional Advances for the Payment of Approved Project Expenditures. With respect to each Additional Advance requested for the payment of Approved Project Expenditures, in addition to satisfaction by Borrower of all the applicable conditions precedent set forth in Sections 2.1.5

and 2.1.6 above, Lender shall not be obligated to make such Additional Advance unless all of the following conditions are also satisfied:

(a) Lender shall have received an Officer's Certificate with respect to any construction work constituting the applicable Approved Project Expenditures to be funded by such Additional Advance certifying that whatever portion of such work has been Completed to date has been Completed in good and workmanlike manner in substantial accordance with all applicable Legal Requirements and the Plans and Specifications;

(b) Lender shall have received (i) an updated Construction Budget for the Project in accordance with Section 5.1.3(c) hereof, in form and substance reasonably satisfactory to Lender, which indicates the Costs (other than Interest and Carry Costs) anticipated to complete the Required Improvements, after giving effect to Costs (other than Interest and Carry Costs) incurred during the period since the Closing Date, or the date of the last preceding Draw Request, as the case may be, and (ii) an anticipated costs report in form and substance reasonably acceptable to Lender, which indicates the Costs (other than Interest and Carry Costs) anticipated to complete the Required Improvements, after giving effect to Costs incurred during the previous calendar month (or the date of the last preceding Draw Request, as the case may be), and projected Costs; provided, that, no Line Item in the Construction Budget with respect to Approved Project Expenditures shall be eligible for funding from the proceeds of an Additional Advance until 100% of such Line Item has been bought out and Lender and Construction Consultant have reviewed the related sub-contract(s) and, if applicable, Major Trade Contractor Consent(s);

(c) Lender shall have received a reconciliation by Borrower of the progress and cost of the construction of the Project through the date of the Draw Request with the Construction Schedule and the Construction Budget, together with a projection of such progress and costs through to Completion of the Project; and

(d) in no event will the aggregate of all Additional Advances actually made under this Agreement for the payment of Approved Project Expenditures exceed the Project Advance Amount.

2.1.8 Intentionally Omitted.

2.1.9 Advances to Pay Interest, Fees and Expenses.

(a) Subject to the terms of this Agreement, Additional Advances may be used to pay Interest and Carry Costs. Subject to the remaining provisions of this Section 2.1.9, Borrower hereby irrevocably requests that Lender make an Additional Advance on each Payment Date to pay Interest and Carry Costs to the extent of the Mortgage Funding Share of any shortfall of amounts on deposit in the Cash Management Account. Additional Advances required to be made by Lender in accordance with the foregoing shall be deposited by Lender into the Cash Management Account for application in the manner and order of priority as set forth in Section 3.1(b) of this Agreement. Any Additional Advance so made shall be deemed to be an Additional Advance made to and received by Borrower and shall be added to the unpaid principal balance of the Loan.

(b) Notwithstanding anything to the contrary contained in this Agreement and without relieving Borrower of any obligation to pay the same, Lender shall have no obligation to make any Additional Advance with respect to Interest and Carry Costs as set forth in this Section 2.1.9 unless each of the conditions precedent to an Additional Advance set forth in Sections 2.1.6(a), (c), (d), (e), (h), (i), (k), (m), (n), (o), (p), (q), (r), (s), (t), (u) and (w) have been satisfied. In addition, with respect to any Additional Advance disbursed in accordance with the foregoing and disbursed to Borrower for payments of Cash Expenses and/or Approved Extraordinary Expenses, in addition to any other requirements set forth in this

Agreement, Borrower shall also provide to Lender an Officer's Certificate (i) certifying that such Additional Advance (or a portion thereof) are to be used for the payment of Cash Expenses or Approved Extraordinary Expenses, as applicable, (ii) including copies of all bills, invoices, receipts and other documentation requested by Lender to be reimbursed or paid by the Additional Advance (or a portion thereof), and (iii) stating that all prior Additional Advances requested for the payment of Costs have been spent on Cash Expenses and/or Approved Extraordinary Expenses for which such Additional Advances were made. No such Additional Advance shall be deemed to cure or waive any Default or Event of Default that may then exist. The authorization hereby granted shall be irrevocable, and no further direction or authorization from Borrower shall be necessary for Lender to make any Additional Advance in accordance with this Section 2.1.9. Lender shall not be deemed to be authorized to make an Additional Advance on any Payment Date with respect to Interest and Carry Costs that are then due and payable that have otherwise been paid by Borrower when due and payable and nothing contained in this Section 2.1.9 shall be deemed to prevent Borrower from paying Interest and Carry Costs from its own funds.

(c) Lender agrees that Interest and Carry Costs on any Payment Date shall be paid as follows: (i) first, pursuant to Section 3.1(b) hereof, (ii) second, from the Shortfall Account, (iii) third, from the Excess Cash Flow Reserve Account, (iv) fourth, as (x) an Additional Advance to the extent there are unfunded Loan proceeds available to make such Additional Advance in accordance with the terms of this Agreement, and (y) a Mezzanine Loan Additional Advance to the extent there are unfunded Mezzanine Loan proceeds available to make such Mezzanine Loan Additional Advance in accordance with the terms of the Mezzanine Loan Agreement, and (v) fifth, from a current payment from Borrower as and when such Interest and Carry Costs are due.

(d) If, at any time and from time to time, Lender determines that, without duplication, the sum (such sum, the "Estimated Interest and Carry Available Amount") of (i) the then remaining unadvanced Loan Amount and the then remaining unadvanced Mezzanine Loan Amount available for application toward the payment of Interest and Carry Costs, plus (ii) any funds then on deposit in the Shortfall Account and any Reserve Account (but only to the extent that the funds then on deposit in the Reserve Account are allocable for payment of Interest and Carry Costs, and provided that Lender's access to such funds is not restricted by (A) Legal Requirements, injunction or other court order, or (B) as a result of any action, inaction or omission by Borrower, Guarantor or any Affiliate of Borrower or Guarantor), plus (iii) amounts that are guaranteed pursuant to the Equity Funding Guaranty (provided that no claim is then being pursued by Lender in respect of any of the Guarantees and Guarantor is not then in default or in breach of any of its obligations in respect of any of the Guarantees) with respect to Interest and Carry Costs, as determined by Lender, would be insufficient to fund the estimated Interest and Carry Costs projected to be payable with respect to the Loan and the Mezzanine Loan through the Maturity Date (the "Estimated Interest and Carry Costs"), as determined by Lender in its good faith discretion (the amount by which the Estimated Interest and Carry Costs exceeds the amount of the Estimated Interest and Carry Available Amount, the "Interest and Carry Cost Shortfall"), Lender shall require that Borrower deposit cash into an interest and shortfall reserve account established and maintained at Cash Management Bank by Lender under the sole dominion and control of Lender (the "Shortfall Account") in an amount equal to the Interest and Carry Cost Shortfall. Any Interest and Carry Cost Shortfall payment that Borrower is required to deposit in accordance with this Section 2.1.9(d) shall be due and payable to Lender not later than five (5) Business Days after Lender's delivery to Borrower of written demand for such payment. Provided that (1) no Event of Default or Mezzanine Loan Event of Default has occurred and is continuing, (2) no Interest and Carry Cost Shortfall then exists, and (3) all amounts then due and payable to Lender under this Agreement and the other Loan Documents (including, without limitation, all Reserve Funds required to be deposited by Borrower in accordance with the terms of this Agreement) have been made, amounts then remaining in the Shortfall Account (after deducting thereof any amounts applied by Lender in accordance with the terms of this Agreement) shall be used to pay shortfalls in deposits and/or payments, as applicable, pursuant to

Section 3.1(b), subject to the terms and conditions set forth in this Agreement with respect to Additional Advances to pay Interest and Carry Costs.

2.1.10 Advances for Stored Materials. Lender shall make disbursements for Stored Materials to be utilized in connection with the Project, as applicable, in amounts such that the sum of all Additional Advances and Mezzanine Loan Additional Advances on account of all such Stored Materials not yet installed or incorporated into the Project shall not be in excess of $1,500,000 ("Stored Materials Cap") in the aggregate at any one time, it being agreed that once Borrower provides satisfactory evidence to Lender and Construction Consultant that such applicable Stored Materials have been installed or incorporated into the Project, such Stored Materials so installed or incorporated into the Project shall no longer count against the Stored Materials Cap. The aggregate amount of Additional Advances for Stored Materials shall in no event at any time exceed the actual Hard Costs incurred by Borrower for such materials as verified by Construction Consultant pursuant to the provisions of this Agreement. In addition to the foregoing limitations, Additional Advances on account of Stored Materials shall be subject to the other provisions of this Agreement and, prior to any Additional Advance for Stored Materials being made, Lender shall have received the following, in form and substance reasonably satisfactory to Lender:

(a) evidence that the Stored Materials are appropriate for purchase during the then current stage of construction;

(b) (i) as to any Stored Materials, evidence that such Stored Materials are or will be securely stored (A) on site at the Property or (B) in a bonded warehouse off-site properly inventoried and clearly stenciled or otherwise marked to indicate that they are (I) the property of Borrower and (II) the subject of a security interest by Lender and (ii) with respect to Stored Materials stored off-site in accordance with the foregoing, an agreement of the owner of such warehouse to permit Lender and/or Construction Consultant access to the same;

(c) evidence that the Stored Materials have been paid for and are owned by (or upon payment of the amounts to be disbursed in the applicable Draw Request shall be paid for and owned by) Borrower free of all liens or claims of the vendor or any third party;

(d) a perfected, first-priority security interest in such Stored Materials is held by Lender;

(e) as to any Off-Site Materials, evidence reasonably satisfactory to Lender that such Off-Site Materials are segregated and identified as Borrower's property;

(f) as to any Unincorporated Materials, Construction Consultant shall have determined, in a manner reasonably satisfactory to Construction Consultant, that such Unincorporated Materials are not in excess of such building equipment and materials as would be kept at the Property in accordance with good construction practice for current installation or incorporation;

(g) evidence reasonably satisfactory to Lender that the Off-Site Materials or Unincorporated Materials, as the case may be, are insured against casualty, loss and theft for an amount equal to their replacement costs and Lender is named as an additional insured and loss payee with respect thereto;

(h) as to any Off-Site Materials, proof of payment reasonably satisfactory to Lender from the supplier or fabricator of such Off-Site Materials, the cost of which is, in whole or in part, payment for all amounts covered by any prior Draw Request; and

(i) if required by Lender in its reasonable discretion, a certification by the Architect or Construction Consultant that it has inspected such Stored Materials and they are in the condition required under the applicable Trade Contracts.

2.1.11 Loan Balancing and Construction Budget Reallocations.

(a) Loan Balancing. Taking into account Borrower's deposits of Deficiency Collateral with Lender pursuant to Section 2.1.12(b), at all times that any portion of the Debt remains outstanding until the Project is Completed in accordance with the terms and conditions hereof, no Deficiency shall exist (the absence of any Deficiency shall be referred to herein as the Loan being "In Balance"), which determination shall be made by Lender, in Lender's sole but good faith discretion, after taking into account any substantiated Cost Savings and any permitted reallocations of the Contingency and shall be made on both a Line Item by Line Item basis and in the aggregate, and shall be final absent manifest error.

(b) Contingency Line Items. Provided that no Event of Default has occurred and is continuing, Borrower may revise the Construction Budget from time to time without the prior written consent of Lender to move amounts available under the Contingency to other Line Items for Hard Costs or Soft Costs in the Construction Budget, in the same proportion as the percent of completion of the Project. Any reallocation in excess of the percent of completion of the Project shall be subject to Lender's prior written consent, in Lender's sole but good faith discretion.

(c) Cost Savings. If there is a Cost Saving in a particular Line Item of the Construction Budget and if such Cost Saving is substantiated by evidence reasonably satisfactory to Lender and Construction Consultant that (i) all costs associated with such Line Item have been paid in full, (ii) all mechanics lien waivers with respect to such Line Item have been received (to the extent applicable) and (iii) all mechanics liens associated with such Line Item, if any, have been discharged of record, then Borrower shall have the right upon Lender's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, to apply such Cost Saving to other Line Items or to the applicable "Contingency" in the Construction Budget, in each case, at the option of Borrower; provided, however, that Borrower shall in no event or under any circumstances have the right to:

(i) reallocate any portion of the Interest and Carry Cost Line Item prior to Completion of the Project; or

(ii) reallocate any savings in any Line Item for Hard Costs to a Soft Costs Line Item.

(d) Determination of Cost Savings. For the purposes hereof, "Cost Saving" shall mean, if the component of the construction of the Project (other than Interest and Carry Costs with respect to the Loan) which is the subject of a Hard Cost Line Item shall be reasonably determined by Lender and Construction Consultant to have been completed without the expenditure of the entire amount allocated in the Construction Budget to such Hard Cost Line Item, and, subject to Borrower's right to contest in accordance with Section 5.1.2(b), all Trade Contractors have been paid in full or have an agreed upon final settlement amount for work performed and materials provided with respect to the component of the construction of the Project which is the subject of such Hard Cost Line Item, and all applicable mechanics' lien waivers with respect to such component have been received, the difference between the amount of such Hard Cost Line Item in the Construction Budget and the amount so expended for such Hard Cost Line Item.

(e) New Line Item. Borrower shall not be permitted to create any new Line Items without Lender's prior written consent, not to be unreasonably withheld, conditioned or delayed.

2.1.12 Loan Balancing and Deficiency.

(a) Lender shall not be required to make an Additional Advance pursuant to the provisions of this Agreement or any of the other Loan Documents for more than the aggregate amount of the Line Items in the Construction Budget or if the Loan is otherwise not In Balance, unless Cost Savings from other Line Items have previously been applied in accordance with Section 2.1.11(c) or all or a portion of the Contingency has been reallocated to such Line Item in accordance with Section 2.1.11(b) hereof or any of the actions set forth in Section 2.1.12(b) below are taken (which reallocation may be requested within seven (7) Business Days prior to the delivery of any Draw Request).

(b) If Lender shall determine that a Deficiency exists, Lender shall deliver written notice of such determination to Borrower and Lender shall not be obligated to make any Additional Advances under this Agreement or any of the other Loan Documents until the Loan is In Balance as hereinafter set forth. Within ten (10) Business Days of receipt of such notice of determination, Borrower shall take the following actions, individually or in combination:

(i) subject to Sections 2.1.11(b) and Section 2.1.11(c), apply Cost Savings and/or any permitted reallocation pursuant to Section 2.1.11 hereof such that the aggregate sum of the Deficiency is reduced to zero; or

(ii) deposit cash (the "Deficiency Collateral") into an account established and maintained at Cash Management Bank by Lender under the sole dominion and control of Lender (the "Deficiency Account") in an amount such that the amount on deposit in the Deficiency Account (following any application of any Cost Savings and/or any Contingency to the Deficiency in accordance with the terms and conditions hereof, if any), shall be sufficient to reduce the aggregate sum of the Deficiency to zero.

(c) If Borrower deposits the Deficiency Collateral with Lender, such deposit shall be held in the Deficiency Account, and all interest earned thereon shall become part of the Deficiency Collateral. The Deficiency Collateral shall first be exhausted (in accordance with the terms hereof) before any further Additional Advances shall be made and Lender shall have no obligation to make Additional Advances when the Loan is not In Balance.

(d) Borrower shall have no right to any Deficiency Collateral on deposit in the Deficiency Account, except as described in this Section 2.1.12, and, until expended or applied as provided herein, such Deficiency Collateral shall constitute additional security for the Debt. So long as no Event of Default has occurred and is continuing, any amounts held as Deficiency Collateral shall be drawn and advanced to pay costs for Approved Project Expenditures in the same manner as if such amounts were Additional Advances (it being understood that the condition that Mezzanine Lender has made a Mezzanine Loan Additional Advance shall be inapplicable (and no Additional Advance shall be made hereunder) so long as funds from the Deficiency Account are being utilized to pay 100% of any Approved Project Expenditures).

(e) If Master Tenant is required to deposit with Borrower any amount pursuant to Section 1.1.2.1 of the Master Lease, then Borrower shall direct Master Tenant to deposit such amount with Lender. Any amount deposited with Lender pursuant to this Section 2.1.12(e) shall be held in the Deficiency Account and shall be applied as Deficiency Collateral in accordance with the terms and conditions set forth in this Agreement.

2.1.13 Direct Advances. Lender shall have the right (but not the obligation) to make any or all Additional Advances directly to General Contractor, any Trade Contractor that has a direct agreement with

Borrower, or any other Person to whom payment is due from Borrower, provided that no direct Additional Advance shall be made for any costs being disputed by Borrower pursuant to Section 5.1.2(b) hereof. If an Event of Default is continuing, Additional Advances may be made by deposit in a bank account to be designated by Lender which may be controlled by General Contractor, such Trade Contractor or by such other Person, in each case individually or jointly with Lender, as Lender may elect. Such direct Additional Advances may be made by check payable to the Person to whom an Additional Advance is to be made in accordance with this Section 2.1.13. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable direction and authorization to Lender to so disburse Additional Advances as described in, and in accordance with, this Section 2.1.13. No further direction or authorization from Borrower shall be necessary or required for such direct Additional Advances and all such Additional Advances shall satisfy pro tanto the obligations of Lender hereunder and shall be secured by the Loan Documents as fully as if made directly to Borrower, regardless of the disposition thereof by General Contractor, any Trade Contractor or any other Person.

2.1.14 Partial Advances. If any or all conditions precedent to making an Additional Advance have not been satisfied on the date requested for such Additional Advance, Lender may, at its option in its sole and absolute discretion, waive so many of such conditions precedent as Lender may elect. Lender may, however, without waiving any of its rights or remedies, disburse that portion, if any, of the requested Additional Advance for which all of the conditions precedent have been satisfied. Notwithstanding the foregoing, nothing set forth in this Section 2.1.14 shall require Lender to fund all or any portion of an Additional Advance unless all of the conditions precedent have been satisfied

2.1.15 Retainage. The amount of Loan proceeds disbursed on account of any Additional Advance or portion thereof allocable to any Hard Costs shall be reduced by the Mortgage Funding Share of the portion of the Retainage to be paid out of Additional Advances in accordance with this Agreement and applicable to such Hard Costs. No final Retainage amounts shall be released with respect to a particular Trade Contract prior to the date of final completion of all of the work of the Trade Contractor under such Trade Contract and the expiration of the lien period for an individual subcontract (unless Borrower provides an unconditional lien waiver from the applicable Trade Contractor satisfactory to Lender, in which event such final Retainage shall be funded in connection with the Draw Request therefor). In no event shall Lender be required to disburse any funds on account of Retainage prior to the time such sums are payable pursuant to the applicable Trade Contract.

2.1.16 Costs and Additional Advances. Additional Advances shall be made on the basis of (a) the Line Items for Hard Costs and Soft Costs specified in the Construction Budget or items not detailed in the Construction Budget but which are funded by the Contingency, subject to the provisions of Section 2.1.11 and Section 2.1.12, and (b) the documented cost of work in place and performed and services provided (without reduction for any retainage permitted under any applicable Trade Contract, but subject to the Retainage required under this Agreement), or the extent provided in Section 2.1.10, Unincorporated Materials or Off-Site Materials or deposits made, in each case, in accordance with this Agreement; provided that Lender shall at no time be obligated to make an Additional Advance for work performed, materials furnished or services provided under Construction Contracts that are not fully executed and delivered.

2.1.17 Conditions Precedent. Lender shall not be obligated to make any Additional Advance unless Lender is reasonably satisfied that the applicable conditions precedent to the Additional Advance as set forth in this Section 2.1 have been satisfied by Borrower as of the applicable Advance Date. Without limiting the foregoing, the requesting of an Additional Advance shall constitute, without necessity of specifically containing a written statement to such effect, a confirmation, representation and warranty by Borrower to Lender that all of the applicable conditions to be satisfied in connection with the making of such Additional Advance have been satisfied (unless waived in writing by Lender) and that all of the representations and warranties of Borrower and Guarantor set forth in the Loan Documents are true and

correct as if made on (and with respect to facts and circumstances existing as of) the date on which such Additional Advance is made, except as otherwise permitted by the terms and conditions hereof, and except for any changes in facts or circumstances occurring since the Closing Date that do not constitute a Default or Event of Default or were not caused by the occurrence of a Default or Event of Default and, in any event, do not result in a Material Adverse Effect.

2.1.18 Separate Contracts for Additional Advances; Several Obligations. Borrower covenants and agrees not to take any action whatsoever, at law or in equity (including the assertion of any right of rescission, set-off, counterclaim or defense) against any Lender on account of such Lender failing to fund any portion of the Additional Advance in violation of this Agreement. In the event Borrower breaches the foregoing covenant, Borrower shall indemnify, defend and hold each Lender harmless from any and all Losses incurred by such Lender in any way related to such breach (which agreement to indemnify such Lender shall be a personal liability of Borrower and not subject to Article VIII). Borrower acknowledges and agrees that (a) no Lender shall have any obligation to fund any other Lender's portion of any Additional Advance, and that such obligation shall be the several, sole and exclusive obligation of such Lender, and (b) each Lender's obligations to make its portion of each Additional Advance in accordance with Section 2.1 are a several obligation of such Lender, and an independent contract made by and between such Lender and Borrower separate and apart from any other obligation of any other Lender under the other provisions of the Loan Documents, and that such Lender shall at no time be required to make Additional Advances in an amount that exceeds such Lender's commitment (which shall be equal to a percentage of the Loan Amount that is determined by dividing the portion of the Loan Amount evidenced by the Note executed in favor of such Lender by the total Loan Amount). The obligations of the Borrower under this Agreement and the other Loan Documents shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of the Borrower, or any other party, against any Lender by reason of such Lender's failure to make any Additional Advance. Borrower agrees that it shall not assert (and shall not have) any defense (including the assertion of any right of rescission, set-off, counterclaim or defense) to the payment of Debt owed to any Lender in the event such Lender breaches any obligation to make an Additional Advance that it is required to make hereunder. The making of any Additional Advance by any Lender at the time when an Event of Default exists shall not be deemed a waiver or cure by such Lender of that Event of Default, nor shall such Lender's rights and remedies be prejudiced in any manner thereby. Nothing in this Section 2.1.18 shall be deemed to be a release of any claim that Borrower may have against any Lender for its failure to perform its obligations under this Agreement and the other Loan Documents.

2.1.19 Conditions Precedent to Completion. The Project shall not be deemed Completed unless and until the following conditions are satisfied:

(a) Approval by Construction Consultant. Lender and Construction Consultant shall have received evidence reasonably acceptable to them, or otherwise be reasonably satisfied, that Completion of the Project has occurred.

(b) Final Lien Waivers and Release/Payment Receipts. Subject to Borrower's right to contest pursuant to Section 5.1.2(b) hereof, Lender shall have received from Borrower final unconditional Lien waivers and release/payment receipts from General Contractor and all Trade Contractors party to a Trade Contract in the form required by California Civil Code Section 8138 (or any successor thereto).

(c) Certificates of Occupancy. Lender shall have received a copy of the certificate of occupancy (or an equivalent document) and all other material Operating Permits for the Project.

(d) Final "As-Built" Plans and Specifications. Borrower shall have delivered to Lender the final "as-built" Plans and Specifications for the Project.

(e) Final Survey. Borrower shall have delivered to Lender the final survey of the Property upon Completion by a surveyor licensed in the State and reasonably satisfactory to Lender and the Title Company, and that satisfies Lender's survey requirements.

(f) Certificate of Architect. Lender shall have received a certificate of Completion for the Project certified by Architect and confirmed by Construction Consultant, in its good faith determination, which confirms that Completion has occurred substantially in accordance with the Plans and Specifications and all Legal Requirements, including all Punchlist Items with respect thereto.

(g) Title Date Down. The requirements of Section 2.1.6(h) have been satisfied.

(h) Payment of Fees. Lender shall have received payment for any and all reasonable, actual, out-of-pocket fees then due and payable by Borrower to Lender pursuant to the Loan Documents, including, but not limited to, the reasonable, fees and expenses of Construction Consultant and reasonable, fees, costs and expenses of outside legal counsel of Lender (in each case, to the extent then due and payable).

(i) Certificate of Borrower. Borrower shall have furnished to Lender a certificate from Borrower, currently dated, certifying that: (i) no written notices from any Governmental Authority of any claimed violations of applicable Legal Requirements arising from the development or operation of the Project which have not been cured were served upon Borrower or any contractor or subcontractor or their respective agents or representatives and (ii) there are no circumstances which could give rise to the issuance of any such notice of claimed violation.

(j) Fixtures, Equipment and Inventory. All fixtures, furnishings, equipment, all inventory and all other property contemplated under the Construction Budget and the Plans and Specifications to be incorporated into or installed in the Project shall have been, to the extent required for the Completion of the Project in accordance with the terms hereof, incorporated or installed free and clear of all liens and security interests other than the Permitted Encumbrances.

(k) UCC Searches. Borrower shall have furnished Lender with current searches of all UCC financing statements filed with the Secretary of State of Delaware and the State against Borrower as debtor, showing that no UCC financing statements are filed or recorded against Borrower in which the collateral is described as any of the collateral for the Loan, including any fixtures, furnishings and equipment or other personal property located on the Property or used in connection with the Property, other than filings (i) pursuant to the Loan Documents or (ii) with respect to Permitted Equipment Leases, provided that such UCC financing statements with respect to Permitted Equipment Leases have been filed after the Closing Date and set forth a description of collateral that is limited solely to the collateral under the applicable Permitted Equipment Lease.

SECTION 2.2. Interest Rate.

2.2.1 Interest Calculation. Subject to Section 2.2.2 and Section 2.2.6, interest on the Outstanding Principal Balance shall accrue, from the Closing Date until the Debt is repaid in full, at the Interest Rate, and during the continuance of an Event of Default, at the Default Rate. Interest on the Outstanding Principal Balance shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate (or the Default Rate, if applicable) and a three hundred sixty (360) day year, by (c) the Outstanding Principal Balance. The Interest Rate applicable to an Interest Accrual Period shall be determined by Lender as set forth herein; provided, however, that Term SOFR for the Interest Accrual Period commencing on the Closing Date through and including July 9, 2022 shall be Term SOFR on the Closing Date, which the parties agree is Closing Date Term SOFR. In connection with the use or administration of Term SOFR, Lender

will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of Borrower. Lender will promptly notify Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.2.2 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Outstanding Principal Balance at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.2.3 Taxes.

(a) Payment of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Legal Requirements. If any Legal Requirement requires the deduction or withholding of any Tax from any such payment, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Legal Requirements and, if such Tax is an Indemnified Tax, the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding for Indemnified Taxes has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.2.3(a)) the applicable Lender receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Legal Requirements any Other Taxes. Borrower shall pay to each Lender within ten (10) days after demand therefor, the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.2.3(a)) payable or paid by such Lender or required to be withheld or deducted from a payment to such Lender and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender shall be conclusive absent manifest error. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.2.3(a), Borrower shall deliver to Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender. For purposes of this Section 2.2.3, "Legal Requirements" shall include FATCA.

(b) Status of Lender.

(i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Loan Document shall deliver to Borrower, (A) prior to becoming a party to this agreement or obtaining any interest in the Loan, (B) at the time or times reasonably requested by Borrower, and (C) if any form or

certification previously delivered expires or becomes obsolete or inaccurate in any respect, such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, if reasonably requested by Borrower, any Lender shall deliver such other documentation prescribed by applicable Legal Requirements (or reasonably requested by Borrower) as will enable Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be reasonably requested by Borrower) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), whichever of the following is applicable:

1. in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

2. executed copies of IRS Form W-8ECI;

3. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit K-1 attached hereto to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W 8BEN-E; or

4. to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W 8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-2 or Exhibit K-3, each attached hereto, IRS Form W-9, and/or other certification documents from

each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-4 attached hereto on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be reasonably requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment (and solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement).

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so.

(c) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified pursuant to this Section 2.2.3 (including by the payment of additional amounts pursuant to this Section 2.2.3(c)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.2.3(c) with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.2.3(c) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.2.3(c), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.2.3(c) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.2.3(c) shall not be

construed to require any indemnified party to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the indemnifying party or any other Person.

(d) Survival. Each party's obligations under this Section 2.2.3 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the commitments to make Additional Advances and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(e) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.2.5, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.2.3(a), then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loan hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to such Sections 2.2.3 or 2.2.5, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

2.2.4 Breakage Indemnity. Borrower shall indemnify Lender against any Losses which Lender may actually sustain or incur in liquidating or redeploying deposits from third parties acquired to effect or maintain the Loan or any part thereof as a consequence of (a) any default by Borrower in payment of the principal of or interest on a Term SOFR Loan, an Alternate Rate Loan or a Prime Rate Loan, as applicable, including, without limitation, any such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain a Term SOFR Loan, an Alternate Rate Loan or a Prime Rate Loan, as applicable, hereunder, (b) any prepayment (whether voluntary or mandatory) of the Term SOFR Loan, an Alternate Rate Loan or a Prime Rate Loan, as applicable, on a day that is not the last day of an Interest Accrual Period, including, without limitation, such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain the Term SOFR Loan, an Alternate Rate Loan or a Prime Rate Loan, as applicable, hereunder, and (c) the conversion (for any reason whatsoever, whether voluntary or involuntary) of the Applicable Rate Index from Term SOFR to an Alternate Rate Index or the Prime Rate Index (or any other conversion of the Interest Rate) with respect to any portion of the Loan Amount on a date other than the last day of an Interest Accrual Period; provided, however, Borrower shall not indemnify Lender from any Losses arising from Lender's willful misconduct or gross negligence. Lender shall deliver to Borrower a statement for any such sums which it is entitled to receive pursuant to this Section 2.2.4, which statement shall be binding and conclusive absent manifest error. Borrower's obligations under this Section 2.2.4 are in addition to Borrower's obligations to pay any Prepayment Premium applicable to a payment or prepayment of the Outstanding Principal Balance. This provision shall survive payment of the Note in full and the satisfaction of all other obligations of Borrower under this Agreement and the other Loan Documents.

2.2.5 Legal Requirements.

(a) If any Change in Law shall (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of Lender which is not otherwise included in the determination of Term SOFR, the Alternate Rate Index or the Prime Rate Index hereunder, (ii) have the effect of reducing the rate of return on Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy) by any amount deemed by Lender to

be material, (iii) subject any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or (iv) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loan made by such Lender or participation therein, and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining the Loan or of maintaining its obligation to make any the Loan, or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, in any such case, upon written request of such Lender and delivery of the certificate described in Section 2.25(c) below, subject to Section 2.25(d) below, Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered (such increases in cost and reductions in amounts receivable hereinafter collectively, the "Increased Costs").

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loan made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 2.2.5(a) or (b) above and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.2.5 shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section 2.2.5 for any Increased Costs incurred or reductions suffered more than twelve (12) months prior to the date that such Lender notifies Borrower of the Change in Law giving rise to such Increased Costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such Increased Costs or reductions is retroactive, then the twelve-month period referred to above shall be extended to include the period of retroactive effect thereof).

2.2.6 Rate Conversion.

(a) In the event that Lender shall have determined in its sole but good faith discretion that Term SOFR cannot be determined as provided in the definition of Term SOFR as set forth herein or Lender shall have reasonably determined that Term SOFR has been succeeded by an Alternate Rate Index, then Lender shall forthwith give notice thereof by telephone of such fact, confirmed in writing, to Borrower at least one (1) Business Day prior to the Determination Date. If such notice is given, the Loan shall be converted, from and after the first day of the next succeeding Interest Accrual Period, (i) to an Alternate Rate Loan bearing interest based on the Alternate Rate in effect on the related Determination Date provided that (1) Lender has determined in its sole but good faith discretion that Term SOFR has been succeeded by the Alternate Rate Index and (2) Lender has received evidence satisfactory to Lender that conversion to an Alternate Rate Loan does not violate ERISA or (ii) at Lender's option, to a Prime Rate Loan bearing interest based on the Prime Rate in effect on the related Determination Date. Notwithstanding any provision of this

Agreement to the contrary, in no event shall (x) Borrower have the right to convert (i) a Term SOFR Rate Loan to a Prime Rate Loan or an Alternate Rate Loan, (ii) an Alternate Rate Loan to a Term SOFR Rate Loan or a Prime Rate Loan, or (iii) a Prime Rate Loan to a Term SOFR Rate Loan or an Alternate Rate Loan, (y) the Prime Rate be less than the Minimum Rate or the Alternate Rate be less than the Minimum Rate.

(b) If, pursuant to the terms of Section 2.2.6(b) above, the Loan has been converted to a Prime Rate Loan but thereafter either (i) Term SOFR can again be determined as provided in the definition of Term SOFR as set forth herein or (ii) Lender has determined in good faith (which determination shall be conclusive and binding upon Borrower absent manifest error) that Term SOFR has been succeeded by an Alternate Rate Index and the conditions set forth in Section 2.2.6(b) above are satisfied, Lender shall give notice thereof to Borrower and convert a Prime Rate Loan to a Term SOFR Rate Loan or to an Alternate Rate Loan, as applicable, by delivering to Borrower notice of such conversion no later than 2:00 p.m. (New York City time), one (1) Business Day prior to the next succeeding Determination Date. If such notice is given, the Loan shall be converted, from and after the first day of the next succeeding Interest Accrual Period, to a Term SOFR Rate Loan or an Alternate Rate Loan, as applicable, bearing interest based on Term SOFR or the Alternate Rate Index, as applicable, in effect on the related Determination Date.

(c) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lenders to make or maintain a Term SOFR Rate Loan or an Alternate Rate Loan as contemplated hereunder, (i) the obligation of Lender hereunder to make a Term SOFR Rate Loan or an Alternate Rate Loan or to convert a Prime Rate Loan to a Term SOFR Rate Loan or an Alternate Rate Loan shall be canceled forthwith and (ii) any outstanding Term SOFR Rate Loan or Alternate Rate Loan shall be converted automatically to a Prime Rate Loan on the first day of the next succeeding Interest Accrual Period or within such earlier period as required by law.

2.2.7 Interest Rate Cap Agreement.

(a) On or prior to the Closing Date, Borrower shall enter into an agreement with (or guaranteed by) an Acceptable Counterparty, which agreement (an "Interest Rate Cap Agreement") shall (i) be in form and substance reasonably satisfactory to Lender, (ii) contain the agreement of such Acceptable Counterparty to make payments to Borrower in the event the Applicable Rate Index exceeds a strike rate of no greater than three percent (3.00%), (iii) require payments based on a notional amount at least equal to the Loan Amount, (iv) not terminate prior to the date that is twenty-four (24) months following the Closing Date, and (v) require payments to be made on the date that is three (3) Business Days prior to the applicable Payment Date. Borrower shall collaterally assign to Lender, pursuant to an assignment agreement in form and substance acceptable to Lender (the "Assignment of Interest Rate Cap Agreement"), all of its right, title and interest (but not its obligations) to receive any and all payments under any Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the collateral assignment to Lender and require that payments be deposited directly into the account designated by Lender) and shall notify the Acceptable Counterparty of such assignment and obtain from such counterparty a confirmation of the assignment of such Interest Rate Cap Agreement to Lender in form and content acceptable to Lender.

(b) Not later than the date that is sixty (60) days prior to the date on which the initial Interest Rate Cap Agreement described in Section 2.2.7(a) terminates, Borrower shall enter into an agreement with (or guaranteed by) an Acceptable Counterparty, which agreement (a "Replacement Interest Rate Cap Agreement") shall (i) be in form and substance reasonably satisfactory to Lender, (ii) contain the agreement of such Acceptable Counterparty to make payments to Borrower in the event the Applicable Rate Index exceeds a strike rate of no greater than three percent (3.00%), (iii) require payments based on a notional amount at least equal to the Loan Amount, (iv) be effective commencing immediately

upon the termination of such initial Interest Rate Cap Agreement and not terminate prior to the Maturity Date, and (v) require payments to be made on the date that is three (3) Business Days prior to the applicable Payment Date. Borrower shall collaterally assign to Lender, pursuant to an Assignment of Interest Rate Cap Agreement, all of its right, title and interest (but not its obligations) to receive any and all payments under any Replacement Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Replacement Interest Rate Cap Agreement (which shall, by its terms, authorize the collateral assignment to Lender and require that payments be deposited directly into the account designated by Lender) and shall notify the Acceptable Counterparty of such assignment and obtain from such counterparty a confirmation of the assignment of such Replacement Interest Rate Cap Agreement to Lender in form and content acceptable to Lender.

(c) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by an Acceptable Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(d) In the event of any downgrade, withdrawal or qualification of the rating of the counterparty under the Interest Rate Cap Agreement such that such counterparty is a Downgraded Counterparty, or in the event of any default by an Acceptable Counterparty under the Interest Rate Cap Agreement, Borrower shall, not later than fifteen (15) days following the receipt by Borrower of notice of such downgrade, withdrawal, qualification, or default (whether received from Lender, the Acceptable Counterparty, or otherwise), then Borrower shall replace the Interest Rate Cap Agreement with an Interest Rate Cap Agreement satisfying the requirements of Section 2.2.7(a) above not later than fifteen (15) days following the receipt by Borrower of notice of such downgrade (whether received from Lender, the Acceptable Counterparty, or otherwise).

(e) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement, in each case, in accordance with the terms and provisions of this Agreement, Lender may (but shall have no obligation to) purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(f) In connection with the Interest Rate Cap Agreement, Borrower shall obtain and deliver to Lender, within twenty (20) Business Days following the Closing Date (or, with respect to a Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement, within twenty (20) Business Days following the effective date of such Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement, as applicable), an opinion from counsel (which counsel may be in-house counsel for the Acceptable Counterparty) for the Acceptable Counterparty (upon which Lender and its successors and assigns may rely) which shall provide, in relevant part, that: (i) the Acceptable Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Agreement; (ii) the execution and delivery of the Interest Rate Cap Agreement by the Acceptable Counterparty, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property; (iii) all consents, authorizations and approvals required for the execution and delivery by the Acceptable Counterparty of the Interest Rate Cap Agreement, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have

been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance; and (iv) the Interest Rate Cap Agreement, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by the Acceptable Counterparty and constitutes the legal, valid and binding obligation of the Acceptable Counterparty, enforceable against the Acceptable Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(g) Notwithstanding anything to the contrary contained in this Section 2.2.7 or elsewhere in this Agreement, in the event a Rate Conversion occurs, then, within ten (10) Business Days after such Rate Conversion, Borrower shall enter into a Substitute Interest Rate Cap Agreement (and in connection therewith, but not prior to Borrower taking all the actions described in this Section 2.2.7(g), Borrower shall have the right to terminate any then-existing Interest Rate Cap Agreement), together with, within five (5) Business Days thereafter, an assignment of interest rate cap agreement with respect to such Substitute Interest Rate Cap Agreement in form and substance substantially similar to the Assignment of Interest Rate Cap Agreement delivered in connection with the then-existing Interest Rate Cap Agreement, together with legal opinions of counsel to the counterparty and Borrower as reasonably required by Lender. Notwithstanding anything to the contrary set forth in this Section 2.2.7, if, following a Rate Conversion, Lender determines (which determination will be based on market customs and/or proposals of industry associations) that a Substitute Interest Rate Cap Agreement is not then generally commercially available from an Acceptable Counterparty, then, Borrower shall not be required to obtain a Substitute Interest Rate Cap Agreement but shall instead be required to purchase such other hedging product as reasonably determined by Lender would afford Lender substantially equivalent protection from increases in the interest rate, which such alternative shall be satisfactory to Lender in its reasonable discretion.

SECTION 2.3. Extension Option.

2.3.1 Borrower shall have the option to extend the term of the Loan beyond the Initial Maturity Date (each such option, an "Extension Option") for two (2) successive one-year terms (the period of each sun extension, an "Extension Term") upon satisfaction of each of the following conditions (it being agreed that, except to the extent expressly provided in this Section 2.3.1, each of the following conditions are required to be satisfied with respect to Borrower's exercise of each Extension Option):

(a) Borrower shall have given at least thirty (30) days' prior written irrevocable notice (but not more than ninety (90) days' prior written notice) to Lender of its election to extend the Maturity Date;

(b) no Default or Event of Default shall have occurred and be continuing on the date of delivery of the notice referred to in clause (a) above or on the Maturity Date;

(c) the Debt Yield calculated as of the Maturity Date shall be at least 8.5%;

(d) with respect to the second Extension Option only, the As-Stabilized Loan-to-Value Ratio calculated as of the Maturity Date shall not be greater than 45%;

(e) the Loan shall be In-Balance and no Interest and Carry Cost Shortfall shall exist;

(f) the Master Lease shall remain in full force and effect and no default shall have occurred under the Master Lease that remains uncured beyond any applicable notice and cure period in Lender's sole but good faith determination;

(g) Completion of the Project shall have occurred;

(h) Borrower and Guarantor shall have executed and delivered amendments to and reaffirmations of any or all of the Loan Documents as may be reasonably requested by Lender;

(i) each of the representations and warranties of Borrower and Guarantor contained in each of the Loan Documents shall be true, complete and correct in all material respects as of the Maturity Date, except for any changes in facts or circumstances occurring since the Closing Date that do not constitute a Default or Event of Default or were not caused by the occurrence of a Default or Event of Default and, in any event, do not result in a Material Adverse Effect;

(j) Borrower shall have paid to Lender a fee in the amount of 0.25% of the Outstanding Principal Balance plus any amounts available to be advanced as Additional Advances under this Agreement, and shall have paid or reimbursed all of Lender's outstanding fees and expenses, in accordance with the terms of this Agreement and the other Loan Documents;

(k) if Lender determines that the Estimated Interest and Carry Available Amount calculated as of the first day of the applicable Extension Term would be insufficient to fund the estimated Interest and Carry Costs projected to be payable with respect to the Loan and the Mezzanine Loan through the last day of the applicable Extension Term (the amount of any such shortfall, an "Extension Shortfall"), Borrower shall deposit cash into the Unfunded Loan Proceeds Account in an amount equal to the Extension Shortfall;

(l) Borrower either (i) extends the term of the Interest Rate Cap Agreement (or, if following a Rate Conversion, the Substitute Interest Rate Cap Agreement) then in effect to a date not earlier than the extended Maturity Date, or (ii) enters into a new Interest Rate Cap Agreement (or, if following a Rate Conversion, the Substitute Interest Rate Cap Agreement) and assigns the same to Lender pursuant to such documents as Lender may require, which Interest Rate Cap Agreement (or, if following a Rate Conversion, the Substitute Interest Rate Cap Agreement) expires no earlier than the extended Maturity Date, and which extension or new agreement complies with the requirements set forth in Section 2.2.7 and has the effect of capping Term SOFR (or, following, a Rate Conversion, as applicable, the Alternate Rate Index or the Prime Rate Index) at a strike price equal to 3.00%, on a notional principal amount not less than the Outstanding Principal Balance;

(m) Mezzanine Borrower shall have extended the Maturity Date (as defined in the Mezzanine Loan Agreement) of the Mezzanine Loan to a date not sooner than the applicable extended Maturity Date hereunder (including that all conditions precedent to such extension shall have been satisfied by Mezzanine Borrower or waived in writing by Mezzanine Lender); and

(n) Mezzanine Borrower shall have satisfied all requirements set forth in Section 2.3.1 of the Mezzanine Loan Agreement for such extension of the Mezzanine Loan (except to the extent that the only condition not satisfied thereunder is Borrower's simultaneous satisfaction of the conditions set forth in this Section 2.3.1) and the Mezzanine Loan has been extended pursuant to the terms and conditions of the Mezzanine Loan Agreement.

2.3.2 Unfunded Loan Proceeds. If (i) any Loan proceeds have not been advanced (such unadvanced amounts hereinafter, the "Unfunded Loan Amount") on or prior to the Initial Maturity Date and (ii) Borrower has elected to exercise the first Extension Option in accordance with the terms and conditions of Section 2.3.1 hereof, then, Lender, at its sole election, may elect by written notice to Borrower given no less than ten (10) Business Days prior to the anticipated advance date, advance all or such applicable portion of the Unfunded Loan Amount into an Eligible Account under the sole dominion and

control of Lender (the "Unfunded Loan Proceeds Account") subject to Borrower's satisfaction of the conditions precedent to an Extension Term set forth in Section 2.3.1. With respect to such portion of the Unfunded Loan Amount that is not funded into the Unfunded Loan Proceeds Account in accordance with this Section 2.3.2, Lender's commitment to fund such amounts shall terminate on the Initial Maturity Date. Lender shall be released from all obligations under this Agreement and the other Loan Documents with respect to such terminated portion of the commitment. So long as no Event of Default is continuing, any amount funded into the Unfunded Loan Proceeds Account (including any Extension Shortfall deposited therein and any amounts deposited therein by Mezzanine Lender pursuant to Section 2.3.2 of the Mezzanine Loan Agreement) shall be disbursed to Borrower on each Payment Date by Lender to pay Interest and Carry Cost Shortfalls, subject to the terms and conditions set forth in this Agreement with respect to Additional Advances to pay Interest and Carry Costs.

SECTION 2.4. Loan Payment.

2.4.1 Required Payments. Borrower shall pay to Lender on the Initial Payment Date (which shall be the first Payment Date hereunder) and on each Payment Date thereafter up to and including the Maturity Date, the Monthly Debt Service Payment Amount, which payments (prior to an Event of Default) shall be applied (i) first to amounts due and payable with respect to the Loan other than principal and interest (but including interest at the Default Rate), and then (ii) to accrued and unpaid interest at the Interest Rate, and then (iii) to the Outstanding Principal Balance. So long as no Event of Default then exists, all payments received by Lender with respect to the Loan shall be applied by Lender to amounts due with respect to each Note on a pro rata and pari passu basis, based on the outstanding principal amount due under each Note and the interest rate applicable thereto; provided, however, that from and after an Event of Default, all payments received by Lender shall be applied by Lender to amounts due with respect to the Notes in such order and priority as Lender shall determine in its sole discretion. Borrower shall pay the entire Debt to Lender on the Maturity Date.

2.4.2 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount (such amount, a "Late Payment Charge") equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Late Payment Charges shall be secured by the Security Instrument and the other Loan Documents to the extent permitted by applicable law.

2.4.3 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Accrual Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day. Following an Event of Default, and for so long as such Event of Default continues, any prepayment shall be applied to payments of principal of the Loan and other amounts due under the Loan Documents in such order and priority as Lender may determine in its sole discretion. All payments received by Lender during the existence of an Event of Default (other than an Event of Default resulting from a failure to repay the Debt on the Maturity Date) shall be deemed to have been made on the next occurring Payment Date.

SECTION 2.5. Prepayments.

2.5.1 Voluntary Prepayments. Except as otherwise expressly provided herein, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. Borrower may, at its option and upon at least thirty (30) days prior written notice to Lender specifying the Business Day on which such prepayment is to be made (a "Prepayment Date") (which notice may be revoked by Borrower at any time prior to the Prepayment Date provided that Borrower shall reimburse Lender for any costs incurred by Lender as a result of such revocation), prepay the Debt in whole, but not in part (except as otherwise expressly permitted under this Agreement), provided that such prepayment is accompanied by (a) all interest accrued on the amount of the Loan being so prepaid through and including the last day of the Interest Accrual Period in effect as of such Prepayment Date, (b) all other sums due and payable under this Agreement and the other Loan Documents, including, but not limited to any amounts due under Section 2.2.4 hereof and all of Lender's out-of-pocket costs and expenses (including reasonable attorney's fees and disbursements) incurred by Lender in connection with such prepayment, and (c) the Prepayment Premium applicable to such payment (if any). Unless an Event of Default then exists, any voluntary prepayment of the Loan and the Mezzanine Loan shall be made such that Lender and Mezzanine Lender shall receive their respective pro rata share of any principal amount so repaid (based on the respective outstanding principal balances of the Loan and the Mezzanine Loan in effect at such time). Notwithstanding the foregoing, in no event shall Borrower be permitted to prepay the Debt on a date during an Interest Accrual Period (other than a prepayment of the Debt in whole on a Payment Date) which is prior to the Determination Date for such Interest Accrual Period.

2.5.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated, or does not elect pursuant to the terms hereof (to the extent it has a right to such election under the Loan Documents), to make such Net Proceeds available to Borrower for Restoration, Borrower is hereby deemed to have authorized Lender to apply such Net Proceeds as a prepayment of the Debt (to the extent it has a right to do so under the Loan Documents) in an amount equal to one hundred percent (100%) of such Net Proceeds. Notwithstanding anything to the contrary contained in the Loan Documents, so long as no Event of Default has occurred and is continuing, no Prepayment Premium shall be due in connection with any prepayment made pursuant to this Section 2.5.2 (but, for the avoidance of doubt, the parties agree that the Prepayment Premium is a deferred financing fee and is applicable to any such prepayment).

SECTION 2.6. Release on Payment in Full. Lender shall execute and deliver to or at the direction of Borrower, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan, any applicable Prepayment Premium, and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, a release of the Lien of the Security Instrument and other Loan Documents with respect to the Property, in form and content reasonably acceptable to Lender.

ARTICLE III

CASH MANAGEMENT; RESERVE ACCOUNTS

SECTION 3.1. Cash Management.

(a) Deposit of Revenues. Borrower shall cause Master Tenant to deposit all Master Lease Payments directly into the Cash Management Account as and when due and payable under the Master Lease. If at any time following the Closing Date, Lender reasonably anticipates that there will be Leases other than the Master Lease or Revenues other than Master Lease Payments, then, within ten (10) Business Days following Lender's written notice to Borrower, Borrower shall (i) establish with Clearing Bank a

Clearing Account, subject to a Clearing Account Agreement, (ii) deliver a Tenant Director Letter to all tenants under any other Leases, and (iii) deposit all other Revenues received by Borrower or Manager into the Clearing Account within one (1) Business Day after receipt. Borrower shall send a copy of each Tenant Direction Letter sent as provided above, together with evidence that the same has been sent, to Lender within five (5) Business Days after the sending thereof. Without the consent of Lender, neither Borrower nor Manager shall terminate, amend, revoke or modify any Tenant Direction Letter in any manner whatsoever, or direct or cause any tenant to pay any amount in any manner other than as provided in the related Tenant Direction Letter. To the extent that Borrower or any Person on Borrower's behalf holds any Revenues, whether in accordance with this Agreement or otherwise, (A) such amounts shall be deemed to be collateral for the Debt and shall be held in trust for the benefit of Lender, (B) such amounts shall not be commingled with any other funds or property of Borrower or Manager, and (C) Borrower or Manager shall deposit such amounts in the Clearing Account within one (1) Business Day of receipt.

(b) Application of Revenues. On each Business Day, funds on deposit in the Clearing Account (if applicable) shall be transferred to the Cash Management Account (or as otherwise directed by Lender or its Servicer). So long as no Event of Default shall have occurred and be continuing (and thereafter at Lenders' sole option and discretion) Lender shall direct Cash Management Bank to allocate all available funds on deposit in the Cash Management Account (other than any Revenues paid more than one (1) month in advance, which shall be retained in the Cash Management Account until payment thereof is due under the applicable Lease ("Prepaid Revenues"), on each Payment Date in the following amounts and order or priority:

(i) First, to the Tax Reserve Account in an amount sufficient to pay the monthly deposit, if any, required to be made for Property Taxes in accordance with the terms and conditions of Section 3.2(a); and then

(ii) Second, to the Insurance Reserve Account in an amount sufficient to pay the monthly deposit, if any, required to be made for Insurance Premiums in accordance with the terms and conditions of Section 3.2(b) hereof; and then

(iii) Third, to pay Cash Management Bank the monthly portion of fees charged by the Cash Management Bank in accordance with the Cash Management Agreement and any other fees or expenses due to Lender under the Loan Documents; and then

(iv) Fourth, to Lender in the amount of the Monthly Debt Service Payment Amount; and then

(v) Fifth, to Lender to pay any other amounts, if any, then due Lender (or then required to be paid to Servicer or Construction Consultant) under the Loan Documents not specified in the foregoing clauses; and then

(vi) Sixth, to Lender in the amount of the Mezzanine Monthly Debt Service Payment Amount; and then

(vii) Seventh, to Mezzanine Lender to pay any other amounts, if any, then due Lender (or then required to be paid to Servicer or Construction Consultant (each such term as defined in the Mezzanine Loan Agreement)) under the Mezzanine Loan Documents not specified in the foregoing clauses; and then

(viii) Eighth, to Borrower for payments for monthly Cash Expenses actually incurred during the prior month in accordance with the related Approved Annual Budget

(other than repairs, replacements and Approved Project Expenditures, unless specifically approved by Lender for purposes of disbursements); and then

(ix) Ninth, to Borrower for payments of Extraordinary Expenses that are (A) not required to be paid by Master Tenant in accordance with the express terms of the Master Lease and (B) approved by Lender in Lender's sole discretion ("Approved Extraordinary Expenses"), if any; and then

(x) Tenth, (A) during the continuation of a Cash Management Period, any amounts remaining in the Cash Management Account (excluding Prepaid Revenues) ("Excess Cash Flow") shall be held by Lender in an Eligible Account established by Lender from time to time ("Excess Cash Flow Reserve Account") as additional collateral for the Obligations which funds, at Lender's option following the occurrence of an Event of Default, may be used to reduce the Outstanding Principal Balance, and (B) during any period other than a Cash Management Period, Excess Cash Flow shall be disbursed to Borrower.

(c) If a Cash Management Period is in effect, then, so long as no Default or Event of Default then exists, Lender shall disburse to Borrower any funds held by Lender in the Excess Cash Flow Reserve Account on the Payment Date next following the termination of such Cash Management Period.

(d) The insufficiency of funds on deposit in the Accounts shall not relieve Borrower of the obligation to make any payments, as and when due pursuant to the Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever. All funds on deposit in the Accounts during the existence of an Event of Default may be applied by Lender to the Debt in such order and priority as Lender shall determine in its sole discretion. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts due to the Reserve Accounts and any other payment for reserves and escrows established pursuant to this Agreement or any other Loan Document shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender. At Lender's option, Lender may issue payments for Cash Expenses and/or Extraordinary Expenses directly to Borrower or to Manager.

(e) Cash Expenses. Borrower hereby covenants and agrees that amounts disbursed to Borrower from the Cash Management Account for payments of Cash Expenses or Extraordinary Expenses shall be used only for payments made (or to be made) by Borrower or Manager for the payment of expenses incurred in the ordinary course of business of the ownership and operation, maintenance, repair, managing and leasing of the Property or for the payment of expenditures provided for in the applicable Approved Annual Budget, or as otherwise reasonably approved by Lender. If the actual Cash Expenses or Extraordinary Expenses paid for any calendar month are less than the amount disbursed to Borrower or Manager from the Cash Management Account for the payment of such monthly Cash Expenses or Extraordinary Expenses, the amount of such difference shall be deducted from the amount distributed to Borrower for the payment of Cash Expense for the following month.

SECTION 3.2. Required Deposits.

3.2.1 Tax Reserve Account.

(a) Borrower shall, on each Payment Date, deposit into an Eligible Account established by Lender from time to time (the "Tax Reserve Account") the amount that Lender reasonably estimates will be necessary in order to accumulate sufficient funds to pay, at least thirty (30) days prior to their respective due dates, all Property Taxes and Other Charges due within the ensuing twelve (12) months (the amount of such deposit required on any Payment Date, the "Tax Reserve Deposit Amount"). Amounts deposited into the Tax Reserve Account are referred to herein as the "Tax Reserve Funds." If at any time, Lender reasonably determines that the Tax Reserve Funds will not be sufficient to pay the Property Taxes and Other Charges, Lender shall notify Borrower of such determination and Borrower shall deposit the shortfall amount determined by Lender into the Tax Reserve Account within five (5) Business Days following written notice from Lender to Borrower. Notwithstanding the foregoing or anything to the contrary herein, after the Closing Date, Lender shall disburse into the Tax Reserve Account in the order of priority of application set forth in Section 2.1.9(c) hereof, (i) amounts available for deposit into the Tax Reserve Account pursuant to Section 3.1(b)(i) hereof, (ii) amounts then on deposit in the Shortfall Account allocable for the payment of Property Taxes and Other Charges, (iii) amounts then on deposit in the Excess Cash Flow Account allocable for the payment of Property Taxes and Other Charges, and (iv) Additional Advances available for payment of Property Taxes and Other Charges, in each case, for the payment of Property Taxes and Other Charges in an amount equal to the then-required Tax Reserve Deposit Amount (such disbursement to be made by Lender, the "Tax Disbursement Amount"). Lender's disbursement of the Tax Disbursement Amount shall satisfy Borrower's obligations to make a deposit into the Tax Reserve Account in such amount, provided that, (x) if the Tax Disbursement Amount is less than the then-required Tax Reserve Deposit Amount, Borrower shall deposit such deficiency in accordance with the terms of this Section 3.2.1(a), and (y) with respect to disbursement of amounts on deposit in the Shortfall Account, such disbursement shall be required only so long as Lender's access to such amounts is not restricted by (A) Legal Requirements, injunction or other court order, or (B) as a result of any action, inaction or omission by Borrower, Guarantor or any Affiliate of Borrower or Guarantor.

(b) Provided no Event of Default shall exist, Lender shall apply the funds in the Tax Reserve Account to payments of the Property Taxes and Other Charges for which such funds have been reserved on their respective due dates. In making any such payment, Lender may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof. If Lender so elects at any time, Borrower shall provide, at Borrower's expense, a tax service contract for the term of the Loan issued by a tax reporting agency acceptable to Lender. If Lender does not so elect, Borrower shall reimburse Lender for the out-of-pocket cost of making annual tax searches throughout the term of the Loan.

(c) Notwithstanding the foregoing provisions of this Section 3.2.1, Borrower shall not be required to deposit the Tax Reserve Deposit Amount as set in Section 3.2.1(a) at any time that, in Lender's determination, (i) Master Tenant pays all Property Taxes and Other Charges directly to the appropriate taxing authority in accordance with the express terms of the Master Lease, (ii) there is no event of default by Master Tenant under the Master Lease, and (iii) Borrower provides Lender, or causes to be provided to Lender, evidence of payment of such Property Taxes and Other Charges prior to delinquency. Borrower shall immediately commence depositing all Tax Reserve Deposit Amounts as required by Lender pursuant to Section 3.2.1, within five (5) Business Days of receipt of notice from Lender of Borrower's failure to comply with items (i), (ii), or (iii) in the immediately preceding sentence, and such failure is not cured within such five (5) Business Day period, which such notice shall instruct Borrower, in such event, to immediately commence making all additional deposits of the Tax Reserve Deposit Amount.

3.2.2 Insurance Reserve Account.

(a) Borrower shall, on each Payment Date, deposit into an Eligible Account established by Lender from time to time (the "Insurance Reserve Account") the amount that Lender

estimates will be necessary in order to accumulate sufficient funds to pay, at least thirty (30) days prior to its expiration, all Insurance Premiums for Policies required hereunder due within the ensuing twelve (12) months (the amount of such deposit required on any Payment Date, the "**Insurance Reserve Deposit Amount**"). Amounts deposited pursuant into the Insurance Reserve Account are referred to herein as the "**Insurance Reserve Funds**". If at any time, Lender reasonably determines that the Insurance Reserve Funds will not be sufficient to pay the Insurance Premiums, Lender shall notify Borrower of such determination and Borrower shall deposit the shortfall amount determined by Lender into the Insurance Reserve Account within five (5) Business Days following written notice from Lender to Borrower. Notwithstanding anything to the contrary herein, after the Closing Date, Lender shall disburse into the Insurance Reserve Account in the order of priority of application set forth in Section 2.1.9(c) hereof, (i) amounts available for deposit into the Insurance Reserve Account pursuant to Section 3.1(b)(ii) hereof, (ii) amounts then on deposit in the Shortfall Account allocable for payment of Insurance Premiums, (iii) amounts then on deposit in the Excess Cash Flow Account allocable for payment of Insurance Premiums, (iv) Additional Advances available for payment of Insurance Premiums, in each case, for the payment of Insurance Premiums in an amount equal to the then-required Insurance Reserve Deposit Amount (such disbursement to be made by Lender, the "**Insurance Disbursement Amount**"). Lender's disbursement of the Insurance Disbursement Amount shall satisfy Borrower's obligations to make a deposit into the Insurance Reserve Account in such amount, provided that, (x) if the Insurance Disbursement Amount is less than the then-required Insurance Reserve Deposit Amount, Borrower shall deposit such deficiency in accordance with the terms of this Section 3.2.2(a), and (y) with respect to disbursement of amounts on deposit in the Shortfall Account, such disbursement shall be required only so long as Lender's access to such amounts is not restricted by (A) Legal Requirements, injunction or other court order, or (B) as a result of any action, inaction or omission by Borrower, Guarantor or any Affiliate of Borrower or Guarantor.

(b) Provided no Event of Default shall exist, Lender will apply the funds in the Insurance Reserve Account to payments of Insurance Premiums for Policies required hereunder. In making any such payment, Lender may do so according to any bill, statement or estimate procured from an insurer or agent without inquiry into the accuracy thereof.

(c) Notwithstanding the foregoing provisions of this Section 3.2.2, Borrower shall not be required to deposit the Insurance Reserve Deposit Amount as set in Section 3.2.2(a) at any time that, in Lender's determination, (i) Master Tenant pays all Insurance Premiums for Policies required hereunder directly to the appropriate payee in accordance with the express terms of the Master Lease, (ii) there is no event of default by Master Tenant under the Master Lease, and (iii) Borrower provides Lender, or causes to be provided to Lender, evidence of payment of such Insurance Premiums for Policies required hereunder prior to delinquency. Borrower shall immediately commence depositing all Insurance Reserve Deposit Amounts as required by Lender pursuant to Section 3.2.2, within five (5) Business Days of receipt of notice from Lender of Borrower's failure to comply with items (i), (ii), or (iii) in the immediately preceding sentence, and such failure is not cured within such five (5) Business Day period, which such notice shall instruct Borrower, in such event, to immediately commence making all additional deposits of the Insurance Reserve Deposit Amount.

SECTION 3.3. Adjustments to Reserve Accounts. If at any time Lender determines in its good faith discretion that the funds available in any Reserve Account will not be sufficient to pay for the cost or expense for which such funds have been required to be deposited with Lender hereunder by the date required therefor, or if Lender determines in its good faith discretion (based on the then-current Approved Annual Budget or on review of a physical conditions report for the Property, among other sources) to reassess its estimate of the amount necessary to be reserved for any such costs or expenses, then, at Lender's option, Borrower shall increase its monthly payments to Lender under with respect to the applicable Reserve Account(s) by the amount that Lender so notifies Borrower is required and/or deposit the shortfall amount determined by Lender into the applicable Reserve Account(s) within five (5) Business Days of

notice from Lender. The insufficiency of any balance in any Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

SECTION 3.4. Disbursements from the Reserve Accounts. Lender shall disburse funds from the applicable Reserve Account for the payment of the applicable Reserve Item, but not more frequently than once in any thirty (30) day period, upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender (together with evidence reasonably required by Lender to evidence satisfaction of the conditions set forth in this Section 3.4) at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Reserve Item for which such payment is requested; and (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default exists. Lender shall not be required to make disbursements from the Reserve Accounts unless such requested disbursement is in an amount greater than $50,000 (or a lesser amount if the total amount in the applicable Reserve Account is less than $50,000 in which case only one disbursement of the amount remaining in the account shall be made). No funds shall be disbursed from a Reserve Account for the payment of a Reserve Item for which funds have been reserved in a different Reserve Account (or for a Reserve Item for which no funds have been reserved). Any amount remaining in a Reserve Account after the Debt has been paid in full shall be returned to Borrower.

SECTION 3.5. Accounts Generally. The Accounts are, and shall each be treated as, a "securities account" as such term is defined in Section 8-501(a) of the UCC or a "deposit account" as such term is defined in Section 9-102(a)(29) of the UCC, as the context may require. Each item of property (whether investment property, financial asset, securities, instrument, cash or other property) credited to the Accounts shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC. Borrower agrees that the each applicable bank shall, subject to the terms of this Agreement, treat Lender as entitled to exercise the rights that comprise any financial asset credited to the Accounts. All securities or other property underlying any financial assets credited to the Accounts (other than cash) shall be registered in the name of the applicable bank, indorsed to the such bank (or in blank) or credited to another securities account maintained in the name of the applicable bank, and in no case will any financial asset credited to any such account be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower. Subject to the terms and conditions of this Agreement, the Accounts shall be under the sole dominion and control of Lender (which dominion and control may be exercised by Servicer). Lender and Servicer shall have the sole right to make withdrawals from the Accounts (without limiting the terms and conditions of this Agreement or the Clearing Account Agreement), and all out-of-pocket costs and expenses for establishing and maintaining the Accounts incurred by Lender or Cash Management Bank shall be paid by Borrower. Lender may replace the Accounts or establish new Accounts from time to time in its sole discretion, and Borrower hereby agrees that it shall take all reasonable action necessary to facilitate the transfer of the respective obligations, duties and rights of the any applicable bank to the successor thereof selected by Lender in its sole discretion. If Lender transfers or assigns the Loan, at Lender's request, the names/beneficiaries of the Accounts may be changed by such transferee of the Loan. Funds in the Clearing Account and the Cash Management Account shall not bear interest (except, with respect to the Cash Management Account, to the extent that the Reserve Accounts are actually subaccounts of the Cash Management Account). In no event shall Lender or any Servicer be required to select any particular interest-bearing account or the account that yields the highest rate of interest, provided that selection of the account shall be consistent with the general standards at the time being utilized by Lender or such Servicer, as applicable, in establishing similar accounts for loans of comparable type. All such interest that so becomes part of the applicable Reserve Account shall be disbursed in accordance with the disbursement procedures contained herein applicable to such Reserve Account; provided, however, that Lender may, at its election, retain any such interest for its own account during the occurrence and continuance of an Event of Default. Provided no Event of Default has occurred and is continuing beyond any applicable cure periods, Lender or Servicer will direct such bank or financial institution where Reserve Accounts are established from time to time to invest funds in the Reserve Accounts in an interest bearing account at a money market rate

customarily offered by such bank or financial institution (provided, however, that interest paid or payable with respect to any such account may not be based on the highest rate of interest payable by Lender or such bank or institution on deposits and shall not be calculated based on any particular external interest rate or interest rate index, nor shall any such interest reflect the interest rate utilized by Lender or such bank or institution to calculate interest payable on deposits held with respect to any particular loan or borrower or class of loans or borrowers, and Lender shall have no liability with respect to the amount of interest paid and/or loss of principal). Any interest or other earnings which may accrue on the amounts held in Reserve Accounts shall be added to the applicable Reserve Account and be allocated and/or disbursed in accordance with the terms hereof applicable to such Reserve Account. The Reserve Funds shall not constitute trust funds and may be held in Lender's name and commingled with other monies held by Lender (provided, however, if at such time Lender has received written notice that a Mezzanine Loan Event of Default then exists, such funds shall instead be deemed distributed to Mezzanine Borrower and shall be paid to Mezzanine Lender).

SECTION 3.6. Pledge of Accounts. To secure the full and punctual payment and performance of the Debt and all Obligations of Borrower under the Loan Documents, Borrower hereby grants to Lender a first priority continuing security interest in and to the following property (collectively, the "Account Collateral") of Borrower, whether now owned or existing or hereafter acquired or arising and regardless of where located: (i) the Accounts (whether established on the Closing Date or on any date following the Closing Date), and all cash, checks, drafts, securities, certificates and instruments, if any, from time to time deposited or held in, or credited to, such accounts, including all deposits or wire transfers made to such accounts; (ii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing; and (iii) to the extent not covered by clauses (i) or (ii) above, all "proceeds" (as defined under the UCC) of any or all of the foregoing. Lender shall have with respect to the foregoing collateral, in addition to the rights and remedies herein set forth, all of the rights and remedies available to a secured party under the UCC, as if such rights and remedies were fully set forth herein. Upon the occurrence and during the continuance of an Event of Default, Lender may notify any applicable bank of such Event of Default and, without notice to Borrower, (a) Borrower shall have no further right in respect of (including the right to instruct Lender or any such bank to transfer from) the Accounts and such collateral, and (b) Lender may apply such collateral to the Debt in such order of priority as Lender may determine. Borrower will not in any way alter or modify the Accounts and will not further pledge, assign, encumber or grant a security interest in the foregoing.

SECTION 3.7. Mezzanine Loan. Any transfer of Borrower's funds from any of the Accounts or other sources to or for the benefit of the Mezzanine Borrower under the Mezzanine Loan pursuant to this Agreement, or any other Loan Document, is intended by the parties to constitute, and shall constitute, distributions from Borrower to the Mezzanine Borrower under the Mezzanine Loan and shall be treated as such on the books and records of each party. All such distributions must comply with the requirements of Section 18-607 of the Delaware Limited Liability Company Act. No provision of the Loan Documents is intended to nor shall create a debtor-creditor relationship between Borrower and any Mezzanine Lender.

SECTION 3.8. Continuing Security Interest. This Agreement shall create a continuing security interest in the Account Collateral and shall remain in full force and effect until the indefeasible payment in full of the Debt. Upon the indefeasible payment in full of the Debt, this security interest shall automatically terminate without further notice from any party and Borrower shall be entitled to the return, upon its request, of such of the Account Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and Lender shall execute such instruments and documents as may be required by the Clearing Account Agreement (if applicable) and Cash Management Agreement to evidence such termination and the release of the Account Collateral; provided however if following the payment in full of the Debt, any portion of the Mezzanine Debt remains outstanding, any remaining Account Collateral shall not be released to

Borrower but shall instead be transferred to Mezzanine Lender to be held pursuant to the terms of the Mezzanine Loan Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.1. Borrower Representations. Borrower represents and warrants as of the Closing Date that:

4.1.1 Borrower.

(a) Organization. Each of Borrower and SPE Component has been duly organized and is validly existing and in good standing in the jurisdiction in which it is organized and has the requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business in, and is in good standing in, the State and each other jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. Borrower's principal place of business as of the Closing Date is the address set forth in the introductory paragraph of this Agreement. The organizational chart attached hereto as Schedule II shows all Persons that (a) (i) except as set forth in the immediately following clause (ii), own ten percent (10%) or more of the direct or indirect ownership interests in Borrower, and (ii) to Borrower's knowledge, own ten percent (10%) or more of the direct or indirect ownership interests in Borrower constituting publicly traded shares on a nationally or internationally recognized stock exchange and (b) Control Borrower.

(b) Authority; Enforceability. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, SPE Component Entity or Guarantor (including the defense of usury), nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and none of Borrower, SPE Component Entity or Guarantor has asserted any right of rescission, set-off, counterclaim or defense with respect to the Loan Documents.

(c) No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower, SPE Component Entity, and/or Guarantor, as applicable, does not (a) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any of such Person's organizational or governing documents, (b) conflict with or result in a breach of any, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of such Person pursuant to the terms of, any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which such Person is a party or by which any of such Person's property or assets is subject, or (c) result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over such Person or any of such Person's properties or assets. Any consent, approval, authorization, order, registration or qualification of or with any Governmental

Authority required for the execution, delivery and performance by Borrower, SPE Component Entity, and/or Guarantor, as applicable, of this Agreement or any other Loan Documents to which it is a party has been obtained and is in full force and effect.

(d) Litigation; Judgments. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or to Borrower's knowledge, threatened against or affecting Borrower, SPE Component Entity, Guarantor, or the Property, that, with respect to Guarantor only, (i) would reasonably be expected to result in a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the transactions contemplated by the Loan Documents. Borrower, SPE Component Entity, and Guarantor are not in default or violation with respect to any order, writ, injunction, decree or demand of any Governmental Authority. If the Property is subject to a Management Agreement, to Borrower's knowledge, (i) there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or threatened against or affecting Manager that, if determined adversely, would be reasonably likely to have a Material Adverse Effect, and (ii) Manager is not in default or violation with respect to any order, writ, injunction, decree or demand of any Governmental Authority that would be reasonably likely to have a Material Adverse Effect.

(e) Agreements. Borrower is not a party to any agreement or instrument and has not subjected itself or the Property to, and neither it nor the Property are subject to, any restriction which would reasonably be expected to have a Material Adverse Effect. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower and SPE Component Entity have no material financial obligations under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or SPE Component Entity is a party or by which Borrower, SPE Component Entity, or the Property is otherwise bound, other than (a) Permitted Indebtedness, and (b) other obligations which, in each case, would not reasonably be expected to have a Material Adverse Effect.

(f) Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will be, immediately following the making of the Loan, greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of the obligations of Borrower). No petition in bankruptcy has been filed against Borrower or SPE Component Entity, and neither Borrower nor SPE Component Entity has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, SPE Component Entity, or any of their respective direct or indirect owner is contemplating either the filing of a Bankruptcy Action by Borrower or SPE Component Entity or the liquidation of all or a major portion of its assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or SPE Component Entity. Neither the Property, nor any portion thereof, is the subject of, and none of Borrower, SPE Component Entity, or Guarantor is a debtor in, state or federal bankruptcy, insolvency or similar proceeding. None of Borrower, SPE Component Entity, Guarantor, or any Person owning a direct

ownership interest in any of the foregoing in excess of ten percent (10%) (other than as a result solely of the ownership of publicly traded shares on a nationally or internationally recognized stock exchange) has ever been in a state or federal bankruptcy or insolvency proceeding or convicted of a felony. To Borrower's knowledge, no Person owning publicly traded shares on a nationally or internationally recognized stock exchange constituting a direct ownership interest in Borrower, SPE Component Entity or Guarantor of ten percent (10%) or more has ever been in a state or federal bankruptcy or insolvency proceeding or convicted of a felony.

(g) No Plan Assets. Neither Borrower nor SPE Component Entity (if any) (a) is, sponsors, or is obligated to contribute to an "employee benefit plan" (within the meaning of §3(3) of ERISA) which is subject to Title I of ERISA or §4975 of the Code, and none of the assets of such Person constitute "plan assets" (within the meaning of 29 C.F.R. §2510.3-101) for purposes of §3(42) of ERISA, or (b) is a "governmental plan" (within the meaning of §3(32) of ERISA) or subject to any state statute regulating investments of, or fiduciary obligations with respect to, such "governmental plans" which is similar to the provisions of §406 of ERISA or §4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement (including the exercise by Lender of any of its rights under the Loan Documents).

(h) Special Purpose Entity/Separateness. Borrower and SPE Component Entity (if any) are each (and have been, at all times since their formation) a Special Purpose Entity. All of the facts and assumptions contained in any substantive consolidation opinion delivered to Lender in connection with the Loan are true and correct in all material respects. Borrower has been and is in compliance with all Legal Requirements and has received all permits necessary for it to operate its contemplated business. Borrower is not, and has not been, involved in any dispute with any taxing authority. Borrower has paid all Taxes and Other Charges. Borrower has never owned any property other than the Property and has never engaged in any business except the ownership and operation of the Property. Borrower is not now and has not ever been a party to any lawsuit, arbitration, summons or legal proceeding. Borrower has no material contingent or actual obligations not related to the Property. Any debt incurred by Borrower other than the Debt that is secured by the Property has been satisfied in full on or before the date hereof, none of Borrower, Mezzanine Borrower or Guarantor have any remaining liabilities or obligations in connection with such debt, and all collateral and security for such debt has been released on or prior to the date hereof.

(i) Certain Regulations. Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money; (iv) a "bank holding company" or a direct or indirect subsidiary of a "bank holding company" as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System; or (v) a "foreign person" within the meaning of § 1445(f)(3) of the Code. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

(j) Embargoed Person; Prescribed Laws. As of the Closing Date (and as of any subsequent date on which this representation is re-made or deemed to be re-made): (i) none of Borrower, SPE Component Entity, or Guarantor, and none of the funds or other assets of Borrower, SPE Component Entity, or Guarantor constitute property of, or are beneficially owned (directly or indirectly) by, any

Embargoed Person; (ii) no Embargoed Person has any direct or indirect interest of any nature whatsoever in Borrower, SPE Component Entity, or Guarantor, as applicable, with the result that the investment in Borrower, SPE Component Entity, or Guarantor, as applicable (whether directly or indirectly), is or would be prohibited by law or the Loan is or would be in violation of law; (iii) none of the funds of Borrower, SPE Component Entity, or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, SPE Component Entity, or Guarantor, as applicable (whether directly or indirectly), is or would be prohibited by law or the Loan is or would be in violation of law; (iv) none of the Persons that own a direct or indirect ownership interest in Borrower (A) is a government or representative of a jurisdiction or a financial institution that has been designated by the U.S. Secretary of the Treasury under Section 311 of the USA PATRIOT Act as of primary money laundering concern (a list of these jurisdictions and financial institutions can be found on the Financial Crimes Enforcement Network website at www.fincen.gov.), (B) resides or has a place of business in, or is organized under the laws of, a country or territory subject to economic sanctions administered or enforced by OFAC or which is designated as a non-cooperative country or territory by the Financial Action Task Force on Money Laundering (which list of non-cooperative countries and territories can be found on the FATF web site), (C) is a senior foreign political figure (defined as a senior official in the executive, legislative, administrative, military or judicial branches of a non-U.S. government (whether elected or not), a senior official of a major non-U.S. political party, or a senior executive of a non-U.S. government-owned corporation, and includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure), or any immediate family member (including parents, siblings, spouse, children and in-laws) or close associate (meaning a Person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial U.S. and non-U.S. financial transactions on behalf of the senior foreign political figure) of a senior foreign political figure (other than certain passive indirect sovereign wealth fund investors that are indirect owners of Borrower who do not otherwise fall within clauses (A) through (C) above); (v) no portion of the Property has been or will be purchased with proceeds of any illegal activity; (vi) Borrower, SPE Component Entity, and Guarantor are (and have always been) operated under policies, procedures and practices, if any, that are in compliance with the Prescribed Laws and available to Lender for review and inspection during normal business hours and upon reasonable prior notice; (vii) none of Borrower, SPE Component Entity, Guarantor, or any Person that Controls them is in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States, nor any official of any State, claiming a violation or possible violation of Prescribed Laws. Borrower represents and warrants that, in connection with this Agreement, Borrower and, to Borrower's knowledge, each Person that has an economic interest in Borrower, has complied with and will continue to comply with all applicable anti-bribery and corruption laws and regulations, including the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010. Borrower shall, at all times throughout the term, maintain and enforce appropriate policies, procedures and controls to ensure compliance with the Anti-Corruption Obligation.

(k) Minimum Equity Requirement Satisfaction. As of the Closing Date, direct and indirect owners in Borrower, in the aggregate, have invested no less than the Closing Date Minimum Equity Requirement.

(l) Required Equity/Control Requirements. The Required Equity/Control Requirements are satisfied.

4.1.2 Property.

(a) Title. Borrower has good, marketable and insurable fee simple title to the part of the Property comprising real property (including, without limitation, the entirety of the alley running through, and along the periphery of, the Property, which alley has been dedicated for public use by virtue

of an easement vested in the City of Los Angeles for street purposes) and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. There are no Liens on the direct or indirect Equity Interests in Borrower (other than the Lien created by the Mezzanine Loan Documents and Permitted Encumbrances and Liens encumbering shares publicly traded on a nationally or internationally recognized stock exchange). Neither the Property nor any part thereof, nor any direct or indirect Equity Interests in Borrower, are subject to any purchase options, rights of first refusal, rights of first offer or other similar rights in favor of any Person. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower's ability to repay the Loan. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien in and to Borrower's right, title and interest to the Property (as such term is defined in the Security Instrument), subject only to Permitted Encumbrances, and (b) perfected security interests in and to, and perfected collateral assignments of, Borrower's right, title and interest to all Personal Property owned by Borrower (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. There are no claims for payment for work, labor or materials affecting the Property, which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents. There are no prior assignments of the Leases or any portion of the Revenues due and payable or to become due and payable which are presently outstanding. This Agreement, together with the other applicable Loan Documents, creates a valid and continuing security interest (as defined in the UCC) in each of the Accounts in favor of Lender, which security interest is prior to all other Liens and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold or otherwise conveyed the Accounts. Borrower is not a party to any outstanding contract or agreement requiring it to convey its interest in the Property to any Person, other than the conveying of the leasehold interest granted pursuant to the Master Lease.

(b) Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including building and zoning ordinances and codes and Prescribed Laws. Pursuant to all Legal Requirements, Borrower has sufficient development rights to construct the Project and there are no remaining zoning or discretionary approvals required in order to complete the Required Improvements. There has not been committed by Borrower or to Borrower's knowledge, any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the knowledge of Borrower, threatened in writing with respect to the zoning of the Property. Neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property (except for any easements or rights-of-way which are Permitted Encumbrances). The use being made of the Property is (or with respect to the Project, will be upon Completion) in conformity with the certificate of occupancy issued for the Property and all other restrictions, covenants and conditions affecting the Property. The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

(c) Condemnation. No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of any roadway providing access to the Property.

(d) Utilities and Public Access. The Property is located on or adjacent to a public road and has direct legal access to such road (or has access to it via an irrevocable easement or irrevocable right of way permitting ingress and egress to and from such public road), and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All easements, cross easements, licenses, air rights and rights-of-way or other similar property interests, if any, necessary for the full utilization of the Improvements for their intended purposes have been obtained, are described in the Title Insurance Policy and are in full force and effect without default thereunder. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

(e) Separate Lots. The Property is comprised of one (1) or more parcels that constitute one (1) or more separate tax lots and do not constitute a portion of any other tax lot that is not a part of the Property.

(f) Assessments. There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(g) Insurance. Borrower has obtained and has delivered to Lender certificates for all Policies required hereunder, with all premiums currently payable thereunder having been paid, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made under any such Policies, and no Person has done, by act or omission, anything that would impair the coverage of any such Policies.

(h) Use of Property; Licenses. The Property is used exclusively as a life sciences research related manufacturing and office facility and other appurtenant and related uses. All certifications, permits, licenses and approvals (including certificates of completion and occupancy permits (or its equivalent)) required for the legal use, occupancy and operation of the Property as described in the foregoing sentence (collectively, the "Licenses"), have been obtained and are in full force and effect. As of the Closing Date, Borrower has delivered to Lender copies of all other material Licenses which are required for the legal use, occupancy and operation of the Property.

(i) Flood Zone. Except as may be shown on the Survey, none of the Improvements on the Property are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards (or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property).

(j) Physical Condition. Except for the matter set forth on Schedule VII hereto (the costs of which are covered by insurance), subject to Completion of the Project, the Property (including all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components) is in good condition, order and repair in all material respects. Except for the matter set forth on Schedule VII hereto (the costs of which are covered by insurance), to Borrower's knowledge, and subject to Completion of the Project, there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened

termination of any policy of insurance or bond. Except for the matter set forth on Schedule VII hereto (the costs of which are covered by insurance), the Improvements have suffered no material casualty or damage which has not been fully repaired and the cost thereof fully paid.

(k) Boundaries; Survey. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy. The Survey does not fail to reflect any material matter affecting the Property or the title thereto.

(l) Leases.

(i) The Property is not subject to any Leases other than the Master Lease, and the demised premises under the Master Lease constitute the entirety of the Land and the Improvements. The initial term of the Master Lease does not expire prior to the date that is the later to occur of the date that is (A) fifteen (15) years following the Must-Take Space Commencement Date (as defined in the Master Lease and (B) fifteen (15) years following the Closing Date. Master Tenant is required to commence payment of base rental payments under the Master Lease, with respect to Building A, not later than the Closing Date, and, with respect to the Required Improvements, on the date (such date, the "Master Lease Payment Outside Date") that is the earlier to occur of (x) the date on which the Project is Substantially Complete and (y) the Substantial Completion Due Date.

(ii) With respect to each Lease (including, without limitation, the Master Lease, (A) Borrower is the owner of landlord's interest in such Lease, (B) other than with respect to Permitted Encumbrances, no Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of such Lease, (C) such Lease is in full force and effect, the tenants thereunder have accepted possession of and are in occupancy of all of their respective demised premises (except, prior to the Substantial Completion Due Date, Building B), are open for business, and are paying (except, prior to the Master Lease Payment Outside Date, the Master Lease Payments in respect of Building B) full, unabated rent, and no tenant under such Lease has given Borrower any notice of its intent to terminate such Lease or vacate the leased premises (and Borrower has no knowledge that any such tenant intends to so terminate or vacate), (D) Borrower has not received written notice from any tenant under such Lease claiming that Borrower (or any prior landlord) is in default thereunder, and to the knowledge of Borrower there are no defaults under such Lease by any party thereto, (E) no Revenue has been paid more than one (1) month in advance of its due date, (F) all work to be performed by Borrower (or any prior landlord) under such Lease (other than, with respect to the Master Lease, the Required Improvements) has been performed as required and has been accepted by the applicable tenant, (G) any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant has already been received by such tenant, (H) all security deposits are held by Borrower in accordance with the terms of such Lease and applicable Legal Requirements, (I) no tenant under such Lease is a debtor in state or federal bankruptcy, insolvency, or similar proceeding, (J) other than Master Tenant under the Master Lease, no tenant under such Lease (or any sublease) is an Affiliate of Borrower, (K) except, in each case, in accordance with the express provisions of this Agreement, no tenant has assigned any interest in such Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its

employees occupy such leased premises, (L) there are no brokerage fees or commissions due and payable in connection with such Lease, and no such fees or commissions will become due and payable in the future in connection with such Lease, including by reason of any extension of such Lease or expansion of the space leased thereunder, in each case except as has previously been disclosed to Lender in writing, (M) no tenant under such Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part, (N) no tenant under such Lease has any right or option for additional space in the Improvements, (O) other than as expressly permitted under the Master Lease, no hazardous wastes or toxic substances, as defined by applicable federal, state or local statutes, rules and regulations, have been disposed, stored or treated by any tenant under such Lease on or about the leased premises nor does Borrower have any knowledge of any tenant's intention to use its leased premises for any activity which, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any toxic or hazardous chemical, material, substance or waste, and (P) such Lease (including any renewal or expansion options) provides that it is subordinate to the Security Instrument and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale.

(m) Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Security Instrument, have been paid, and, under current Legal Requirements, the Security Instrument and the other Loan Documents have been validly executed and delivered and are enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

(n) Management Agreement. As of the Closing Date, Borrower self-manages the Property and no agent, affiliated or unaffiliated with Borrower, receives a fee or other compensation for managing the Property. If Borrower is required to engage a Qualified Manager in accordance with Section 5.1.2(f)(ii), then the Management Agreement is in full force and effect and there is no default thereunder by Borrower or, to Borrower knowledge, by the Manager and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

(o) REA. Each REA is in full force and effect and neither Borrower nor, to Borrower's knowledge, any other party to any REA, is in default thereunder, and to Borrower's knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No REA has been modified, amended or supplemented, except as set forth on Schedule VI hereto.

(p) Material Agreements. As of the Closing Date, there are no Material Agreements in place with respect to Borrower or the Property other than as set forth in Schedule III attached hereto. With respect to each Material Agreement, Borrower and hereby represents that (i) each Material Agreement has not been amended, restated, replaced or otherwise modified (except, in each case, in accordance with this Agreement) and, to Borrower's knowledge, is in full force and effect, (ii) there are no material defaults (following applicable notice and cure periods) under any Material Agreement by Borrower or to Borrower's knowledge, any other Person under the applicable Material Agreement, (iii) no party to any Material

Agreement has commenced any action or given or received any written notice for the purpose of terminating any Material Agreement, and (iv) to Borrower's knowledge, the representations made in any estoppel certificate (if any) delivered with respect to any Material Agreement in connection with the Loan are true, complete and correct.

4.1.3 Construction Matters.

(a) Labor. No organized work stoppage or labor strike is pending or, to Borrower's knowledge, threatened by employees and other laborers at the Property. Neither Borrower nor, to Borrower's knowledge, General Contractor (i) is involved in or threatened with any labor dispute, grievance or litigation relating to labor matters involving any employees and other laborers at the Property, including violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints; (ii) has engaged in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act at the Property; or (iii) is a party to, or bound by, any collective bargaining agreement or union contract with respect to employees and other laborers at the Property except as disclosed by Borrower to Lender in advance and in writing and as approved in advance in writing by Lender (collectively, the "Labor Agreements").

(b) Construction Documents.

(i) Borrower has all necessary power and authority to enter into and perform its respective obligations under the Construction Documents to which Borrower is a party, and all other agreements and instruments to be executed by Borrower in connection with the construction and the development of the Project.

(ii) The Existing Construction Documents to which Borrower is a party have been, and any Future Construction Documents to which Borrower will be a party will be, duly executed and delivered by Borrower.

(iii) The Existing Construction Documents to which Borrower is a party constitute, and any Future Construction Documents to which Borrower will be a party will constitute, when executed and delivered, a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws generally affecting rights of creditors and the enforcement of debtors' obligations, and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(iv) General Contractor has engaged subcontractors under subcontracts representing one hundred percent (100%) of all subcontract amounts under the Construction Budget (which shall include all of the Major Trade Contracts and the related Major Trade Contractors under such Major Trade Contracts).

(v) Borrower has obtained all Construction Permits (A) required for Borrower and/or General Contractor to commence construction work constituting the applicable Required Improvements, and (B) otherwise then-required under Legal Requirements for the actual stage of construction on the Property, and, in each case, a true, complete and correct list of such Construction Permits is attached as Schedule V hereto.

(vi) Borrower shall have delivered evidence reasonably satisfactory to Lender that each of the Design Drawings and the Construction Drawings with respect to the Required Improvements on such Parcel are 100% complete.

(c) No Violation. The construction of the Project and the execution, delivery and performance by Borrower of its obligations under, and the consummation of the transactions contemplated by each of the Construction Documents to which Borrower is, or will be, a party, and all other agreements and instruments to be executed by Borrower in connection therewith do not and will not (i) violate any Legal Requirement applicable to Borrower in any material respect, (ii) result in a breach of any of the terms, conditions or provisions of, or constitute a default under the organizational documents of Borrower, or result in a material breach of the terms, conditions or provisions of any mortgage, indenture, agreement, permit, franchise, license, note or instrument to which Borrower is a party or by which it or any of its properties is bound, or (iii) result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the assets of Borrower (except as contemplated by this Agreement and the Permitted Encumbrances).

(d) Consents. All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, or other actions in respect of or by, any Governmental Authorities that are required in connection with the execution, delivery and performance by Borrower of the Construction Documents and all other agreements and instruments to be executed by Borrower in connection therewith and the construction and operation of the Project have been obtained or will be obtained when required for the then applicable stage of construction of the Project and are or will be in full force and effect.

(e) Plans and Specifications. The Plans and Specifications applicable up to and including the current stage construction as set forth in the Construction Schedule have been approved, to the extent required by applicable Legal Requirements and by all applicable Governmental Authorities. The anticipated use of the Project complies in all material respects with all REAs and all Material Agreements affecting the Property and all Legal Requirements, including all applicable zoning ordinances and regulations and Environmental Laws.

(f) Compliance with Building Codes and Zoning Laws. The current land use, zoning law, regulations and declarations covering the Property permit on an as-of-right basis the construction of the Project to be completed substantially in accordance with the Plans and Specifications, the current zoning law and declarations covering the Property permit the Project to be operated and used as contemplated by this Agreement and the other Loan Documents, and no additional variance, conditional use permit, special use permit or other similar approval is required for such construction, use and occupancy of the Project that has not been or will not, if and when required, be obtained. The Property currently and, upon completion of construction of the Project substantially in accordance with the Plans and Specifications, the use thereof will be in all material respects in compliance with all current Construction Permits then required and Operating Permits then required, as the case may be, and all other applicable Legal Requirements, and such compliance is not dependent on any land, improvements or facilities that are not a part of the Property, other than easement, encroachment and similar rights granted to the Property pursuant to REAs. There are no pending or, to Borrower's knowledge, threatened actions, suits or proceedings to revoke, attach, invalidate, rescind or modify the zoning applicable to the Property or any part thereof or any of the Current Construction Permits, as currently existing.

(g) Certain Agreements. The Existing Construction Documents heretofore executed by, or assigned to and assumed by, Borrower are in full force and effect, have not been amended, modified, terminated, assigned or otherwise changed (except as set forth on Schedule I), or the provisions thereof waived.

(h) Construction Budget. As of the Closing Date and as of each date on which this representation is deemed remade, the Construction Budget (as the same may be amended from time to time in accordance with this Agreement) accurately reflects Borrower's best good faith estimate of all anticipated

Hard Costs, Soft Costs, Interest and Carry Costs and any other costs and expenses reasonably anticipated to be incurred in connection with the construction, development and operation of the Project.

(i) Loan Proceeds and Adequacy. The sum of (i) the Loan Amount to be advanced by Lender pursuant to this Agreement, (ii) the Mezzanine Loan Amount to be advanced by Lender pursuant to the Mezzanine Loan Agreement, (iii) amounts that are guaranteed pursuant to the Equity Funding Guaranty (provided that no claim is then being pursued by Lender in respect of any of the Guarantees and Guarantor is not then in default or in breach of any of its obligations in respect of any of the Guarantees), and (iv) any amounts in the Deficiency Account, are sufficient to pay (A) all Costs necessary for Completion of the Project substantially in accordance with the Construction Budget and the Plans and Specifications and (B) all Interest and Carry Costs.

4.1.4 Financial Information; Disclosure. All information submitted to Lender (including all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof, and all statements of fact made in this Agreement or in any other Loan Document) (a) are accurate, complete and correct in all material respects as of the date given, (b) accurately represent the financial condition of Borrower, Guarantor, and/or Property as of the date of such reports (as applicable), (c) to the extent prepared, audited or reviewed by an Independent Accountant, have been prepared, audited or reviewed in accordance with the Approved Accounting Method throughout the periods covered (except as disclosed therein), and (d) do not omit to state any material fact necessary to make statements contained herein or therein not misleading. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Material Adverse Effect, except as referred to or reflected in such financial statements. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that would be reasonably likely to have a Material Adverse Effect. Borrower has disclosed to Lender all material facts that could cause any information provided to Lender or any representation or warranty made in any of the Loan Documents concerning Borrower, any SPE Component Entity, Guarantor, Manager, or the Property, to be materially misleading. No statement of fact made by Borrower or Guarantor in any of the Loan Documents to which such Person is a party contains any untrue statement of a material fact or omits to state any material fact presently known to such Person and necessary to make statements contained herein or therein not misleading.

4.1.5 Mezzanine Loan Matters.

(a) True, correct and complete copies of each Mezzanine Loan Document have been delivered to Lender, and such Mezzanine Loan Documents have not been amended or modified except as disclosed in writing to Lender.

(b) The Mezzanine Loan Documents are in full force and effect, (ii) no default or event of default has occurred and is continuing thereunder, and (iii) there is no existing condition which, but for the passage of time and/or the giving of notice, could result in a default or event of default under the terms of the Mezzanine Loan Documents. Neither Mezzanine Borrower nor Mezzanine Lender has commenced any action or given or received any written notice of default or termination under any of the Mezzanine Loan Documents.

(c) Mezzanine Borrower is a passive holding company with no liabilities or obligations, except (i) pursuant to the Mezzanine Loan and (ii) Tax liabilities and obligations incurred in the ordinary course.

SECTION 4.2. Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

SECTION 5.1. Covenants. From the Closing Date and until payment and performance in full of all Obligations (other than contingent indemnification obligations which expressly survive the repayment of the Debt), in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that it shall comply with the following:

5.1.1 Borrower.

(a) Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits, franchises, and trade names required for the operation of the Property pursuant to Legal Requirements (and other material agreements entered into by Borrower in accordance with the terms of this Agreement) in the manner presently being conducted. Borrower shall comply with all Legal Requirements applicable to it and the Property, including Prescribed Laws (subject to Borrower's right to contest the applicability of any such Legal Requirement in accordance with Section 5.1.2(b) below).

(b) Organization; Compliance with Legal Requirements; Special Purpose Entity.

(i) Borrower shall not: (A) change its principal place of business or state of organization without first giving Lender thirty (30) days' prior notice; (B) fail to be a Special Purpose Entity, or fail to cause any SPE Component Entity required hereunder to be a Special Purpose Entity, or fail to cause all assumptions contained in any opinion concerning substantive consolidation delivered to Lender in connection with the Loan to be true and correct in all material respects; (C) remove or replace any Independent Director or Independent Manager except for Cause, and in any event not without providing at least five (5) Business Days' advance written notice thereof to Lender; (D) to the fullest extent permitted by applicable Legal Requirements, engage (nor permit any SPE Component Entity required hereunder to engage) in any dissolution, liquidation, or consolidation or merger with or into any other business entity; (E) modify, amend, waive or terminate (nor permit any SPE Component Entity required hereunder to modify, amend, waive or terminate) its organizational documents (other than pursuant to amendments that are solely ministerial in nature); (F) fail to maintain qualification to do business in any jurisdiction to the extent the same is required for the ownership, maintenance, management and operation of the Property; or (G) cease to operate the Property in the manner in which it is presently being operated (other than temporary cessation in connection with any continuous and diligent renovation or restoration of the Property following a Casualty or Condemnation), or change the trade name or names under which it operates the Property. Notwithstanding anything to the contrary herein, in the event of the death, legal incapacity, or voluntary non-collusive resignation of an Independent Director or Independent Manager, no prior written notice to Lender shall be required, provided that, within two (2) Business Days

after Borrower's knowledge of such, Borrower shall provide to Lender, the identity of the proposed replacement Independent Director or Independent Manager, as applicable, together with a certification that such replacement satisfies the requirements set forth with respect to an Independent Director or Independent Manager in this Agreement.

(ii) Borrower shall not (A) violate, and shall not permit any other Person in occupancy of or involved with the operation or use of the Property to violate, any Prescribed Laws or otherwise commit any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents, or (B) at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, permit (or allow to occur) (I) any of the funds or other assets of Borrower, SPE Component Entity, or Guarantor to constitute property of, or be beneficially owned, directly or indirectly, by any Embargoed Person, (II) an Embargoed Person to own any interest of any nature whatsoever in Borrower, SPE Component Entity or Guarantor, as applicable, or (III) any of the funds of Borrower, SPE Component Entity, or Guarantor, as applicable, to be derived from any unlawful activity, in each case with respect to the foregoing clauses (I) through (III) with the result that the investment in Borrower, SPE Component Entity, or Guarantor, as applicable (whether directly or indirectly), is or would be prohibited by applicable Legal Requirements, or the Loan is or would be in violation of applicable Legal Requirements. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower (or any of its beneficial owners, affiliates or participants) or any Person that owns a direct or indirect interest in the Property (other than a public shareholder of Guarantor) becomes an Embargoed Person or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall promptly notify Lender. At Lender's option, it shall be an Event of Default hereunder if any of the representations and warranties contained in Section 4.1.1(j) hereof are untrue in any material respect at any time. Borrower acknowledges that the Prescribed Laws require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, Lender may from time-to-time request, and Borrower shall provide to Lender, Borrower's name, address, tax identification number and/or such other identification information as shall be necessary for Lender to comply with federal law (including such information concerning its direct and indirect owners), and re-make the representations and warranties contained in Section 4.1.1(j) hereof. An "account" for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

(iii) Required Equity/Control Requirements. The Required Equity/Control Requirements shall remain satisfied at all times.

(c) ERISA. Assuming that no portion of the Loan is funded (initially or through participation, assignment, transfer or securitization of the Loan) with plan assets of any plan covered by ERISA or §4975 of the Code, unless the Lender (or other applicable party) relied on an available prohibited transaction exemption, all of the conditions of which are and will continue to be satisfied, Borrower shall not engage in any transaction that would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA, or otherwise cause Borrower to be unable to make the representations contained in Section 4.1.1(g) hereof. Borrower further covenants and

agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as reasonably requested by Lender, that (i) the representations contained in Section 4.1.1(g) hereof are true and correct as of the date of such certification, and (ii) one or more of the following circumstances is true: (A) Equity Interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R §2510.3-101(b)(2); (B) less than twenty-five percent (25%) of each outstanding class of Equity Interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R §2510.3-101(f)(2); (C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R §2510.3-101(c) or (e); or (D) the assets of Borrower are not otherwise "plan assets" (within the meaning of 29 C.F.R. §2510.3-101) of one or more "employee benefit plans" (as defined in §3(3) of ERISA) subject to Title I of ERISA.

(d) Transfers.

(i) Without the prior written consent of Lender, Borrower shall not, and shall not permit to occur, any (y) Transfer (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of the Property, any part thereof, or any legal or beneficial interest therein, or any direct or indirect Equity Interest in any Restricted Party, or (z) effectuate change of Control of a Restricted Party. Notwithstanding the foregoing provisions of this Section 5.1.1(d), the following Transfers (collectively, the "Permitted Transfers") shall be permitted without Lender's consent (subject to the satisfaction of the applicable terms and conditions set forth below):

(A) Permitted Encumbrances;

(B) Transfers of worn out or obsolete Personal Property that are promptly replaced with property of equivalent value and functionality if reasonably necessary or which is no longer necessary in connection with the operation of any Property;

(C) the Master Lease and any other Leases that have been approved by Lender (or that do not require Lender's approval) in accordance with the this Agreement;

(D) the pledge of any direct or indirect Equity Interest in Borrower by Mezzanine Borrower in connection with the Mezzanine Loan and, Transfer of the direct Equity Interests in Borrower to Mezzanine Lender (and any change of Control in Borrower or Mezzanine Borrower), in each case, pursuant to a foreclosure or voluntary transfer in lieu thereof to the Mezzanine Lender or other exercise of remedies by Mezzanine Lender under the Mezzanine Loan Documents;

(E) the Transfer of publicly traded shares on a nationally or internationally recognized stock exchange in any direct or indirect equity owner of Mezzanine Borrower; and

(F) Transfer of the Property pursuant to a foreclosure or voluntary transfer in lieu thereof to Lender or other exercise of remedies by Lender;

provided, however, in each case with respect to any such Transfer described in clause (E) above, the following conditions are satisfied:

1. to the extent Borrower has knowledge of any Transfer that would cause the transferee to increase its direct or indirect interest in Borrower to an amount which equals or exceeds 10% of the direct or indirect Equity Interests in Borrower (and such transferee did not hold at least a 10% interest prior to such Transfer), Borrower shall give Lender written notice of such Transfer, and an Officer's Certificate certifying that the requirements of this Section 5.1.1(d) have been satisfied, not less than ten (10) Business Days after Borrower obtains knowledge of such Transfer;

2. such Transfer does not result in the Required Equity/Control Requirements failing to be satisfied;

3. such Transfer does not and will not result in the termination or dissolution of Borrower, SPE Component Entity (if any) or Guarantor, by operation of law or otherwise;

4. no such Transfer shall be to any Person that would cause the representations made in Sections 4.1.1(g), (h) or 4.1.1(j) to be untrue if made immediately following such Transfer;

5. no such Transfer shall cause Borrower or any SPE Component Entity to fail to be a Special Purpose Entity after such Transfer;

6. no such Transfer shall consist of a Transfer of the Equity Interests in Borrower or Mezzanine Borrower owned by SPE Component Entity (if any);

7. (I) if such Transfer would cause the transferee to increase its direct or indirect interest in Borrower to an amount which equals or exceeds 10% of the direct or indirect Equity Interests in Borrower (and such transferee did not hold at least a 10% interest prior to such Transfer), such proposed transferee complies with, (x) other than with respect to Transfers of direct or indirect ownership interests in Borrower constituting publicly traded shares on a nationally or internationally recognized stock exchange, all of Lender's "know your customer" requirements, and (y) all Prescribed Laws and all applicable banking rules and regulations, and (II) unless the applicable Transfer is a Transfer of direct or indirect ownership interests in Borrower constituting publicly traded shares on a nationally or internationally recognized stock exchange, Borrower shall, prior to such Transfer, deliver to Lender (at Borrower's sole cost and expense) customary searches (credit, judgment, lien, etc.) acceptable to Lender with respect to such transferee;

8. if approved by Lender, if any such Transfer results in a Person owning more than forty-nine percent (49%) of the direct or indirect interests in Borrower that did not own such amount prior to such Transfer or results in a change of Control of Borrower, then Lender shall have received a substantive consolidation opinion in form and content acceptable to Lender; and

9. Borrower shall have reimbursed Lender for all reasonable and actual out-of-pocket expenses incurred by Lender in connection with such Transfer.

(ii) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer in violation of this Agreement. This Section 5.1.1(d) shall apply to every such Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous such Transfer. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and Guarantor in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on such Persons' ownership of Borrower and the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Obligations contained in the Loan Documents. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Obligations, Lender can recover the Debt by a sale of the Property. For all purpose under the Loan Documents, a Transfer of the Property or Borrower shall include, but not be limited to: (A) an installment sales agreement wherein Borrower agrees to sell the Property, or any part thereof, for a price to be paid in installments; (B) an agreement by Borrower leasing all or substantially all of the Property for other than actual occupancy by a space tenant thereunder, or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Revenues (provided that the foregoing shall not be construed to prohibit Borrower from entering into a non-binding term sheets for the sale and/or sale-leaseback of the Property which are not recorded and are expressly subject and subordinate to the Loan Documents); (C) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (D) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the limited liability company interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (E) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the limited liability company interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such limited liability company interest, or the Sale or Pledge of non-managing limited liability company interests or the creation or issuance of new non-managing limited liability company interests; (F) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (G) the removal or the resignation of the Manager other than in accordance with Section 5.1.2(g) hereof.

(iii) Borrower may, without the consent of Lender, grant easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities, provided that no such encumbrance shall materially impair the utility and operation of the Property or have a Material Adverse Effect. In connection with any encumbrance permitted pursuant to this Section 5.1.1(d)(iii), Lender shall execute and deliver any instrument reasonably necessary or appropriate to subordinate the Lien of the

Security Instrument to such easements, restrictions, covenants, reservations and rights of way or other similar grants upon receipt by Lender of:

(A) fifteen (15) Business Days prior written notice thereof;

(B) a copy of the applicable instruments;

(C) an Officer's Certificate stating (x) the consideration, if any, being paid for such encumbrance is commercially reasonable and (y) that such encumbrance does not materially impair the utility and operation of the Property, materially reduce the value of the Property or otherwise have a Material Adverse Effect; and

(D) reimbursement of all of Lender's costs and expenses incurred in connection with such encumbrance.

(e) Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

(f) Reporting.

(i) Borrower will keep and maintain or will cause to be kept and maintained on a fiscal year basis (commencing January 1 of each year), in accordance with the Approved Accounting Method and Regulation AB, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable prior notice (which may be given verbally) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the existence of an Event of Default, Borrower shall pay any reasonable costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest.

(ii) Borrower will furnish (or cause to be furnished) to Lender annually, within ninety (90) days following the end of each fiscal year of Guarantor, a complete copy of Guarantor's consolidated annual financial statements (including consolidated statements of income and expense and cash flow and a consolidated balance sheet for Guarantor and its subsidiaries) prepared in accordance with the Approved Accounting Method and Regulation AB and audited by an Independent Accountant, and, if requested by Lender, Borrower shall deliver to Lender copies of all federal income tax returns to be filed by Borrower, and statements of profit and loss for Borrower and the Property (as applicable) and a balance sheet for Borrower. Borrower shall also provide Borrower-prepared and certified statements which set forth the financial condition and the results of operations for the Property for such fiscal year, and shall include, but not be limited to, amounts representing annual Net Operating Income, Operating Income (and any other Revenues not already included therein) and Operating Expenses, which shall be accompanied by (A) a comparison of the budgeted income and expenses and the actual income and expenses for the prior fiscal year (including Cash Expenses and Extraordinary Expenses for which

Borrower has received funds pursuant to Section 3.1(b) hereof, if applicable) with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, and identifying any payment made to an Affiliate of Borrower and the reasons therefor; (B) a list of tenants, if any, occupying more than ten percent (10%) of the total floor area of the Improvements; (C) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and cumulative basis (and such other occupancy statistics for the Property as Lender may request); (D) an Officer's Certificate certifying to such officer's knowledge that each annual financial statement fairly presents the financial condition and the results of operations of Borrower and the Property being reported upon and that such financial statements have been prepared in accordance with the Approved Accounting Method and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same; and (E) a certification to Lender identifying the name and contact information of each Independent Director or Independent Manager required hereunder.

(iii) Not later than forty-five (45) days prior to the commencement of each fiscal year, Borrower shall submit to Lender its proposed annual budget for the Property detailing all anticipated Operating Expenses and Operating Income for the Property for the ensuing fiscal year in form reasonably satisfactory to Lender. Such proposed budget shall be subject to Lender's written approval (when so approved, an "Approved Annual Budget"), not to be unreasonably withheld, conditioned or delayed. Until such time that Lender approves a proposed budget, the most recently Approved Annual Budget shall apply; provided, however, that such Approved Annual Budget shall be deemed adjusted to reflect actual increases in the amount of Property Taxes, Insurance Premiums and Other Charges. The approved Annual Budget for the remainder of calendar year 2022 is attached hereto as Exhibit D.

(iv) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar quarter, (A) Borrower's calculation of the Debt Yield for the twelve (12) month period ending at the end of such calendar quarter (provided that Borrower may make such calculations using its reasonable expectation of the adjustments to be made to such calculations pursuant to the definition of UNOI contained herein) accompanied by an Officer's Certificate with respect thereto, together with Borrower's method of calculation and such detail and background information as Lender shall reasonably require, (B) accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete in all material respects and fairly present in all material respects the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments): (I) a rent roll for the subject quarter; (II) subject to any appropriate reconciliations, quarterly and year-to-date operating statements prepared for each calendar month, noting Net Operating Income, Operating Income (and any other Revenues not already included therein), and Operating Expenses, and, upon Lender's request, other information necessary and sufficient to fairly represent in all material respects the financial position and results of operation of the Property during such calendar quarter, and containing a comparison of budgeted income and expenses (including Cash Expenses and Extraordinary Expenses for which Borrower has received funds pursuant to Section 3.1(b) hereof, if applicable) and the actual income

and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, and identifying any payment made to an Affiliate of Borrower and the reasons therefor, all in form reasonably satisfactory to Lender; (III) a reasonably detailed statement of operating expenses paid by Master Tenant in accordance with the Master Lease during the subject calendar quarter; (IV) a copy of the quarterly statements for the Clearing Account prior to such date (if applicable); and (V) upon Lender's request, such other information reasonably necessary and sufficient to fairly represent in all material respects the financial position and results of operation of the Property during such calendar quarter. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.1(h) hereof are true and correct in all material respects as of the date of such certificate to the actual knowledge of Borrower and that there are no undisputed trade payables outstanding for more than sixty (60) days from the later of the date incurred or the date an invoice was issued therefor.

(v) In the event that Borrower must incur an extraordinary Operating Expense not set forth in the Approved Annual Budget (each, an "Extraordinary Expense"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval.

(vi) Any reports, statements or other information required to be delivered under this Agreement shall be provided to Lender electronically unless Lender requests in writing for such statements to be delivered in paper form or on a diskette. Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.1(f) in connection with a Secondary Market Transaction to such parties requesting such information in connection with such Secondary Market Transaction.

(vii) If any report, statement or other information required to be delivered to Lender pursuant to this Section 5.1.1(f) (a "Required Report") is not timely delivered (and without limiting the terms and conditions of Article 8 hereof), Borrower shall promptly pay to Lender, as a late charge, the sum of $200.00 per item per day until such Required Report is delivered.

(viii) Borrower shall furnish to Lender, within thirty (30) days after request, such further detailed information with respect to the operation of the Property and the financial affairs of Borrower, Manager, Guarantor, and their Affiliates as may be reasonably requested by Lender. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower, any SPE Component Entity, and Guarantor which would reasonably be expected to have a Material Adverse Effect. Borrower shall promptly advise Lender of any material adverse change in Borrower's, any SPE Component Entity's, or Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default.

(g) Distributions. Borrower shall not make any distribution, payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any equity or ownership interest of Borrower, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of Borrower. Notwithstanding the foregoing Borrower shall have the right to make distributions to repay the Reimbursable Costs. Notwithstanding the foregoing, distributions deemed made pursuant to Section 3.7 shall in no event be deemed restricted by this Section 5.1.2.

(h) Minimum Equity Requirement Satisfaction. The Closing Date Minimum Equity Requirement shall remain satisfied at all times.

5.1.2 Property.

(a) Title to the Property. Borrower will warrant and defend (i) the title to the Property and every part thereof, and (ii) the validity and priority of the Lien of the applicable Loan Documents, in each case against the claims of all Persons (subject only to the Permitted Encumbrances).

(b) Taxes, Other Charges, and Liens; Contests. Borrower shall pay all Property Taxes, Other Charges, and Liens (other than Permitted Encumbrances) now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the delinquency thereof; provided, however, Borrower's obligation to directly pay Property Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 3.2(a) hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Property Taxes and Other Charges have been so paid no later than ten (10) days prior to the date on which the Property Taxes and/or Other Charges would otherwise be delinquent if not paid. Notwithstanding the foregoing, Borrower's obligation to directly pay Property Taxes for which Lender is reserving funds pursuant to Section 3.2(a) hereof (and to provide evidence of the same) shall be suspended for so long as Borrower complies with the terms and provisions of said Section 3.2(a). Borrower, at its own expense, may contest (after prior written notice to Lender) by appropriate legal proceeding, promptly initiated and conducted in good faith and with reasonable diligence, the amount or validity or application in whole or in part of any Property Taxes, Other Charges, or any Lien on the Property, and/or the applicability of any Legal Requirement, provided that: (i) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower, the Property or any collateral for the Loan, as applicable, is subject and shall not constitute a default thereunder, and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (ii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iii) Borrower shall promptly, upon final non-appealable determination thereof, pay the amount of any such Property Taxes, Other Charges, or Lien (together with all costs, interest and penalties which may be payable in connection therewith) and/or comply with such contested Legal Requirement; and (iv) such proceeding shall suspend the collection of such contested Property Taxes, or Other Charges (unless Borrower shall have paid all such amounts so demanded under protest), and with respect to Liens, Borrower shall have caused any such Lien to be discharged (by bonding or otherwise) within thirty (30) days (or sooner if required to avoid a forfeiture of the Property) of the filing thereof, or Borrower shall furnish such security as may be requested by Lender (not to exceed one hundred twenty-five percent (125%) of the amount of such Lien being contested), to insure the payment of any such Property Taxes, Other Charges, or Liens, together with all interest and penalties thereon (and Lender may pay over any such security to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost, or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien). Borrower shall promptly upon final determination thereof pay the amount of any such Property Tax, Other Charge, or Lien, together with all costs, interest and penalties which may be payable in connection therewith, and comply with any such contested Legal Requirement.

(c) Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (and subject to the rights of tenants under Leases). Borrower agrees pay or reimburse Lender within ten (10) Business Days after written demand for all reasonable, out-of-pocket costs and expenses incurred by Lender in connection with the inspections described in this Section 5.1.2(c).

(d) REAs. Borrower shall, at its sole cost and expense, promptly and timely perform and observe all the material terms, covenants and conditions required to be performed and observed by Borrower under the REAs. Borrower shall notify Lender promptly in writing of the occurrence of any material default by any party to the REAs or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party to the REAs, and the receipt by Borrower of any notice (written or otherwise) from any party under the REAs noting or claiming the occurrence of any default by Borrower under the REAs or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a default by Borrower under the REAs. Borrower shall promptly deliver to Lender a copy of any such written notice of default. Borrower hereby collaterally assigns to Lender all of its rights under the REAs to vote on any matters concerning the Property or the REAs, provided that such Voting rights are hereby licensed back to Borrower effective so long as no Event of Default exists and is continuing. So long as any of the Obligations remains outstanding (other than contingent indemnification obligations which expressly survive the repayment of the Debt), Borrower shall not exercise any purchase right, purchase option or similar rights granted to Borrower with respect to any real property without Lender's approval.

(e) Zoning; REAs. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, in each case, without the prior consent of Lender. Borrower shall not, without Lender's written consent, (i) fail to exercise any option or right to renew or extend the term of the REAs (if applicable) in accordance with the terms of the REAs, and shall give immediate written notice to Lender and shall execute, acknowledge, deliver and record any document requested by Lender to evidence the Lien of the Security Instrument on such extended or renewed term (and if Borrower shall fail to exercise any such option or right as aforesaid, Lender may exercise the option or right as Borrower's agent and attorney-in-fact as provided above in Lender's own name or in the name of and on behalf of a nominee of Lender, as Lender may determine in the exercise of its sole and absolute discretion); (ii) waive, excuse, condone or in any way release or discharge any party to the REAs of or from their material obligations, covenant and/or conditions under the REAs; (iii) surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or change, modify or amend in a material or adverse manner, the REAs.

(f) Operation of the Property.

(i) Borrower shall cause the Property to be maintained in a good and safe condition and repair in all material respects, and at all times keep the Property in good working order and repair (subject to ordinary wear and tear and casualty damage, and, with respect to Building B only, taking into account, prior to Substantial Completion, the construction of the Required Improvements to the extent effectuated in accordance with the terms and conditions set forth in this Agreement). Lender acknowledges that the Property is managed as of the Closing Date by Borrower and does not have professional management as otherwise required by this Section 5.1.2(f). Lender agrees, subject to the terms of Section 5.1.2(f)(ii), that Borrower may continue to manage the Property.

(ii) Borrower will not engage a Manager, developer or leasing agent without Lender's prior written consent, not to be unreasonable withheld, conditioned or delayed. If Lender reasonably determines that the Property is not being managed in accordance with generally accepted management practices for properties similar to the Property, then Lender may, at its option, deliver written notice to Borrower, which written notice will specify the issues for Lender's determination. If Lender determines that the issues specified in such written notice are not remedied to Lender's reasonable satisfaction by Borrower

within thirty (30) days from receipt of such written notice or that Borrower has failed to diligently undertake correcting such issues within such thirty (30) day period, or if an Event of Default has occurred and is continuing, Borrower will, at Lender's direction, engage a Qualified Manager reasonably satisfactory to Lender at all times under a property management agreement approved by Lender in writing, which Manager will execute an Assignment of Management Agreement in a form acceptable to Lender.

(iii) If Borrower is required to engage a Qualified Manager in accordance with Section 5.1.2(f)(ii), then Borrower shall cause the Property to be operated, in all material respects, in accordance with the Management Agreement. If the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Management Agreement in form and content reasonably acceptable to Lender with Manager approved by Lender. Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (IV) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner. If (1) an Event of Default occurs or if Lender or any other Person takes possession of the Property or any portion thereof through foreclosure, conveyance in lieu of foreclosure or other similar transaction, (2) if Manager files or is the subject of a petition in bankruptcy or similar proceeding, or a trustee or receiver is appointed for Manager's assets or Manager makes an assignment for the benefit of creditors or Manager is adjudicated insolvent, (3) a default occurs under the Management Agreement on the part of either Borrower or Manager, beyond any applicable grace and cure periods, (4) a change of Control of Manager occurs, or (5) Manager shall commit gross negligence, fraud, illegal acts, or willful misconduct, Borrower shall, at the request of Lender, terminate the Management Agreement and replace Manager with a Manager reasonably approved by Lender.

(g) Management Agreement. If Borrower is required to engage a Qualified Manager in accordance with Section 5.1.2(f)(ii), then Borrower shall not, without Lender's prior written consent: (i) surrender, terminate or cancel the Management Agreement; provided, that Borrower may, without Lender's consent, not to be unreasonably withheld, replace the Manager so long as the replacement manager is a Qualified Manager engaged pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase the amount of any charges or fees payable to Manager under the Management Agreement in excess of three percent (3.0%) of Operating Income per annum; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. Borrower shall not permit Manager to assign or subcontract Manager's rights, duties or responsibilities under the Management Agreement to any other Person without the express written consent of Lender. Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

(h) Leasing Matters.

(i) Without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed (except with respect to the Master Lease, in which case Lender's consent shall be in its sole discretion), Borrower shall not (A) enter into any Lease; (B) cancel or terminate (including by exercise of any landlord recapture rights) any Lease; (C) approve any assignment of any Lease that releases the original tenant from its obligations under such Lease, (D) amend, modify or waive the provisions of any Lease in any material respect (including any amendment, modification or waiver reducing the fixed initial term of any Lease, reducing the rent payable under any Lease, changing any renewal provisions of any Lease or materially increasing the obligations of the landlord or materially decreasing the obligations of the tenant under any Lease or pursuant to which any premises covered by such Lease is surrendered); or (E) cancel or modify any guaranty, or release any security deposit, letter of credit, or other item constituting security pertaining to any Lease.

(ii) Any request for approval of a Lease, or assignment, termination, amendment or modification of any Lease requiring approval as set forth above shall be made to Lender in writing and together with such request Borrower shall furnish to Lender: (A) such biographical and financial information about the proposed tenant and any guarantor of such proposed Lease as Lender may reasonably require, (B) a copy of the proposed form of Lease (or amendment or modification), and (C) a summary of the material terms of such proposed Lease (or amendment or modification) including rental terms and the term of the proposed Lease and any options.

(iii) Borrower shall promptly send Lender copies of any notices of default received from the tenant under any Lease, and will enforce (short of terminating a Lease, unless Lender consents thereto, which consent shall not be unreasonably withheld or unduly delayed) the performance by each tenant of the tenant's obligations under any Lease.

(iv) Except for security deposits, Borrower shall not collect rent more than one (1) month in advance. Borrower, at Lender's request, shall furnish Lender with executed copies of all Leases hereafter made (to the extent not theretofore provided to Lender). All Leases executed after the Closing Date (including any renewal or expansion options) shall provide that they are subordinate to the Security Instrument and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale.

(v) Notwithstanding anything herein to the contrary, Borrower may sublease or license up to 10% of the Improvements to one or more Permitted Users (as defined in the Master Lease).

(vi) For the avoidance of doubt, nothing herein shall prohibit Guarantor from engaging in the business of contract manufacturing for third-parties.

(i) Liens; Indebtedness. Subject to Borrower's contest and similar rights contained in the Loan Documents (including as set forth in Section 5.1.2(b) herein), Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except Permitted Encumbrances. Borrower shall not (directly or indirectly) create, incur, assume, or allow to exist any Indebtedness with respect to Borrower or SPE Component Entity, other than Permitted Indebtedness.

(j) Alterations. Other than as expressly provided herein with respect to the Required Improvements, Borrower shall not (i) cause or permit any material waste of the Property, (ii) make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or intentionally take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of the Security Instrument or otherwise cause a Material Adverse Effect, (iii) permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof, or (iv) in each case, without having first obtained Lender's prior written consent, permit or cause any alterations to any Improvements that (A) would reasonably be likely to have a Material Adverse Effect, (B) result in any decrease of Net Operating Income, (C) violate the terms of any Lease, (D) concern structural component of any Improvements, any utility or HVAC system contained in the Improvements, or the exterior of any building constituting a part of any Improvements, or (E) cost, in the aggregate of all related alterations, Five Hundred Thousand and 00/100 Dollars ($500,000) or more; provided, however, that the foregoing limitations shall not apply to alterations consisting of alterations performed as part of a Restoration required hereunder. Without limiting the foregoing, if the total unpaid amounts due and payable with respect to alterations to the Improvements (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed Five Hundred Thousand and 00/100 Dollars ($500,000), Borrower shall promptly deliver to Lender as security for the payment of such amounts (and as additional security for the Debt) cash, a Letter of Credit, or a completion and performance bond (issued by a surety acceptable to Lender) (or a combination thereof), in an amount equal to the excess of the total unpaid amounts with respect to such alterations (other than such amounts to be paid or reimbursed by tenants under the Leases), and Lender may apply such security from time to time at the option of Lender to pay for such alterations (or, upon an Event of Default, to the payment of the Debt).

(k) No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of all or any portion of the Property (i) with any other real property constituting a tax lot separate from the Property, or (ii) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

(l) Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority that may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any condemnation proceeds or insurance proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed by Borrower for any out-of-pocket expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements, and the payment by Borrower of the expense of an Appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) from such condemnation proceeds or insurance proceeds, as applicable.

(m) Intentionally Omitted.

(n) Material Agreements. Borrower shall (i) promptly perform and/or observe all material terms, covenants and agreements required to be performed and observed by it under the Material Agreements; (ii) promptly notify Lender of any material default (following applicable notice and cure periods) under the Material Agreements of which Borrower has knowledge; (iii) not, without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed, (A) enter into any new Material Agreement or execute modifications to any existing Material Agreements, (B) surrender, terminate

or cancel any Material Agreement, (C) reduce or consent to the reduction of the term of the Material Agreements, (D) increase or consent to the increase of the amount of any charges under the Material Agreements, (E) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Material Agreements, or (F) following the occurrence and during the continuance of an Event of Default, exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Material Agreements.

(o) Labor Matters. Borrower shall not, without Lender's prior consent, enter into any collective bargaining agreement or union contract with respect to employees and other laborers at the Property.

(p) Appraisal. Lender shall have the right to order new Appraisals of the Property from time to time at Borrower's expense; provided, that Borrower's obligation to pay for such expense shall be limited to one (1) Appraisal during any twelve (12) month period, except (x) during the continuance of an Event of Default or (y) in connection with a Secondary Market Transaction in accordance with Section 9.1-Each Appraisal is subject to review and approval by Lender. Borrower shall pay to Lender the reasonable out-of-pocket cost and expense for such Appraisals and a reasonable fee for Lender's review of each Appraisal.

(q) Parking Covenant. Borrower shall use Commercially Reasonable Efforts to cause to be terminated and removed of record, no later than the Substantial Completion Due Date, that certain Covenant and Agreement Regarding Maintenance of Off-Street Parking Space, dated September 26, 1969 and recorded in the Official Records of Los Angeles County, California on October 6, 1969 as document number 2214.

5.1.3 Construction Matters.

(a) Construction of Project.

(i) Borrower shall cause the Project to be constructed on the Land (A) in a good and workmanlike manner, substantially in accordance with the Plans and Specifications approved by Lender, (B) in a manner in compliance with the terms of all documents of record, (C) free and clear of Liens and claims for materials supplied or for labor or services performed in connection with the construction of the Project or otherwise (other than Permitted Encumbrances), subject to Borrower's right to contest any such Liens or claims in accordance with Section 5.1.2(b) hereof, and (D) with diligence and continuity, in a good and workmanlike manner, and in accordance with this Agreement so as to achieve, subject to Excusable Delay, the Major Milestones within the time period applicable to each such Major Milestone.

(ii) Borrower shall use Commercially Reasonable Efforts to cause the Costs of the construction of the Project to be in accordance with the Construction Budget.

(iii) Borrower shall use Commercially Reasonable Efforts to cause the construction of the Project to be diligently and continuously performed throughout the Construction Phase until Completion of the Project.

(b) Construction Schedule. Each month prior to Completion of the Project, Borrower shall deliver to Lender and Construction Consultant (which delivery may be made within seven (7) Business Days prior to the delivery of any Draw Request) a copy of an updated Construction Schedule reflecting, among other things, the anticipated dates of completion of and the timing of disbursements of incremental

amount of various subcategories of the Construction Budget, all in such form and containing such details as Lender may require in its reasonable discretion.

(c) Construction Budget Adjustments. No adjustments in the Construction Budget shall be deemed to be approved without the prior written consent of Lender (which consent shall not be unreasonably withheld); provided, however, that Construction Budget adjustments to reflect Change Orders entered into in accordance with Section 5.1.3(g) shall be permitted.

(d) Inspection of Property and Books and Records.

(i) Without limiting Lender's rights pursuant to Section 5.1.2(c) hereof, Borrower agrees to permit Lender and Construction Consultant, or designated representatives of any of them, to enter upon the Property, at any reasonable times during business hours on reasonable notice, with access to inspect or examine or, to the extent not located on the Property, to otherwise make available in Los Angeles, California to Lender and Construction Consultant the following:

(A) all materials and shop drawings pertaining to the construction of the Project, to the extent in the possession or control of Borrower or its Affiliates or available to Borrower under the General Contractor Agreement or other Construction Contracts;

(B) any contracts, bills of sale, statements, receipts or vouchers pertaining to the construction of the Project, to the extent in the possession or control of Borrower or its Affiliates or available to Borrower under the General Contractor Agreement or other Construction Contracts;

(C) all work done, labor performed or materials furnished in and about the Project, including in connection with the construction of the Project;

(D) all books, contracts and records of Borrower or General Contractor available to Borrower under the General Contractor Agreement or other Construction Contracts pertaining to the construction of the Project; and

(E) any other documents which are related to the construction of the Project, to the extent in the possession or control of Borrower or its Affiliates or available to Borrower under the General Contractor Agreement or other Construction Contracts.

(ii) Borrower may satisfy the delivery or accessibility of any of the foregoing by causing General Contractor to deliver or otherwise make available such materials on a timely basis.

(iii) Borrower promptly will provide Lender and Construction Consultant with copies of any of the foregoing as Lender or Construction Consultant, as the case may be, may from time to time reasonably request. Borrower will make its representatives available to discuss Borrower's affairs, finances and accounts relating to the construction of the Project, and Borrower will reasonably cooperate, and take all reasonable steps to cause the General Contractor, the Architect and the Trade Contractors (including Major Trade Contractors) to cooperate with Lender and Construction Consultant, or any of their

designated representatives, to enable such Person to perform its functions under this Agreement.

(e) Construction Consultant. Borrower acknowledges that (i) Construction Consultant has been retained by Lender to act as a consultant to review Plans and Specifications, Construction Contracts and Draw Requests, perform inspections and other services as determined by Lender but only as a consultant to Lender in connection with the construction of the Project and Construction Consultant has no duty to Borrower; (ii) Construction Consultant shall in no event or under any circumstance have any power or authority to make any decision or to give any approval or consent or to do any other act or thing which is binding upon Lender and any such purported decision, approval, consent, act or thing by Construction Consultant on behalf of Lender shall be void and of no force or effect; (iii) Lender reserves the right to make any and all decisions required to be made by Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender, and to accept or not accept any matter or thing required to be accepted by Lender, under and in accordance with the terms of this Agreement, and without being bound or limited in any manner or under any circumstances whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by Construction Consultant to Lender with respect thereto; (iv) Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by the Construction Consultant to Lender, and (v) Lender reserves the right in its sole and absolute discretion to replace Construction Consultant with another qualified construction consultant at any time and without approval by or prior (but with subsequent) notice to Borrower. Borrower shall be required to pay all reasonable fees and expenses payable to the Construction Consultant by Lender in connection with the Loan.

(f) Changes to Plans and Specifications. Borrower shall provide to Lender and Construction Consultant, concurrently with each Draw Request or at such other times as Lender or Construction Consultant may reasonably request, copies of all orders, documents or revisions to Plans and Specifications reflecting Change Orders, regardless of whether the prior approval by Lender and/or Construction Consultant of any such order, document or revision or Change Order is required pursuant to the terms of this Agreement or the other Loan Documents.

(g) Change Orders. Borrower shall not request, initiate, agree to, approve or accept, cause or suffer directly or indirectly any Change Order which (i) increases the Approved Project Expenditures by more than $1,000,000 for any single Change Order or by more than $5,000,000 for all Change Orders in the aggregate, (ii) would affect the structural integrity of the Property, (iii) constitutes a material downward change in the building material or equipment specifications, (iv) will or is reasonably expected to cause a Milestone Non-Compliance Event, (v) will decrease the aggregate net rentable square feet comprising Building B as compared to the net rentable square feet comprising Building B in the Plans and Specifications approved by Lender as of the Closing Date, (vi) will materially and adversely change the layout of the Required Improvements, (vii) will result in a Deficiency, or (viii) will violate Legal Requirements, in each case, without Lender's prior written consent, not to be unreasonably withheld, conditioned or delayed (and Borrower shall be permitted to request, initiate, agree to, approve and accept all other Change Orders without Lender's prior consent). Any approval by Lender of any Change Order (x) shall not obligate Lender to increase the amount of the Loan, and (y) shall not obligate Lender to make any Additional Advance to the extent the same would not otherwise be obligated pursuant to this Agreement to make such Additional Advance. Borrower shall submit to Lender and Construction Consultant copies of each proposed Change Order prior to entering into it, together with documentation reasonably satisfactory to Lender and Construction Consultant, setting forth all additions and subtractions theretofore made to or from the scope of the Project. Lender shall promptly review all Change Orders so submitted. If any Change Order shall require the consent or approval of any third party, Borrower shall provide Lender

with written evidence of such consent or approval. Borrower shall submit to Lender and Construction Consultant copies of all Change Orders entered into with respect to the Project within fifteen (15) days after the same are entered into.

(h) Correction of Work. Borrower will, promptly after written notice from Lender, correct any defect in the Project or the Improvements or any material departure without Lender's prior written approval from the Plans and Specifications. Borrower agrees that the making of any Additional Advance shall not constitute a waiver of Lender's right to require compliance with this Section 5.1.3(h) with respect to any such defects or material departures from the Plans and Specifications. Borrower agrees that Lender's failure to deliver such a written notice shall not constitute a waiver by Lender of any of Lender's rights in respect of such defect.

(i) Required Notices.

(i) Without limiting any other notice requirement set forth in this Agreement, Borrower shall give notice to Lender promptly upon the occurrence of:

(A) any cessation of construction of the Project for a period in excess of fifteen (15) Business Days more than once in any sixty (60) calendar day period;

(B) any actual litigation or action of, or any litigation or action threatened in writing by, a Governmental Authority of which Borrower has knowledge concerning the actual or alleged presence, release, threat of release, placement on or in, or the generation, transportation, storage, treatment or disposal at, the Property and/or Project of any Hazardous Material in violation of applicable Environmental Law;

(C) any written notice given pursuant to any Construction Document alleging that there has occurred a default by Borrower or General Contractor in the performance of their respective obligations thereunder; and

(D) any condition which results in any delay, which would reasonably be expected to result in Completion occurring after the date therefor set forth in the Construction Schedule, or in any further delay beyond any delays of which Lender has been previously notified;

(ii) Each notice pursuant to this Section 5.1.3(i)(ii) shall be accompanied by a statement of Borrower setting forth details of the occurrence referred to therein and stating what action Borrower proposes to take with respect thereto, in each case, in such detail as Lender may reasonably require.

(j) Compliance with Construction Documents and Contracts. Borrower shall abide by, perform and comply with all of Borrower's material obligations under the Architect Agreement, the General Contractor Agreement, the Trade Contracts, the other Construction Contracts and the Construction Documents to which Borrower is a party, and Borrower, at its sole cost and expense, shall use all Commercially Reasonable Efforts to secure or enforce the performance of each and every material obligation, covenant, condition and agreement to be performed by the other parties thereunder.

(k) Construction Contracts. Except to the extent otherwise permitted herein, Borrower shall not (i) enter into, surrender, terminate, cancel, modify, amend or consent to the assignment of any Construction Document, or (ii) consent to or approve of the entering into, surrender, termination,

cancellation, modification, amendment or assignment of any Trade Contract by the General Contractor (but only to the extent that such surrender, termination, cancellation, modification, amendment or assignment by General Contractor requires Borrower's approval pursuant to the General Contractor Agreement), without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If and to the extent any amendment, supplement, replacement or other modification is made to any of the foregoing which requires Lender's consent, upon reasonable request by Lender, Borrower shall promptly cause the Architect, General Contractor, or Major Trade Contractor, as the case may be, to deliver a certificate or other written statement which confirms, on and as of the date thereof, that the Architect Consent, the Engineer Consent, the Assignment of General Contractor Agreement or the Major Trade Contractor Consent, as the case may be, previously delivered in connection with the Loan remains valid, true, correct and complete in all material respects as of the date so amended, supplemented, replaced or otherwise modified. Borrower promptly will give notice to Lender of the surrender, termination, cancellation, modification, amendment, substitution or assignment of the other Construction Contracts, whether or not Lender consented thereto pursuant to the immediately preceding sentence.

(l) Trade Contracts. Borrower certifies that, on or prior to the Closing Date, Lender has been provided with a true, correct and complete copy of each Existing Construction Document (other than, with respect to Trade Contracts only, Trade Contracts to which neither Borrower nor any Affiliate of Borrower is a direct party). Borrower shall deliver to Lender an executed copy of any Major Trade Contract which General Contractor and/or Borrower enters into (together with a Major Trade Contractor Consent) and shall promptly give notice to Lender of the surrender, termination, cancellation, modification, amendment, substitution or assignment of any Major Trade Contract. Upon Lender's reasonable request, Borrower shall deliver to Lender a copy of each subcontract entered into by the General Contractor within ten (10) days of Lender's request.

(m) Cessation of Business. With respect to any work relating to the Required Improvements, Borrower shall not for any reason (i) subject to Excusable Delay, cease for a period in excess of fifteen (15) Business Days more than once in any sixty (60) calendar day period the construction of the Project, or (ii) enter into or engage in any other business not expressly permitted by the terms of this Agreement.

(n) Construction Permits. Promptly after obtaining any additional material Construction Permits for the construction of the Project after the Closing Date, Borrower shall deliver a copy thereof to Lender.

(o) Certificate of Occupancy. Borrower shall, to the extent required by applicable Legal Requirements, obtain certificates of occupancy with respect to the entire Project in accordance with this Agreement and, thereafter, shall continuously maintain in full force and effect valid certificates of occupancy for the entire Property, but excluding temporary certificates of occupancy for portions of the Property that can only be obtained following the build-out of such space for or by a Tenant.

(p) Protection Against Liens. Subject to its right of contest set forth in Section 5.1.2(b), Borrower shall pay, discharge or bond all claims for labor, materials and services furnished in connection with construction of the Project and take all actions reasonably required to prevent the assertion of claims of Liens (other than Permitted Encumbrances) against the Property. Borrower irrevocably appoints, designates and authorizes Lender as its agent (such agency being coupled with an interest) with the authority (but no obligation) to file any notice relating to claims of Liens (other than Permitted Encumbrances) that Lender reasonably deems advisable to protect its interests under the Loan Documents. If any stop notice or claim is asserted against Lender by any Person furnishing labor, services, equipment or materials to the Project, upon demand by Lender, Borrower shall take such action as Lender may reasonably require to release Lender from any obligation or liability with respect to such stop notice

or claim, including (i) if the claim is being contested in accordance with Section 5.1.2(b) hereof, obtaining a bond or other security, in form, substance and amount reasonably satisfactory to Lender, sufficient to discharge the same of record or (ii) payment of such claim, in each case, except to the extent such stop notice or claim is the result of any action or omission of Lender, Construction Consultant or their respective Affiliates, directors, officers, employees or agents. If Borrower fails to take such action required to be taken by Borrower pursuant to this Section 5.1.3(p), Lender may, in its sole discretion, file an interpleader action requiring all claimants to interplead and litigate their respective claims, and in any such action Lender shall be released and discharged from all obligations with respect to any funds deposited in court.

(q) **Lender's Review**. Observation, inspection and approvals by Lender of the Plans and Specifications, any other Construction Documents, the construction of the Project and the workmanship and materials used therein shall impose no responsibility or liability of any nature whatsoever on Lender or Construction Consultant, and no Person shall, under any circumstances, be entitled to rely upon such inspections and approvals by Lender or Construction Consultant for any reason. Approvals granted by Lender for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any such approval. Construction Consultant has been or will be retained by Lender solely as a consultant and has no authority to bind or otherwise act for or on behalf of Lender.

(r) Submission of Evidence. Any condition of this Agreement which requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts and Lender shall, at all times, be free to independently establish to its reasonable satisfaction such existence or non-existence.

(s) Contractors. Except as provided by law, no Trade Contractors or any other Person dealing with Borrower, including the Architect and the General Contractor, shall be, nor shall any of them be deemed to be, third party beneficiaries of this Agreement, but each shall be deemed to have agreed (a) that the Trade Contractor(s) or other Person in question shall look to Borrower or such Person, as the case may be, as their sole source of recovery if not paid and (b) except as otherwise agreed to in writing between Lender and the Trade Contractor(s) or other Person in question, that they may not claim against Lender under any circumstances.

(t) Completion of the Project. Each of the Approved Project Expenditures that is a subject of an Additional Advance shall be Completed in accordance with the Construction Schedule.

(u) Labor.

(i) Borrower shall not enter into (or consent or approve Manager entering into) any collective bargaining agreements affecting the Property without Lender's prior written consent; provided that, notwithstanding the foregoing, in no event shall Borrower be required to be in violation in any material respect of any applicable Legal Requirements as a result of Lender's exercise of its consent rights.

(ii) Borrower will, in a timely manner, pay (or cause to be paid), or satisfy (or cause to be satisfied) when due all bills, costs, or other obligations incurred by Borrower or on its behalf in connection with the employees employed by the Borrower in connection the operation of the Property, including but not limited to any obligations under ERISA, the Multiemployer Pension Plan Amendments Act, the Internal Revenue Code, federal or state wage and hour law, the Labor Agreements, or applicable State or Federal plant closing laws (any such bills, costs, or liabilities a "Labor Liability"). Borrower further covenants and agrees to deliver to Lender promptly, and in any event within ten (10) Business Days

after receipt thereof by Borrower or any of its Affiliates, a copy of each notice concerning a claim of Labor Liability.

(iii) Unless Lender consents in writing, Borrower shall not have any employees at the Property. To the extent Borrower has the right to provide prior written consent to the same pursuant to the terms of the Management Agreement, Borrower shall not consent to Manager's termination of the Property employees in a way that would give rise to liability under the WARN Act, without the prior written consent of Lender.

(iv) Borrower will comply in all material respects with all applicable state and federal anti-discrimination laws and all applicable state and federal laws regarding the payment of wages and benefits to its employees in connection with the operation of the Property.

(v) Bonds; Sub-Guard Insurance. Each Trade Contractor shall be, at Lender's election, either (a) bonded pursuant to a Bond issued by a surety satisfactory to Lender or (b) covered by a sub-guard insurance policy in form and substance acceptable to Lender. Borrower will cause Lender to be named as a co-obligee (as each its interest may appear) with Borrower on all Bonds obtained by Borrower.

5.1.4 Mezzanine Loan Matters.

(a) Notices. Borrower shall deliver to Lender, promptly after the receipt or delivery, a copy of any notice of default received or sent by Mezzanine Borrower with respect to the Mezzanine Loan.

(b) Independent Approval Rights. If any action, proposed action or other decision is consented to or approved by Mezzanine Lender, such consent or approval shall not be binding or controlling on Lender. Borrower hereby acknowledges and agrees that (i) the risks of Mezzanine Lender in making the Mezzanine Loan are different from the risks of Lender in making the Loan, (ii) in determining whether to grant, deny, withhold or condition any requested consent or approval, Mezzanine Lender and Lender may reasonably reach different conclusions, and (iii) Lender has an absolute independent right to grant, deny, withhold or condition any requested consent or approval based on its own point of view, but subject to the standards of consent set forth herein. Furthermore, the denial by Lender of a requested consent or approval shall not create any liability or other obligation of Lender if the denial of such consent or approval results directly or indirectly in a default under the Mezzanine Loan Documents, and Borrower hereby waives any claim of liability against Lender arising from any such denial unless Lender has not complied with any applicable standard for consent. The rights described above may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

(c) Intercreditor Agreement. Borrower hereby acknowledges and agrees that any intercreditor agreement entered into between Lender and Mezzanine Lender will be solely for the benefit of Lender and Mezzanine Lender, and that neither Borrower nor Mezzanine Borrower shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights thereunder, or be entitled to rely on any of the provisions contained therein. Lender and Mezzanine Lender have no obligation to disclose to Borrower or Mezzanine Borrower the contents of any such intercreditor agreement. Borrower's obligations hereunder are and will be independent of any such intercreditor agreement and shall remain unmodified by the terms and provisions thereof.

(d) Modifications, Prepayments, Etc. Without obtaining the prior written consent of Lender, or otherwise in accordance with the terms of the Intercreditor Agreement, Borrower shall not cause or permit any of Mezzanine Borrower or any Affiliate of Borrower or Mezzanine Borrower to (i) amend,

modify, consolidate, spread, restate or waive any of the Mezzanine Loan Documents, (ii) terminate any of the Mezzanine Loan Documents, except in accordance with their terms, (iii) make any voluntary prepayment under any Mezzanine Loan Document, except in connection with the full and simultaneous repayment of the Loan (and then only to the extent prepayment of the Loan is then permitted under the Loan Documents), or (iv) grant any additional collateral to, or incur any guaranty, indemnity or other obligation on account of the Mezzanine Loan in favor of, the Mezzanine Lender or any Affiliate of Mezzanine Lender, except for collateral and guaranty, indemnity and other obligations as required pursuant to the Mezzanine Loan Documents as in effect on the Closing Date. Subject to the foregoing, Borrower shall deliver to Lender a copy of any amendment or modification to any Mezzanine Loan Document within two (2) Business Days after the execution thereof.

5.1.5 Further Assurances. Borrower shall, at Borrower's sole cost and expense, (a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith; (b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Obligations under the Loan Documents, and to establish, maintain, and perfect Lender's security interest therein free of all other Liens (other than Permitted Encumbrances); and (c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, in each case as Lender shall reasonably require from time to time. Borrower authorizes Lender, at the expense of Borrower, to file any financing statement or statements (and amendments thereto and continuations thereof) deemed necessary or desirable by Lender to perfect its security interest in any of the collateral for the Loan (including an "all assets" financing statement within the meaning the UCC). Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, coupled with an interest and with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the collateral for the Loan, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower is required to do under the Loan Documents or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for in the Loan Documents and to accomplish the purposes of this Loan Agreement, including any amendment to the Loan Documents which may be required hereunder, in each case upon Borrower's failure to take any of the foregoing actions or any other applicable action required under the Loan Documents within five (5) Business Days after notice from Lender. The foregoing powers of attorney are irrevocable and coupled with an interest.

5.1.6 Estoppel Statements. After request by Lender, Borrower shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt or the performance of the Obligations, if any, (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of such party and have not been modified or if modified, giving particulars of such modification and such other things as Lender may reasonably request and (vii) such other matters as Lender may reasonably require. Borrower shall use Commercially Reasonable Efforts to deliver to Lender, promptly after Lender's written request, tenant estoppel certificates from each commercial tenant leasing space at the Property in form and substance reasonably satisfactory to Lender, provided, however, that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

ARTICLE VI

INSURANCE; CASUALTY AND CONDEMNATION

SECTION 6.1. Insurance.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk or "special form" insurance, including wind/hail/named storm, on the Improvements and, if applicable, the Personal Property, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement means actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) written on a no coinsurance form or containing an agreed amount endorsement with respect to the Improvements and, if applicable, Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of One Hundred Thousand and No/100 Dollars ($100,000) for all such insurance coverage, except for wind and earthquake which may provide for a maximum deductible of five percent (5%) of the total insurable value; (D) containing "Ordinance or Law Coverage," including coverage for loss to the undamaged portion of the building, demolition costs and increased costs of construction in amounts acceptable to Lender in its commercially reasonable discretion (but in no event shall Borrower be required to maintain more than 10% of the Full Replacement Cost), if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses. In addition, Borrower shall obtain the following additional coverages: (1) if any portion of the Improvements is currently (or at any time in the future is) located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to (y) the maximum amount of such insurance available under the National Flood Insurance Program as governed by the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, with a deductible not greater than Fifty Thousand and No/100 Dollars ($50,000), (z) such excess limits as Lender may require in its commercially reasonable discretion, with a deductible not greater than an amount equal to the maximum available under the foregoing laws; and (2) if the scenario expected loss (SEL) is in excess of twenty percent (20%) of the total insurable value of the Property and commercially available, earthquake insurance with minimum coverage equivalent to 1x SEL of the total insurable value of the Property less the deductible of 5% of the total insurable value of the Property, earthquake insurance in amounts and in form and substance satisfactory to Lender; and (3) if excluded from the comprehensive all risk policy, named windstorm insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in any coastal region, provided, that the insurance pursuant to the preceding clauses (1) and (2) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this clause (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars ($2,000,000) in the aggregate and One Million and No/100 Dollars ($1,000,000) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) intentionally omitted; (C) to cover at least the

following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) contractual liability for all insured contracts; and (D) providing for no deductible in excess of Twenty-Five Thousand and 00/100 Dollars ($25,000) unless approved by Lender in writing;

(iii) rental loss and/or business income interruption insurance (A) with loss payable to Lender as its interest shall appear; (B) covering all risks or "special form" required to be covered by the insurance provided for in clause (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of at least twelve (12) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred percent (100%) of the projected Revenues (which may be reduced to reflect non-continuing expenses) for a period of at least eighteen (18) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the Closing Date and at least once each year thereafter based on Borrower's reasonable estimate of the Revenues for the succeeding twelve (12) month period;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the property and liability coverage forms do not otherwise apply, (A) commercial general liability and umbrella liability insurance covering claims related to the structural construction, repairs or alterations being made at the Property which are not covered by or under the terms or provisions of the commercial general liability and umbrella liability insurance policies required herein; and (B) the insurance provided for in clause (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to clause (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) if applicable, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement and employer's liability in amounts acceptable to Lender;

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under clause (i) above;

(vii) umbrella/excess liability insurance in an amount not less than Twenty Million and No/100 Dollars ($20,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under clause (ii) above;

(viii) if applicable, commercial motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million and No/100 Dollars ($1,000,000);

(ix) pollution legal liability insurance against claims for pollution legal liability resulting from existing conditions and new pollution events related to the Property in form and substance acceptable to Lender ("PLL Policy"), such insurance: (A) to be a claims made and reported policy which shall be maintained, either by renewal, extension or replacement, for a period commencing no later than the Closing Date and continuing through the date that is twenty-four (24) months beyond the fully extended Maturity Date (the "Required PLL Period"); provided, that, no later than the date that is twelve (12) months prior to the Maturity Date, Borrower shall have caused the PLL Policy to be effective through the end of the Required PLL Period without the need for any further renewal, extension or replacement of the PLL Policy; (B) to have a limit of liability of Ten Million Dollars ($10,000,000) for each incident and Ten Million Dollars ($10,000,000) in the aggregate, (C) to have a self-insured retention not to exceed One Hundred Thousand Dollars ($100,000) for each incident; (D) shall name Lender as an additional named insured with its successors and/or assigns as their interests may appear; (E) shall name Lender pursuant to a "Mortgagee Assignment" or similar endorsement providing automatic rights of assignment in the event of default solely to the Property; and (F) shall, throughout the Required PLL Period, include the same coverages, terms, conditions and endorsements (and shall not be modified or cancelled without the prior written consent of Lender) as the PLL Policy approved as of the Closing Date;

(x) the commercial property, business income, commercial general liability and umbrella liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (vii) above shall provide Terrorism Coverage (defined below), whether caused by a foreign or domestic source and Borrower shall maintain Terrorism Coverage on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (vii) above at all times during the term of the Loan; provided, however, in the event the insurance required under Sections 6.1(a)(i) and (iii) above shall contain an exclusion for loss resulting from perils and acts of terrorism, Borrower shall maintain a separate, stand-alone terrorism insurance policy satisfactory to Lender in its commercially reasonable discretion. As used above, "Terrorism Coverage" shall mean acts of terror or similar acts of sabotage; provided, that, for so long as the Terrorism Risk Insurance Act of 2002, as extended and modified by the Terrorism Risk Insurance Program Authorization Act of 2007 (1) remains in full force and effect and (2) continues to cover both foreign and domestic acts of terror, the provisions of such law that define "covered acts" shall determine what is deemed to be included within this definition of "Terrorism Coverage";

(xi) upon not less than thirty (30) days' notice, such other reasonable insurance and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy"), and shall be subject to the approval of Lender, not to be unreasonably withheld, conditioned or delayed, as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A" or better by S&P, or "A2" or better by Moody's, or "AX" or better by AM Best (but in such case only to the extent that such Rating Agency rates the applicable insurer). The Policies described in Section 6.1(a) hereof (other than those strictly limited to liability protection) shall designate Lender as mortgagee and loss payee. Not less than ten (10) days prior to the expiration dates of the Policies theretofore

furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender. Complete copies of the Policies shall be submitted to Lender upon request.

(c) Borrower shall be permitted to obtain the Policies required under Section 6.1(a) hereof under a "blanket" insurance Policy so long as such policy specifically allocates to the Property the amount of coverage from time to time required hereunder and otherwise provides the same protection as would a separate policy insuring only the Property in compliance with the provisions of Section 6.1(a) hereof.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof shall name Borrower as a named insured and, in the case of liability coverages (except for the Policies referenced in Section 6.1(a)(v) and (viii) hereof), shall name Lender as the additional insured, as its interests may appear, and in the case of property coverages, including but not limited to all risk, boiler and machinery, terrorism, and (if applicable) flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All property Policies provided for in Section 6.1 hereof shall: (i) provide that no act or negligence of Borrower, or foreclosure or similar action, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) provide that the Policies shall not be canceled without at least thirty (30) days' notice to Lender, except ten (10) days' notice for non-payment of premium; (iii) provide that the issuers thereof shall give notice to Lender if the Policies have not been renewed ten (10) days prior to its expiration; and (iv) not contain provisions that would make Lender liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender reasonably deems necessary to protect its interest in the Property, including the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender within ten (10) Business Days after written demand and, until paid, shall be secured by the Security Instrument and shall bear interest at the Default Rate. Borrower shall promptly forward to Lender a copy of each written notice received by Borrower of any cancellation of any of the Policies or of any of the coverages afforded under any of the Policies.

SECTION 6.2. Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that such Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty (so long as applicable zoning laws in effect at the time permit such rebuilding), with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 hereof or as otherwise required by zoning codes, building codes, or other applicable laws. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall have the right to approve any final settlement) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than the Net Proceeds Threshold. Borrower shall execute and deliver to Lender all instruments reasonably required by Lender to permit such participation.

SECTION 6.3. Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of any Condemnation of the Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments reasonably requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Furthermore, Borrower shall cooperate with Lender in obtaining for Lender the benefits of any proceeds lawfully or equitably payable in connection with a Condemnation of the Property. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents, and the Outstanding Principal Balance shall not be reduced until any condemnation proceeds shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Condemnation proceeds by the applicable Governmental Authority but shall be entitled to receive out of the Condemnation proceeds interest at the rate or rates provided herein. If the Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration (to the extent such taking resulted in repairable damage) and otherwise comply with the provisions of Section 6.4 herein.

SECTION 6.4. Application of Net Proceeds. All proceeds or awards payable in connection with any Casualty or Condemnation shall be due and payable solely to Lender and shall be held by Lender in an Eligible Account established by Lender from time to time (the "Net Proceeds Reserve Account") as additional collateral for the Obligations, subject to the terms and conditions of this Agreement; provided that Borrower may settle any insurance claim with anticipated Net Proceeds of less than Two Hundred Fifty Thousand Dollars ($250,000) provided that Borrower promptly and diligently uses such Net Proceeds for Restoration. In the event Borrower or any party other than Lender is a payee on any check representing such proceeds or awards, Borrower shall immediately endorse (and cause all such third parties to endorse) such check payable to the order of Lender. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to endorse any such check payable to the order of Lender in the event Borrower has not done so within five (5) days after Lender's demand therefor. The expenses incurred by Lender in the adjustment and collection of such proceeds or awards shall become part of the Debt and shall be reimbursed by Borrower to Lender within five (5) days after Lender's written demand. Borrower hereby releases Lender from any and all liability with respect to the settlement and adjustment by Lender of any claims in respect of any Casualty or Condemnation unless caused by Lender's gross negligence or willful misconduct. The following provisions shall apply in connection with the application of Net Proceeds so received by Lender:

(a) If the Net Proceeds shall be less than the Net Proceeds Threshold and the costs of completing Restoration shall be less than the Net Proceeds Threshold, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that no Event of Default then exists and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration of the Property (if applicable) in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than the Net Proceeds Threshold or the costs of completing Restoration is equal to or greater than the Net Proceeds Threshold, Borrower shall not be permitted to use the Net Proceeds for a Restoration (or to retain Net Proceeds in the event no Restoration is required) unless the following conditions are satisfied:

(i) no Event of Default shall have occurred and be continuing;

(ii) (A) in the event the Net Proceeds are insurance proceeds, less than thirty percent (30%) of the total floor area of the Improvements on the Property has been damaged, destroyed or rendered unusable as a result of such Casualty, or (B) in the event the Net Proceeds are Condemnation proceeds, less than fifteen percent (15%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements on the Property is located on such land or is being taken;

(iii) the Master Lease, any Material Agreements and any REAs shall remain in full force and effect during and after the completion of the Restoration, without abatement of rent beyond the time required for Restoration, notwithstanding the occurrence of any such Casualty or Condemnation;

(iv) Lender shall have determined in good faith that the proceeds of any applicable business interruption insurance (together with any projected Revenues and any additional funds to be deposited with Lender for such purposes) are sufficient to pay all Debt Service coming due under the Loan Documents and all Operating Expenses through the end of the Restoration;

(v) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (A) six (6) months prior to the Maturity Date, (B) such time as may be required under applicable Legal Requirements, and (C) the expiration of any applicable business interruption coverage;

(vi) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(vii) such Casualty or Condemnation, as applicable, does not result in the total loss of access to the Property or the related Improvements;

(viii) Lender shall have determined that, after giving effect to the Restoration, the Debt Yield shall be equal to or greater than the higher of (A) eight and one-half percent (8.5%), and (B) the Debt Yield in effect immediately prior to the applicable Casualty or Condemnation;

(ix) Intentionally omitted;

(x) Lender shall have determined that, after giving effect to the Restoration, the ratio (expressed as a percentage) in which the numerator is the Outstanding Principal Balance and the denominator is equal to the appraised value of the Property (as determined pursuant to an Appraisal ordered by Lender (but at the sole cost and expense of Borrower) and based upon assumptions acceptable to Lender, and otherwise acceptable to Lender in its sole but good faith discretion), shall not be greater than the lower of (A) forty-five percent (45%), and (B) such ratio in effect immediately prior to the applicable Casualty or Condemnation;

(xi) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be subject to Lender's approval in Lender's sole but good faith discretion; and

(xii) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of Restoration.

(c) All Net Proceeds received by Lender and not disbursed to Borrower shall be held by Lender in the Net Proceeds Reserve Account and shall be applied (i) to the repayment of Debt if Lender so elects and is not required to allow Borrower to use the same as provided in Section 6.4(a) above, or (ii) toward the cost of Restoration to the extent so required pursuant to Section 6.4(a) above; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt on the respective dates of payment provided for, or perform the Obligations as required under, this Agreement and the other Loan Documents, except to the extent such amounts are actually paid out of such Net Proceeds. If the conditions described in Section 6.4(b) have been satisfied, Borrower shall commence any applicable Restoration as soon as reasonably practicable (but in no event later than ninety (90) days after Lender has informed Borrower as to whether such conditions have been satisfied, subject to Excusable Delay) and shall complete the same in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements in all material respects. If such conditions have not been satisfied, Borrower shall not be deemed to be in Default hereunder for failing to diligently pursue a Restoration for a period of sixty (60) days thereafter so long as the Debt is repaid in full within such 60-day period (provided that the foregoing shall not be deemed a waiver of any other Default or Event of Default that may occur during such 60-day period).

(d) Notwithstanding anything to the contrary in this Agreement, all insurance proceeds received by Borrower or Lender in respect of business interruption coverage shall be held by Lender in the Net Proceeds Reserve Account and, so long as no Event of Default then exists, shall be applied at Lender's sole discretion to (i) the Debt then due and payable, and (ii) Operating Expenses approved by Lender in its sole discretion; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt on the respective dates of payment provided for, or perform its Obligations as required under, this Agreement and the other Loan Documents.

(e) If required pursuant to this Section 6.4, funds in the Net Proceeds Reserve Account shall be disbursed by Lender to pay the costs of the Restoration, to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (i) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (ii) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not been fully bonded or insured to the satisfaction of Lender. All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender. The identity of the contractors, subcontractors and materialmen engaged in Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and approval by Lender, not to be unreasonably withheld, conditioned or delayed. All out-of-pocket costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration shall be paid by Borrower. In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of Restoration, minus an amount equal to ten percent (10%) (or such higher amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration) of the direct construction "hard" costs actually incurred for work in place as part of Restoration, until Restoration has been completed. Such retained amount shall not be released until Lender has determined that Restoration has been completed in accordance with the provisions of this Section 6.4(e) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been

paid in full or will be paid in full out of such retained amount; provided, however, that Lender will release the portion of such retained amount being held with respect to any Person upon Lender determining that such Person has satisfactorily completed all work and/or has supplied all materials required of such Person and such Person has waived any right to Lien the Property. Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the good faith opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by Lender to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency with Lender before any further disbursement of the Net Proceeds shall be made, and such sums shall be held by Lender and shall be disbursed for costs actually incurred in connection with Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to Section 6.4(e) shall constitute additional security for the Debt and the Obligations.

(g) The excess, if any, of the funds in the Net Proceeds Reserve Accounts after Lender has determined that the Restoration has been completed in accordance with the provisions of Section 6.4(e), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be applied in the same manner as Revenues are applied pursuant to Section 3.1(b) hereof (or if not applicable, shall be disbursed to Borrower so long as no Event of Default then exists).

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

SECTION 7.1. Events of Default. Each of the following events shall constitute an event of default hereunder (an "Event of Default"):

(a) if (i) any payment of principal or interest due with respect to the Loan is not paid on the Payment Date when due, or (ii) the entire Debt is not paid in full on the Maturity Date, or (iii) any payment required to be made to a Reserve Account under this Agreement is not paid on the Payment Date when due, (iv) the Prepayment Premium is not paid in full when due, or (v) any other monetary sum required to be paid hereunder or under any other Loan Document is not paid within five (5) Business Days after written demand from Lender; provided, that, solely with respect to subclause (i) of this clause (a), no Event of Default shall result from a failure to pay the amounts described in such subclause (i) if (x) sums sufficient to pay such amount are available from funds held by Lender and specifically allocated to the payment of Debt Service, and such failure to pay arises solely from Lender's failure to apply such funds to pay the amount described in subclause (i) if and when required pursuant to the terms of this Agreement (unless Lender's access to such funds is restricted in any manner), or (y) such failure is solely as a result of any Lender's failure to make an Advance (which Advance is required to be made for the payment of the amount described in subclause (i) pursuant to the terms of this Agreement) if and when required to do so hereunder;

(b) if any of the Property Taxes or Other Charges are not paid prior to delinquency (unless same are being contested by Borrower in accordance with the terms and conditions of this Agreement) ; provided, that, no Event of Default shall result from a failure to pay the amounts described in this clause (b) if (x) sums sufficient to pay such amount are available from funds held by Lender and specifically allocated to the payment of Property Taxes and Other Charges, and such failure to pay arises solely from Lender's failure to apply such funds to pay the amount described in this clause (b) if and when required pursuant to the terms of this Agreement (unless Lender's access to such funds is restricted in any manner), or (y) such failure is solely as a result of any Lender's failure to make an Advance (which Advance

is required to be made for the payment of the amount described in this clause (b) pursuant to the terms of this Agreement) if and when required to do so hereunder;

(c) if the Policies are not kept in full force and effect pursuant to the terms hereof, or if certified copies of the Policies are not delivered to Lender within thirty (30) days after Lender's request therefor;

(d) the occurrence of a Transfer (other than a Permitted Transfer in accordance with this Agreement); provided, however, (i) the existence of inchoate mechanics liens imposed by operation of law relating to labor or materials provided to the Property in compliance with the terms and conditions of the Loan Documents and as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced shall not constitute an Event of Default hereunder, and (ii) the existence of an actual Lien relating to labor or materials provided to the Property in compliance with the terms and conditions of the Loan Documents shall not constitute an Event of Default hereunder so long as the same is being contested and/or has been bonded over as provided in Section 5.1.2(b) hereof within thirty (30) days after Borrower acquires actual knowledge of the filing or recording of such Lien (but in any event not later than five (5) Business Days after the commencement of an action to foreclose on such Lien);

(e) if (i) any representation or warranty made by Borrower herein or by Borrower or Guarantor in any other Loan Document as of the date such representation or warranty was made or is deemed to have been remade is, or (ii) any financial statement, report, certificate or other instrument, agreement or document furnished to Lender by or on behalf of Borrower or Guarantor after the Closing Date shall have been (or contained statements or information that is), false or misleading in any material respect as of the date the same was delivered, unless with respect to the foregoing misrepresentations or false or misleading information (each, a "Misrepresentation") (A) such Misrepresentation was not knowingly or intentionally made, (B) Lender has suffered no material Loss on account thereof (or Borrower shall have reimbursed Lender for the amount of such Loss so demanded by Lender) nor has the same resulted in a Material Adverse Effect, (C) such Misrepresentation can be cured (meaning that the facts and circumstances underlying the applicable Misrepresentation can be changed such that the applicable representation or information as made or delivered will be true and correct), and (D) such Misrepresentation has been so cured within thirty (30) days after the earlier of (1) the date on which Borrower first has actual knowledge that such Misrepresentation exists, and (2) the date on which Lender first notifies Borrower that such Misrepresentation exists);

(f) if a Bankruptcy Action occurs with respect to Borrower, any SPE Component Entity, or Guarantor; provided, however, if Bankruptcy Action was involuntary and not consented to by such Person, the same shall constitute an Event of Default hereunder only upon the same not being discharged, stayed or dismissed within sixty (60) days;

(g) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(h) if Borrower breaches any of the covenants set forth in Section 5.1.1(b), (d), (e), (g) or (h), Section 5.1.2(f), (g), (h), (i), (j), (n), (o), (u) or (v), Section 5.1.3 or Section 5.1.4;

(i) if Borrower breaches any of its covenants contained in Section 5.1.1(f) hereof and such breach continues for a period of ten (10) days following Lender's notice to Borrower of the same;

(j) if one or more judgments or decrees shall be entered against (i) Borrower, or (ii) Guarantor (individually or collectively) involving, in the case of clause (ii) only, in the aggregate a liability in excess of $2,500,000 and, in either case, the same shall not have been vacated, bonded, satisfied or stayed

pending appeal within thirty (30) days from the date of entry of such judgment (or within thirty (30) days after the termination of any stay thereon obtained within such aforementioned thirty (30) day period);

(k) if Guarantor breaches the Financial Covenant Requirements or fails to pay any amounts due and payable under the Environmental Indemnity or any of the Guarantees and such failure remains uncured for ten (10) Business Days;

(l) if (A) Borrower shall be in default under any REA, any Construction Document or any Material Agreement beyond the expiration of applicable notice and grace periods, if any, thereunder, (B) any of the REAs, Construction Documents or Material Agreements are amended, supplemented, replaced, restated or otherwise modified without Lender's prior written consent or (C) any REA or the estate created thereunder is canceled, rejected, terminated, surrendered or expires pursuant to its terms, unless in such case Borrower enters into a replacement thereof in accordance with the applicable terms and provisions hereof;

(m) Borrower fails to terminate any applicable Management Agreement if requested by Lender (when Lender has the right to so require a termination of the Management Agreement pursuant to this Agreement) and replace such Manager with a Qualified Manager pursuant to a Replacement Management Agreement within thirty (30) days after Lender's request therefor;

(n) if the General Contractor Agreement is terminated and a new General Contractor is not appointed as a replacement General Contractor pursuant to the provisions hereof within thirty (30) days after such termination;

(o) the occurrence of any Milestone Non-Compliance Event;

(p) if Borrower shall fail to obtain and/or maintain the Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement as required pursuant to Section 2.2.7 hereof (after giving effect to applicable notice and grace periods set forth in Section 2.2.7);

(q) if there shall exist an "Event of Default" under and as defined in any other Loan Document, or with respect to any term, covenant or provision set forth in the Loan Documents which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(r) a breach of the covenants set forth in Section 5.1.3(m);

(s) if Borrower or SPE Component Entity incurs any Indebtedness other than Permitted Indebtedness; or

(t) if a Default not specified in the clauses enumerated above continues to exist for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower or Guarantor (as applicable) shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

SECTION 7.2. Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 7.1(f) above), in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including all rights or remedies available at law or in equity; and upon the occurrence and during the continuance of any Event of Default described in Section 7.1(f) above, the Debt shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

(b) During the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing, to the extent allowed by applicable laws, (i) Lender shall not be subject to any "one action" or "election of remedies" law or rule, (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Lien created by the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full, and (iii) Lender may, in its sole discretion, without impairing or otherwise affecting any other rights and remedies of Lender hereunder, at law or in equity, apply, ex parte, for the appointment of a custodian, trustee, receiver, keeper, liquidator or conservator of the Property or any part thereof, irrespective of the adequacy of the security for the Debt and without regard to the solvency of Borrower or of any Person liable for the payment of the Debt, to which appointment Borrower does hereby consent and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Revenues with respect to the Property pursuant to this Agreement or any other Loan Document.

(c) During the continuance of an Event of Default, Lender shall have the right from time to time to sever the Notes and the other Loan Documents into one or more separate notes, mortgages and other security documents in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. The costs or expenses

incurred in connection with the preparation, execution, recording or filing of the foregoing Loan Documents (and amendments thereto) shall be paid by Borrower.

(d) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. Except as limited by applicable law, Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Debt, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(e) In addition to all remedies conferred it by law and by the terms of this Agreement and the other Loan Documents, during the continuance of an Event of Default Lender may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other, and with full rights to reimbursement from Borrower and any Guarantor: (i) take possession of the Property and complete any construction work at the Property, including the right to avail itself of and procure performance of existing contracts or let any contracts with the same contractors or others and to employ watchmen to protect the Property from injury. Without restricting the generality of the foregoing and for the purposes aforesaid to be exercised during the existence and continuance of an Event of Default, Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution to complete any construction work at the Property in the name of Borrower; (ii) use Reserve Funds to complete any construction work at the Property; (iii) make changes to the plans and specifications which shall be necessary or desirable to complete any construction work at the Property in substantially the manner contemplated by such plans and specifications; (iv) retain or employ new general contractors, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which may be liens or security interests, or to avoid such bills and claims becoming liens against the Property, or as may be necessary or desirable for the completion of any construction work at the Property or for the clearance of title to the Property; (v) execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) prosecute and defend all actions or proceedings in connection with any construction work at the Property; and (vii) take any action and require such performance as it deems necessary to be furnished hereunder and to make settlements and compromises with the surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction.

(f) Any amounts recovered from the Property or any other collateral for the Loan after an Event of Default may be applied by Lender toward the payment of the Debt in such order, priority and proportions as Lender determines.

(g) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower or Guarantor pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion.

(h) During the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or under the other Loan Documents or being deemed to have cured any Event of Default, make, do or perform any obligation of Borrower hereunder or under the other Loan Documents in such manner and to such extent as Lender may deem necessary (including, without limitation, curing any default under or breach of the Management Agreement, regardless of whether a Default or Event of Default exists hereunder. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property for such purposes. All out-of-pocket costs and expenses incurred by Lender in remedying or attempting to remedy such Event of Default or such other breach or default by Borrower or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate from the date such costs and expenses were incurred to the date reimbursement payment is received by Lender. All such costs and expenses incurred by Lender, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Obligations, shall be secured by the liens and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

(i) Upon the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; provided, however, that such Event of Default shall cease to continue only if Lender shall accept payment or performance of the defaulted obligation or shall execute and deliver a written confirmation that such Event of Default has ceased to continue. Lender shall not be obligated under any circumstances whatsoever to accept such payment or performance or execute and deliver any such writing. Without limitation, this Section shall govern in any case where reference is made in this Loan Agreement or elsewhere in the Loan Documents to (i) any "cure" (whether by use of such word or otherwise) of any Event of Default, (ii) "during an Event of Default," "the continuance of an Event of Default" or "after an Event of Default has ceased" (in each case, whether by use of such words or otherwise), or (iii) any condition or event which continues beyond the time when the same becomes an Event of Default.

ARTICLE VIII

LIMITATION ON RECOURSE

SECTION 8.1. Exculpation. Subject to the qualifications set forth in this Article VIII, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Notes, this Agreement, the Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, or its direct or indirect owners (other than pursuant to any separate agreement, indemnity or guaranty, including pursuant to the Guarantees and the Environmental Indemnity), except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Notes, this Agreement, the Security Instrument and the other Loan Documents, or in the Property, the Revenues, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment awarded in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Revenues and in any other collateral given to Lender, and Lender, by accepting the Notes, this Agreement, the Security Instrument and the other Loan Documents, and without limitation of the foregoing and in addition thereto, agrees for itself and its successors and assigns that it and its successors and assigns shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Notes, this Agreement, the Security Instrument or the other Loan Documents. The provisions of this Section 8.1 shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale

under the Security Instrument; (c) affect the validity or enforceability of any separate agreement, indemnity or guaranty (including the Guarantees and the Environmental Indemnity), or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the assignment of Leases pursuant to the Security Instrument; or (f) constitute a prohibition against Lender seeking a deficiency judgment against Borrower in order to fully realize the security granted by the Security Instrument or commencing any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property.

SECTION 8.2. Recourse for Losses. Nothing contained in this Agreement or any of the other Loan Documents shall in any manner or way release, affect or impair the right of Lender to recover, and Borrower shall be fully and personally liable for and subject to legal action to the extent of, any Losses actually suffered or incurred by Lender to the extent arising out of or in connection with the following (all such liability and obligation for any or all of the following being referred to herein as the "Recourse Liabilities"):

(i) fraud, intentional misrepresentation, or intentional failure to disclose a material fact concerning the Property, Borrower, Guarantor, or the Loan by any of the Borrower Parties;

(ii) the gross negligence, willful misconduct, or illegal acts of any of the Borrower Parties;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Loan Documents concerning environmental laws or hazardous substances, or any indemnification of Lender and other applicable indemnified parties with respect thereto, in any of the Loan Documents;

(iv) intentional physical waste of the Property by any Borrower Party or any Person at the direction of any of the foregoing;

(v) the removal or disposal of any portion of the Property after an Event of Default;

(vi) the misappropriation, conversion, or application in a manner prohibited by the Loan Documents by or on behalf of any Borrower Party of (A) any Net Proceeds, (B) any funds disbursed from the Reserves, (C) the Initial Advance or any Additional Advances, or (D) any Revenues received after an Event of Default, or (E) any Revenues paid more than one (1) month in advance;

(vii) failure to pay charges for labor or materials or other charges that create a Lien on any portion of the Property;

(viii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof and permitted hereunder;

(ix) failure of Borrower to purchase and maintain any Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap

Agreement as required pursuant to this Agreement (including amounts payable by Borrower pursuant to Section 2.2.7, it being agreed that Lender shall have no obligation to purchase an Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement on behalf of Borrower, and that Lender's Losses on account of Borrower's failure to purchase an Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement are not limited to the cost of such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement at the time the same was required to be purchased);

(x) Borrower's failure to obtain and maintain the fully paid for Policies in accordance with Section 6.1 attributable to the time that Borrower owns the Property;

(xi) Borrower's failure to pay all Property Taxes attributable to the time that Borrower owns the Property prior to the same becoming delinquent;

(xii) the failure of Borrower or any SPE Component Entity to be a Special Purpose Entity;

(xiii) any liability under the WARN Act or any other applicable similar law that arises as a result of the termination of any of the employees at the Property, provided that Borrower shall in no event be liable under this clause 8.2(xiii) to the extent the termination of employees was made by or at the direction of Lender;

(xiv) the forfeiture by any Borrower Party of the Property or any material portion thereof, caused by or resulting from criminal conduct or activity by Borrower or any Borrower Party in connection therewith;

(xv) any transfer, mortgage, mortgage recording, stamp, intangible or other similar Taxes for which Lender becomes obligated, directly or indirectly, following a foreclosure of the Property or action in lieu thereof;

(xvi) any Withdrawal Liability or similar amounts incurred by Borrower or any Affiliate of Borrower for which Lender becomes obligated, directly or indirectly, upon the conclusion of a foreclosure of the Property or action in lieu thereof;

(xvii) any distributions made by any Borrower Party in violation of the terms of the Loan Documents;

(xviii) the failure of Borrower, Guarantor or any SPE Component Entity to be a Special Purpose Entity;

(xix) the failure of Borrower to comply with any provisions of Section 5.1.1(f) hereof;

(xx) the failure of Borrower to comply with any provisions of Section 5.1.2(j);

(xxi) incurrence by Borrower or SPE Component Entity of any Indebtedness in violation of this Agreement;

(xxii) the failure of the Property at any time to be in compliance with Legal Requirements as a result of any deficiency in parking available to the Property; and/or

(xxiii) the failure of Borrower at any time to have renewed, extended or replaced the PLL Policy in order to cause the PLL Policy at all times to satisfy the requirements of Section 6.1(a)(ix) hereof.

SECTION 8.3. Full Recourse. Notwithstanding anything to the contrary in this Agreement, the Notes or any of the Loan Documents, (a) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by the Security Instrument or to require that all collateral shall continue to secure all of the Obligations in accordance with the Loan Documents; and (b) the Debt shall be fully recourse to Borrower in the event of any of the following (each, a "Springing Recourse Event"):

(i) Borrower, Guarantor or SPE Component Entity filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(ii) the filing of an involuntary petition against Borrower, Guarantor or SPE Component Entity under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by a Borrower Party or any other Person in which any of the Borrower Parties colludes with or otherwise assists such Person;

(iii) any Borrower Party soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Guarantor or SPE Component Entity from any Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(iv) Borrower, Guarantor, SPE Component Entity, or any of the other Borrower Parties consenting to, acquiescing in, or joining in any involuntary petition filed against Borrower, Guarantor or SPE Component Entity, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(v) Borrower, Guarantor, SPE Component Entity, or any of the other Borrower Parties consenting to, acquiescing in, or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Guarantor or SPE Component Entity or all or any portion of the Property (other than an application by Lender in connection with the enforcement of Lender's remedies under the Loan Documents);

(vi) Borrower, Guarantor or SPE Component Entity making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(vii) the failure of Borrower, Guarantor or any SPE Component Entity to be a Special Purpose Entity, and such failure is cited as a factor in any order for substantive consolidation of Borrower or SPE Component Entity with any other Person;

(viii) the occurrence of a Transfer of the Property or Equity Interest in any Restricted Party made in violation of this Agreement;

(ix) if any Borrower Party, in any judicial or quasi-judicial case, action or proceeding contests (or any Borrower Party colludes with or otherwise assists any other Person, or solicits or causes to be solicited any other Person to contest) the validity or enforceability of the Loan Documents or contests or intentionally hinders, delays or obstructs (or any Borrower Party colludes with or otherwise assists any other Person, or solicits or causes to be solicited any other Person to contest, hinder, delay or obstruct) the pursuit of any rights or remedies by Lender (including the commencement and/or prosecution of a foreclosure action, judicial or non-judicial, the appointment of a receiver for the Property or any portion thereof or any enforcement of the terms of the assignment of Leases pursuant to the Security Instrument), unless a court of competent jurisdiction finds that such actions by any such Borrower Party were undertaken in good faith, and were not based on a frivolous or meritless position;

(x) if any Borrower Party shall make a counterclaim against Lender, Servicer or their Affiliates in violation of Section 10.15 hereof; and/or

(xi) Borrower entering into any amendment or termination of the Master Lease in violation of this Agreement.

ARTICLE IX

SECONDARY MARKET TRANSACTIONS; SERVICING

SECTION 9.1. Secondary Market Transactions. Borrower acknowledges and agrees that Lender may (a) sell all or any portion of the Loan and the Loan Documents, including, in each case, via a CUSIP, and/or (b) grant or issue one or more participations therein (any such sales, transfers, and/or participations described in the foregoing clauses, collectively, a "Secondary Market Transaction"). If Lender determines at any time to participate in a Secondary Market Transaction, Lender may forward to each actual or potential purchaser, transferee, assignee, servicer, participant or investor in the Loan, counsel, and accountants, all documents and information which Lender now has or may hereafter acquire relating to the Loan, Borrower, Guarantor, and any direct or indirect equity owner of Borrower, which shall have been furnished to Lender in connection with the Loan, as Lender in its discretion determines necessary or desirable.

SECTION 9.2. Borrower Cooperation.

(a) In connection with any Secondary Market Transaction, Borrower shall execute and deliver to Lender such documents, instruments, certificates, financial statements, assignments and other writings, do such other acts and provide such information, and participate in such meetings and discussions, in each case that are reasonably necessary to facilitate the consummation of each Secondary Market Transaction, including executing and delivering such documents and agreements (and deliver such opinions of counsel with respect thereto as Lender may require) necessary to (i) restructure the Loan into multiple notes (which may include component notes and/or senior and junior notes) and/or reduce the number of notes, and/or (ii) restructure the Loan into a mortgage loan and one or more mezzanine loans (to be made to one or more Special Purpose Entities that will be the direct and/or indirect owners of the Equity Interests in Borrower, and secured by a pledge of such Equity Interests, in each case including that such notes and/or mezzanine loans, and/or (iii) establish different interest rates with respect to, and reallocate the amortization and principal balances applicable to, each note or tranche of the Loan, and/or (iv) assign to each such note or tranche or of each of the restructured Loan (collectively, "Tranches") such order of priority as may be designated by Lender, and/or (v) modify any operative dates within the Loan Documents (including the Payment Date, the Determination Date, and the Interest Accrual Period); provided, however, that (A) the

aggregate principal amount of all such Tranches as of their date of creation shall equal the Outstanding Principal Balance immediately prior to their creation, (B) the weighted average interest rate of all such Tranches shall on the date created equal the interest rate that was applicable to the Loan immediately prior to the creation of such Tranches, (C) the debt service payments on all such Tranches shall on the date they are created equal the debt service payment that was due under the Loan immediately prior to the creation of such Tranches, (D) no such amendment to the Loan Documents shall decrease in any material manner the rights of Borrower or Guarantor under the Loan Documents, or result in any additional material liability or material obligation to Borrower or Guarantor under the Loan Documents (except to the extent related to having different interest rates apply to the Tranches upon partial paydown thereof following the occurrence of an Event of Default, or the extent related to having separate mortgage and mezzanine loans), and (E) no such amendment described in clause (v) above shall be effective sooner than thirty (30) days after notice thereof from Lender, nor shall it cause the Maturity Date to be an earlier date). In connection with the creation of any mezzanine loan as described above, Borrower shall cause the formation of one or more Special Purpose Entities as required by Lender in order to serve as the borrower under any such mezzanine loan (and the applicable organizational documents of Borrower and such new entity shall be acceptable to Lender in form and content), and Borrower shall deliver to Lender a "UCC-9" insurance policy and a mezzanine endorsement to the owner's policy of title insurance held by Borrower, and such opinions of legal counsel as lender may reasonably require. If Borrower fails to cooperate with Lender within ten (10) Business Days of written request by Lender, Lender is hereby appointed as Borrower's attorney in fact, coupled with an interest, to execute any and all documents necessary to accomplish such modifications (but in any event the Loan Documents shall be deemed to have been modified to incorporate any such modifications as Lender may so notify Borrower of in writing) and at Lender's option, declare such failure to be an Event of Default.

(b) At the request of Lender, Borrower shall provide information regarding Borrower, the Guarantor or the Property which is not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors or required by applicable Legal Requirements in connection with any such Secondary Market Transaction, including to: (i) provide additional and/or updated information concerning Borrower, any SPE Component Entity, Guarantor, Manager, or the Property, together with appropriate verification and/or consents related to such information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender; (ii) assist in preparing descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, any SPE Component Entity and their respective Affiliates to obtain, collect, and deliver information requested or required by Lender; (iii) deliver (1) new or updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Property, Borrower, any SPE Component Entity, Guarantor and their respective Affiliates, and the Loan Documents (including a so-called "10b-5" opinion), and (2) revised organizational documents for Borrower and any SPE Component Entity and certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower and SPE Component Entity as of the date of the Secondary Market Transaction, which counsel opinions and revisions to organizational documents shall be reasonably satisfactory to Lender; (iv) use Commercially Reasonable Efforts to deliver such additional tenant estoppel letters and subordination, non-disturbance and attornment agreements or, if applicable, estoppels from parties to agreements that affect the Property and who are required to provide the same, which estoppel letters and subordination non-disturbance and attornment agreements shall be reasonably satisfactory to Lender; (v) make such representations and warranties as of the closing date of the Secondary Market Transaction with respect to the Property, Borrower, any SPE Component Entity, Guarantor and the Loan Documents as may be reasonably requested by Lender and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents; (vi) if requested by Lender, review and certify as to the accuracy of any information regarding the Property, Borrower, any SPE

Component Entity, Guarantor, Manager, and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any Affiliate thereof; and (vii) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws and other Legal Requirements.

SECTION 9.3. Disclosure Indemnification. Borrower and Guarantor agree to provide, in connection with any sale or participation of any direct or indirect interest in the Loan, an indemnification agreement (a) certifying that (i) Borrower and Guarantor have carefully examined all written materials provided to Borrower by Lender (to the extent such information relates to, or is based on, or includes any information regarding the Property, Borrower, Mezzanine Borrower, Master Tenant, Guarantor, Manager and/or the Loan) and (ii) such written materials do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (b) jointly and severally indemnifying Lender, and each of its officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Indemnified Persons"), for any losses, claims, damages, liabilities, costs or expenses (including without limitation legal fees and expenses for enforcement of these obligations (collectively, the "Liabilities") to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the written materials provided to Borrower by Lender or arise out of or are based upon the omission or alleged omission to state in such written materials a material fact required to be stated therein or necessary in order to make the statements in such written materials, in light of the circumstances under which they were made, not misleading and (c) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (b) and (c) above shall be effective, valid and binding obligations of the indemnifying Persons, whether or not an indemnification agreement described in clause (a) above is provided.

SECTION 9.4. Costs and Expenses. Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, Borrower shall not be required to pay for any costs and expenses of Lender pursuant to this Article IX following the Closing Date in excess of $75,000 in the aggregate, provided, that, (a) such cap shall not apply to any legal fees or other costs or expenses (i) of Borrower or (ii) that are incurred in connection with any opinion of counsel that Lender requires to be delivered in connection with a Secondary Market Transaction, and (b) such cap shall be reduced by the amount of any costs and expenses that Mezzanine Borrower actually pays to Mezzanine Lender pursuant to Article IX of the Mezzanine Loan Agreement.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations (other than contingent indemnification obligations which expressly survive the repayment of the Debt) are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party.

All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

SECTION 10.2. **Lender's Discretion**. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or to make any election, waiver, or request, or to make any determination, or find that any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove, or to make such election, waiver, request, or determination, decision, or finding shall (except as is otherwise specifically herein provided) be in the sole and absolute discretion of Lender and shall be final and conclusive. Whenever pursuant to this Agreement, Lender exercises any right given to it to reasonably approve or disapprove, or to make any election, waiver, or request, or to make any determination reasonably, or find that any arrangement or term is to be reasonably satisfactory to Lender, during the continuance of an Event of Default, the decision of Lender to approve or disapprove, or to make such election, waiver, request, or determination, decision, or finding shall (except as is otherwise specifically herein provided) be in the sole and absolute discretion of Lender and shall be final and conclusive.

SECTION 10.3. Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW)) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER **LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR**

STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

DELANEY CORPORATE SERVICES, LTD.
99 WASHINGTON AVENUE, SUITE 805A
ALBANY, NEW YORK, 12210

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SECTION 10.4. Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by each of the parties hereto, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

SECTION 10.5. Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or under any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount. A waiver of one Default or Event of Default shall not be construed to

be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power consequent thereon.

SECTION 10.6. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery (with a copy of any notice delivered by the methods described in clause (a) or clause (b) to be sent by electronic mail), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender:	OPG Hermes Investments (DE) LLC c/o Oxford Properties Group 450 Park Avenue 10th Floor New York, New York 10022 Attention: Legal Counsel
with a copy to:	Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004 Attention: Michael Vines, Esq.
If to Borrower:	Complex Therapeutics LLC c/o Instil Bio, Inc. 3963 Maple Avenue, Suite 350 Dallas, Texas 75219 Attention: Sandeep Laumas
With a copy to:	Cooley LLP 4401 Eastgate Mall San Diego, California 92121-1909 Attention: David Crawford, Esq.

A notice shall be deemed to have been given: (i) in the case of hand delivery or delivery by a reputable overnight courier, at the time of delivery; (ii) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (iii) or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept notice, shall be deemed to have been given when the delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its counsel and any notice required or permitted to be given by Lender hereunder or under any other Loan Document may also be given by a Servicer.

SECTION 10.7. Trial by Jury. BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A

TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER AND BORROWER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.

SECTION 10.8. Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

SECTION 10.9. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

SECTION 10.10. Preferences. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the Debt. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

SECTION 10.11. Waiver of Notice. Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

SECTION 10.12. Remedies of Borrower. In the event that a claim or adjudication is made (except any claim or adjudication arising out of any exercise of remedies by Lender) that Lender or any of its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

SECTION 10.13. Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender, within ten (10) Business Days following receipt of written notice from Lender for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and

the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement and the other Loan Documents; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Guarantor, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any Obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the illegal acts, gross negligence, bad faith or willful misconduct of Lender. Any cost and expenses due and payable to Lender may, at the direction of Lender in its sole discretion, be paid from any amounts in the Clearing Account or the Cash Management Account.

(b) Borrower shall indemnify, defend and hold harmless Lender, each Servicer, their respective Affiliates, and their respective directors, managers, officers, partners, members, shareholders, participants, employees, professionals and agents of any of the foregoing, and the successors and assigns of the foregoing (each, an "Indemnified Party"), from and against any and all Losses that may be imposed on, incurred by, or asserted against an Indemnified Party in any manner relating to or arising out of (i) any Defaults or Events of Default under the Loan and/or in connection with the enforcement of the Loan Documents, (ii) any breach by Borrower of its Obligations under, or any misrepresentation by any Borrower Party contained in the Loan Documents, (iii) the use or intended use of the proceeds of the Loan, (iv) costs incurred by Lender in connection with any amendment to, or restructuring of, the Debt or the Loan Documents, (v) any accident, injury to, or death of, Persons or loss of or damage to the Property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or rights of way, (vi) any use, non-use or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or rights of way, (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (viii) any failure of the Property to be in compliance with any Legal Requirements, (ix) any and all claims and demands whatsoever which may be asserted against an Indemnified Party by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease or other agreement relating to the Property, (x) any and all Losses that Lender may incur, directly or indirectly, as a result of a breach of Sections 4.1.1(g) or 5.1.1(c) hereof by Borrower, and (xi) all Recourse Liabilities; provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that the applicable indemnified liabilities arise from the illegal acts, gross negligence, bad faith or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the

maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all such indemnified liabilities incurred by Lender.

(c) Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or in addition to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld or delayed. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(d) The indemnifications made pursuant to this Section 10.13 shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: (i) any satisfaction, release or other termination of this Agreement, the Security Instrument or any other Loan Document, (ii) any assignment or other transfer of all or any portion of this Agreement, the Security Instrument or any other Loan Document or Lender's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (iii) any exercise of Lender's rights and remedies pursuant hereto, under the Security Instrument or under any other Loan Document, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, (iv) any exercise of any rights and remedies pursuant to this Agreement, the Note or any of the other Loan Documents, (v) any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (vi) any amendment to this Agreement, the Security Instrument, the Note or any other Loan Documents, and/or (vii) any act or omission that might otherwise be construed as a release or discharge of Borrower from the Obligations or any portion thereof.

SECTION 10.14. Schedules Incorporated. The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

SECTION 10.15. Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower. Borrower hereby waives the right to assert (and agrees not to assert) a counterclaim of any nature, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents or otherwise to offset any Obligations. No failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Loan Documents.

SECTION 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries. Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any

interest in the Property other than that of mortgagee, beneficiary or lender. This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan (or any disbursement of Reserve Funds) in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

SECTION 10.17. Publicity. All news releases, publicity or advertising by Borrower or their Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or to any of its Affiliates shall be subject to the prior approval of Lender, not to be unreasonably withheld, conditioned or delayed. The foregoing shall not be deemed to prohibit Guarantor from making disclosures of the Loan Documents and terms thereof as required by applicable public company disclosure laws.

SECTION 10.18. Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

SECTION 10.19. Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments that may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

SECTION 10.20. Brokers and Financial Advisors. Borrower hereby represents that, except for CBRE, the fees of which shall be paid solely by Borrower, it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower shall indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any

way relating to or arising from a claim by any Person that such Person acted directly or indirectly, by or on behalf of Guarantor, Borrower or any Affiliate thereof or was retained directly or indirectly, by or on behalf of Guarantor, Borrower or any Affiliate thereof in connection with the transactions contemplated herein. The provisions of this Section 10.20 shall survive the expiration and termination of this Agreement and the payment of the Debt.

SECTION 10.21. Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including that certain Construction Loan Term Sheet, dated March 20, 2022, executed by Instil Bio, Inc., are superseded by the terms of this Agreement and the other Loan Documents.

SECTION 10.22. Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

SECTION 10.23. Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, Lender shall have: (a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice; (b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice; (c) the right, in accordance with the terms of this Agreement, including Section 5.1.1(f) hereof, to receive monthly, quarterly and year-end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding Indebtedness; and (d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property). The rights described above in this Section 10.22 may be exercised by any entity which owns and Controls, directly or indirectly, substantially all of the interests in Lender.

SECTION 10.24. Duplicate Originals, Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original and all of which together shall constitute a single agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall relieve the other signatories from their obligations hereunder.

SECTION 10.25. Prepayment Charges. Borrower acknowledges that (a) Lender is making the Loan in consideration of the receipt by Lender of all interest and other benefits intended to be conferred by the Loan Documents that is not prepayable except as provided in Section 2.4, and (b) if payments of principal are made to Lender prior to the regularly scheduled due date for such payment, for any reason whatsoever, whether voluntary, as a result of Lender's acceleration of the Loan after an Event of Default, by operation of law or otherwise, Lender will not receive all such interest and other benefits and may, in addition, incur costs and expenses. For these reasons, and to induce Lender to make the Loan, Borrower expressly waives any right or privilege to prepay the Loan except as otherwise may be specifically permitted herein and agrees that, except for any prepayment that is expressly permitted to be made pursuant to this Agreement without the payment of the Prepayment Premium (as applicable), all prepayments, if any, whether voluntary or involuntary, will be accompanied by the Prepayment Premium (as applicable), which shall constitute additional interest. Such Prepayment Premium (as applicable) shall be required whether payment is made by Borrower, by a Person on behalf of Borrower, or by the purchaser at any foreclosure sale, and may be included in any bid by Lender at such sale. Borrower further acknowledges that (i) it is a

knowledgeable real estate developer or investor, (ii) it fully understands the effect of the provisions of this Section 10.24, as well as the other provisions of this Agreement and the other Loan Documents, (iii) the making of the Loan by Lender at the Interest Rate and other terms set forth in the Loan Documents are sufficient consideration for Borrower's obligation to pay the Prepayment Premium (as applicable), and (iv) Lender would not make the Loan on the terms set forth herein without the inclusion of such provisions. Borrower also acknowledges that the provisions of this Agreement limiting the right of prepayment and providing for the payment of the Prepayment Premium (as applicable) and other charges specified herein were independently negotiated and bargained for and constitute a specific material part of the consideration given by Borrower to Lender for the making of the Loan except as expressly permitted hereunder.

SECTION 10.26. Registrar. Borrower (or its duly authorized agent; Borrower hereby appointing Lender as its agent for such purpose; provided that if Lender uses a Servicer, such Servicer shall act for this purpose as an agent of Borrower) (the "Registrar") shall maintain or cause to be maintained a registry of the ownership of the Note(s) at its principal office. The Registrar shall act solely as an agent of Borrower and shall maintain, subject to such reasonable regulations as it shall provide, such books and records (the "Register") as are necessary for the registration and transfer of the Note in a manner that shall cause the Note(s) to be considered to be in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any other relevant or successor provisions of the Code or such regulations). In connection with the foregoing: (i) the Register shall reflect Lender as the original owner of the Note(s), (ii) the Register shall reflect such subsequent transferees as the Registrar shall receive notice of, by delivery to it of a notice of an assignment of such Note, duly executed by the then current owner thereof, (iii) the Registrar shall record the name and address of each Lender and the amount of principal (and stated interest) owing to each Lender under this Agreement, (iv) Borrower and Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as Lender hereunder for all purposes of this Loan Agreement, notwithstanding notice to the contrary. Failure to make any such recordation, or any error in such recordation, shall not affect Borrower's or Lender's obligations in respect of such Loan. Any Lender that sells a participation under Section 9.1 shall, acting solely for this purpose as an agent of Borrower, maintain or cause to be maintained a registry including the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Failure to make any such recordation, or any error in such recordation, shall not affect Borrower's or Lender's obligations in respect of such Loan. Such Lender shall treat the person in whose name any participation is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes.

SECTION 10.27. Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

(a) Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the respective parties thereto, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(i) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(ii) the effects of any Bail-in Action on any such liability, including, if applicable:

(iii) a reduction in full or in part or cancellation of any such liability;

(A) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(B) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 10.28. Servicer. At the option of Lender, the Loan may be serviced by a servicer/trustee (the "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement between Lender and Servicer. Borrower shall be responsible for set up fees and other regularly scheduled servicing fees and any other reasonable costs and expenses of the Servicer in connection with the Loan, including (without limitation) any fees and expenses of the Servicer in connection with any requests of Borrower, any prepayment, amendment or modification of the Loan, any special servicing or work-out of the Loan or enforcement of the Loan Documents.

SECTION 10.29. Lead Lender and Co-Lender Provisions.

(a) Lead Lender. Notwithstanding anything to the contrary contained in this Agreement or any of the other Loan Documents, if at any time there is more than one Lender hereunder, each such Lender shall deliver a written notice to Borrower designating one lender or an affiliate thereof as the "Lead Lender" (such Lender, at all times thereafter and until resignation or replacement of such Lender by written notice to Borrower, the "Lead Lender"). Each Lender hereby appoints Lead Lender to serve as non-fiduciary administrative agent and collateral agent for each Lender and hereby agrees that Lead Lender shall be the sole party authorized to grant or withhold consents or approvals hereunder on behalf of the other Lenders (subject, in each case, to appointment of a servicer to receive such notices, requests and other communications and/or to grant or withhold consents or approvals, as the case may be). No Lender shall have any liabilities or responsibilities to Borrower on account of the failure of any other Lender to perform its obligations hereunder or to any Lender on account of the failure of Borrower to perform its obligations hereunder or under any other Loan Document.

(b) Co-Lender Agreement. Borrower hereby acknowledges and agrees that if at any time there is more than one Lender hereunder, such Lenders may enter into one or more agreements (any such agreement as the same may be modified, amended, restated supplemented or replaced from time to time, a "Co-Lender Agreement") governing the relationship between such parties, including, without limitation, the rights of such Lenders and the manner in which such Lenders shall administer the Loan. Any Co-Lender Agreement is intended and will be solely for the benefit of the Lender, and Borrower acknowledges and agrees that neither any Borrower Party nor any other Person shall be a third-party beneficiary (intended or otherwise) of any of the provisions therein, or have any rights thereunder or be entitled to rely on any of the provisions contained therein. Lender shall not have any obligation to provide a copy of any Co-Lender Agreement to any Borrower Party or any Affiliate of any Borrower Party or to disclose to any Borrower Party or any Affiliate of any Borrower Party the contents of any Co-Lender

Agreement. Each Borrower Party's obligations under the Loan Documents are and will be independent of any Co-Lender Agreement and shall remain unmodified by the provisions thereof (although Borrower acknowledges that with respect to certain approvals, calculations and other decisions hereunder, any Co-Lender Agreement may require Lead Lender to consult with or receive the approval of one or more other Lenders prior to providing its own approval or determination regarding the same). Borrower shall be entitled to rely on waivers, consents and/or approvals granted by Lead Lender.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first written above.

BORROWER:

COMPLEX THERAPEUTICS LLC,
a Delaware limited liability company

By: _____
Name: Sandeep Laumas
Title: Authorized Signatory

LENDER:

OPG HERMES INVESTMENTS (DE) LLC,
a Delaware limited liability company,

By: _____
Name: Varuth Suwankosai
Title: Head of Investments & Credit – US Region

By: _____
Name: Kristen Binck
Title: Vice President, Legal

LENDER:

OPG HERMES INVESTMENTS (DE) LLC,
a Delaware limited liability company,

By: _____
Name: Varuth Suwankosai
Title: Head of Investments & Credit – US Region

By: _____
Name: Kristen Binck
Title: Vice President, Legal

EXHIBIT A

Property Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 150 OF TRACT NO. 5692, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 60, PAGES 72 AND 73 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

LOTS 151 AND 152 OF TRACT NO. 5692, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 60, PAGES 72 AND 73 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOT 153 OF TRACT NO. 5692, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 60 PAGES 72 AND 73 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4:

LOT 154 OF TRACT NO. 5692, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 60, PAGES 72 AND 73 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL MINERALS, COALS, OILS, PETROLEUM AND KINDRED SUBSTANCES AND NATURAL GAS UNDER AND IN THAT PORTION OF SAID LAND LYING WITHIN THE BOUNDARIES OF TRACT NO. 1875, AS PER MAP RECORDED IN BOOK 19, PAGE 38 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS RESERVED OF RECORD.

APN: 2157-001-158

EXHIBIT B

FORM OF MAJOR TRADE CONTRACTOR CONSENT

[ATTACHED]

FORM MAJOR TRADE CONTRACTOR CONSENT AND AGREEMENT

OPG HERMES INVESTMENTS (DE) LLC
c/o Oxford Properties Group
450 Park Avenue 10th Floor
New York, NY 10022

Property:	18408-18412 Oxnard Street, Los Angeles, CA 91356
Borrower:	COMPLEX THERAPEUTICS LLC

Ladies and Gentlemen:

The undersigned, a contractor ("Trade Contractor") on the captioned Property, understands that OPG Hermes Investments (DE) LLC, a Delaware limited liability company, having an address at c/o Oxford Properties Group, 450 Park Avenue, 9th Floor, New York, New York 10022 (together with its successors and assigns, "Lender") has made a loan to Borrower in the maximum principal amount of up to $55,000,000.00 (the "Loan") pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may be amended, restated, supplemented, extended, replaced or otherwise modified from time to time, the "Loan Agreement"), which Loan shall be used in part to fund, among other things, a portion of the costs of constructing the proposed improvements at the Property (the "Required Improvements"). Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement.

Trade Contractor hereby agrees with Lender as follows:

1. Attached hereto as Schedule I is a true and complete copy of our agreement with [____] ("Agent"), as agent for Borrower, dated [_____], 20[_], to construct and/or renovate a portion of the Required Improvements (the "Trade Contract") in accordance with the plans and specifications set forth with respect to such portion of the Required Improvements as more particularly described in the Trade Contract.

2. Trade Contractor hereby acknowledges and consents to a collateral assignment of the Trade Contract to Lender, which assigns all of Borrower's rights, if any, under the Trade Contract to Lender. In the event Lender, its nominee, subsidiary, successor(s) or assign(s) (the "Successor"), shall acquire title to the Property through foreclosure, deed in lieu of foreclosure, or receivership, then, at the request of the Successor, and upon Successor's written agreement to accept Trade Contractor's attornment, Trade Contractor shall attorn and shall promptly execute and deliver any instrument the Successor may require to evidence such attornment. Upon such attornment, the Trade Contract shall continue in full force and effect as if it were a direct agreement between the Successor and Trade Contractor.

3. At the request of the Borrower and in order to induce Lender to make advances of the Loan, Trade Contractor hereby acknowledges and agrees that (i) no amendment, modification,

or supplement of the Trade Contract, in any material respect, shall be permitted without Lender's prior written consent, and (ii) Lender may enforce the obligations of the Trade Contract with the same force and effect as if enforced by the Borrower. Except as permitted pursuant to the terms of paragraph 5 below, Trade Contractor shall not terminate or surrender the Trade Contract without Lender's prior written consent and will promptly notify Lender in writing of any attempted termination or surrender of the Trade Contract by Borrower.

4. Trade Contractor represents and warrants that (i) it has no notice of any prior assignment of the Trade Contract, (ii) the Trade Contract is a valid, enforceable agreement, (iii) neither Trade Contractor nor, to the knowledge of Trade Contractor, the Borrower is in default thereunder, (iv) all covenants, conditions and agreements required to have been performed by Trade Contractor have been performed as required therein, except those not due to be performed until after the date hereof, (v) Trade Contractor is duly licensed to conduct its business in the jurisdiction where the construction is to be performed and will maintain said license in full force and effect throughout the life of the Trade Contract, and (vi) as of the date hereof, the subcontractors employed by Trade Contractor (if any) with respect to the Property have been paid all amounts due and payable in accordance with their subcontracts. Trade Contractor further agrees that if it at any time gives a notice of default to Borrower under the Trade Contract, Trade Contractor shall provide a copy of such notice simultaneously to Lender at the following address:

If to Lender:	OPG Hermes Investments (DE) LLC c/o Oxford Properties Group 450 Park Avenue 10th Floor New York, NY 10022 Attention: Legal Counsel
with a copy to:	Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004 Attention: Michael Vines, Esq.

5. Trade Contractor further agrees that if it at any time gives a notice of default to Borrower under the Trade Contract, Trade Contractor shall not exercise any remedy, including, but not limited to, any right to terminate the Trade Contract, unless and until Trade Contractor gives notice to Lender of its intent to exercise such remedy and provides Lender the opportunity to remedy or cure such breach within the greater of (i) the period set forth in the Trade Contract or (ii) ninety (90) days thereafter, or if such breach cannot by its nature be cured within ninety (90) days, such longer period as is required so long as Lender shall have commenced curing such breach during such period and thereafter shall diligently and continuously prosecute the same to completion; provided that Lender shall have no obligation to cure or cause the cure of such default.

6. Additionally, and in consideration of the Lender's making of the Loan, Trade Contractor agrees that in the event of (x) a default under the Trade Contract by Borrower beyond any applicable notice and cure periods or (y) a default by Borrower beyond applicable notice and cure periods under any of the documents now or hereafter executed and delivered in connection

with the Loan, as the same may be from time to time amended and supplemented, Trade Contractor shall, at Lender's request, (i) continue performance under the Trade Contract in accordance with the terms thereof, provided that Trade Contractor is paid in accordance with the Trade Contract, without regard to any modifications thereto not approved in writing by Lender (to the extent approval was required pursuant to Section 3 above), for all services rendered after Lender's election to have Trade Contractor continue performing, further provided that the time periods set forth in the Trade Contract for performance by Borrower shall be deemed extended by the period of time necessary to allow Lender to obtain possession of the Property in accordance with the terms of the Loan Documents, or (ii) terminate the Trade Contract without payment of any penalty or termination fees and, at Lender's election, immediately assign all of its rights under any subcontracts to Lender.

7. If any proceeds of the Loan made by the Lender are disbursed directly to Trade Contractor, then Trade Contractor shall receive the same in trust for the purpose of paying the costs of constructing the Required Improvements due and payable to contractors, subcontractors, suppliers, laborers and materialmen and will apply the same to such payment.

8. The person executing this letter on behalf of Trade Contractor hereby certifies that he or she has the authority to do so and that Trade Contractor has full authority under all state and local laws and regulations to perform all of its obligations under the Trade Contract in accordance with the terms thereof.

9. The provisions set forth in this letter shall be binding upon Trade Contractor and Trade Contractor's successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

10. Trade Contractor agrees that any termination of Agent's role as agent for Borrower under the Trade Contract or any other termination, cancellation or expiration of that certain [_____], dated as of [_____, 20__], between Agent and Borrower shall not in and of itself affect, impair, limit or otherwise alter the rights of Borrower or obligations of Trade Contractor under the Trade Contract.

Dated: [_____], 2022

[CONTRACTOR]

By: _____
Name:
Title:

Schedule I

Trade Contract

EXHIBIT C

FORM OF OFFICER'S CERTIFICATE

Borrower Name: **COMPLEX THERAPEUTICS LLC**, a Delaware limited liability company

Property Address: 18408-18412 Oxnard Street, Los Angeles, California [_____]

This Officer's Certificate is being delivered in accordance with that certain Loan Agreement dated _____, 2022 (the "**Loan Agreement**") among Borrower, Complex Therapeutics LLC, a Delaware limited liability company, and OPG Hermes Investments (DE) LLC, a Delaware limited liability company ("**Lender**"). Capitalized terms used in this Officer's Certificate and not specifically defined herein have the meaning provided in the Loan Agreement. The undersigned officer of Borrower, having personal knowledge of the matters set forth herein, hereby certifies on behalf of Borrower, and not in his/her individual capacity, the following:

[___] Pursuant to Section 2.1.5(a) (Requests for Additional Advances): Borrower requests an Additional Advance pursuant to Section 2.1.5(a) and hereby represents, warrants, and certifies that: (i) all Advance Items to be funded by the requested disbursement involving construction or alteration work have been completed in a good and workmanlike manner and in accordance in substantial accordance with all applicable Legal Requirements and Plans and Specifications; (ii) all Additional Advance (or a portion thereof) to be funded are to be used for the payment of Approved Project Expenditures, Cash Expenses or Approved Extraordinary Expenses, as applicable; (iii) Borrower has previously provided to Lender, or attached to this Officer's Certificate is, a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete such Advance Item; (iv) each Person that supplied materials or labor in connection with the Advance Item to be funded by the requested disbursement is identified on a schedule included with this Officer's Certificate; (v) each such Person has been paid in full or will be paid in full upon such disbursement for all amounts due and payable to such Person through the date hereof; (vi) included with this Officer's Certificate is a full or partial lien waiver (as applicable) or other evidence of payment reasonably satisfactory to Lender with respect to such Person(s); (vii) included with this Officer's Certificate are copies of all bills, invoices, receipts and other documentation requested by Lender to be reimbursed or paid by the Additional Advance (or a portion thereof); (viii) all prior Additional Advances requested for the payment of Costs have been spent on Cash Expenses and/or Approved Extraordinary Expenses for which such Additional Advances were made; and (ix) the Closing Date Minimum Equity Requirement is satisfied and Borrower has made no distributions.

[___] **Pursuant to Section 5.1.1(d) (Transfers)**: Borrower certifies that (i) all the requirements of Section 5.1.1(d) are satisfied and (ii) with respect to Section 5.1.1(d)(iii), (x) the consideration, if any, being paid for any such encumbrance is commercially reasonable and (y) any such encumbrance does not materially impair the utility and operation of the Property, materially reduce the value of the Property or otherwise have a Material Adverse Effect.

[___] **Pursuant to Section 5.1.1(f) (Delivery of Reports)**: To the knowledge of the undersigned:

[___] – Annual/Quarterly Reports: Each financial statement, or other report included with this Officer's Certificate (as applicable) are true, correct, and complete in all material respects, and fairly presents in all material respects the financial condition and the results of operations of Borrower and the Property (subject to normal year-end adjustments) being reported upon as of the date set forth in such documents and such financial statements have been prepared in accordance with the Approved Accounting Method.

[___] – Annual/Quarterly Reports: As of the date hereof there exists no event or circumstance which constitutes a Default or Event of Default under by Borrower under the Loan Documents other than [PLEASE DESCRIBED IF APPLICABLE, INCLUDING THE PERIOD OF TIME IT HAS EXISTED AND THE ACTION THEN BEING TAKEN TO REMEDY THE SAME: _____].

[___] – Quarterly Reports: Subject to any appropriate reconciliations, the quarterly and year-to-date operating statements included with this Officer's Certificate, noting Net Operating Income, Operating Income and Operating Expenses, are true, correct, accurate, and complete in all material respects and fairly present in all material respects the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments).

[___] – Quarterly Reports: Borrower's calculation of the Debt Yield for the twelve (12) month period ending at the end of the most recently-completed calendar quarter (based on Borrower's reasonable expectation of the adjustments to be made to such calculations pursuant to the definition of UNOI contained in the Loan Agreement), is as follows:

Debt Yield: [___]%

BY SIGNING BELOW, the undersigned certifies on behalf of Borrower, and not in his/her individual capacity, that (a) all information provided in this Officer's Certificate is true, complete, and correct in all material respects and does not omit any material fact that would make any such information false or misleading, and (b) the undersigned representative is duly authorized to sign this Officer's Certificate on Borrower's behalf.

Date: [_____]

_____
Name:
Title:

EXHIBIT D

INITIAL APPROVED ANNUAL BUDGET

[***]

EXHIBIT E

FORM OF REQUISITION LETTER

BORROWER AND MEZZANINE BORROWER'S REQUISITION LETTER
Requisition No.

MORTGAGE LENDER:	OPG Hermes Investments (DE) LLC, a Delaware limited liability company
MEZZANINE LENDER:	OPG Hermes Investments (DE) LLC, a Delaware limited liability company
MORTGAGE BORROWER:	Complex Therapeutics LLC, a Delaware limited liability company
MEZZANINE BORROWER:	Complex Therapeutics Mezzanine LLC, a Delaware limited liability company
DATE:	[_____]
PREMISES:	18408-18412 Oxnard Street, Los Angeles, California
PERIOD COVERED:	[_____] to [_____]

Pursuant to the Loan Agreement (the "Agreement") and Mezzanine Loan Agreement ("Mezzanine Loan Agreement") for the subject Loan, Borrower and Mezzanine Borrower hereby authorize and request an advance in the amount of $[_____] (the "Requested Amount"), which is comprised of the items provided for in the attached requisition, Section 2.1.5(a) of the Loan Agreement and Mezzanine Loan Agreement which sets forth and specifies the Hard Costs, Soft Costs and Interest and Carry Costs to be paid from the proceeds of the requested Advance and which has become payable by Borrower.

Borrower requests that the funds be wired on [_____], 20[__] in accordance with the following wire instructions:

Amount:	$[_____]
Bank:	[_____]
ABA #:	[_____]
Account Name:	[_____]
Account #:	[_____]
Attention:	[_____]

The Hard Costs, Soft Costs and Interest and Carry Costs to be paid by the Requested Amount are more particularly set forth on Schedule I attached hereto. The Requested Amount is comprised of:

Mortgage Funding Share: $[_____]

Mezzanine Funding Share: $[_____]

In connection with and in order to induce Lender and Mezzanine Lender to advance the amount requested above, Borrower hereby represents, warrants and stipulates, as of the date hereof, as follows:

1. To Borrower's knowledge, the amounts requested herein are true and correct.

2. No Default or Event of Default exists at the time the Additional Advance is requested or as of the Advance Date.

3. Borrower submitted this Draw Request to Lender in accordance with the requirements of Section 2.1.5(a) of the Loan Agreement, together with all applicable documents required to be delivered with such Draw Request pursuant to Section 2.1.5(b) Loan Agreement.

4. Borrower submitted evidence reasonably satisfactory to Lender that Borrower has paid (or will pay concurrently with the funding of the Additional Advance), from its own funds, at least the greater of (A) (i) with respect to Additional Advances for Approved Project Expenditures, the Required Borrower Equity Advance with respect to the cost of the applicable Approved Project Expenditure and (ii) with respect to Additional Advances for Interest and Carry Costs, the Required Borrower Equity Advance with respect to the applicable Interest and Carry Costs Shortfall, and (B) the actual cost of the applicable Advance Item less the amount to be advanced by Lender hereunder and by Mezzanine Lender under the Mezzanine Loan Agreement for such Advance Item.

5. The Security Instrument constitutes a valid first lien on the Property in an amount equal to the full Loan Amount, free and clear of all Liens except for Permitted Encumbrances (other than Permitted Encumbrances described in clause (iv) of the definition thereof unless actually bonded or discharged).

6. A list of amendments, replacements, supplements or other modifications made to the Plans and Specifications not previously delivered to Construction Consultant, and a true and complete copy of each such amendments, replacements, supplements or other modification have been delivered to Construction Consultant. Borrower submitted to Lender a list identifying the Plans and Specifications as in effect as of such Advance Date.

7. Borrower has obtained from the Title Company (or Borrower will obtain a commitment from the Title Company to issue) an ALTA 33 Disbursement Endorsement to the Title Policy, to be dated and effective on the date of disbursement of the Additional Advance which evidences (i) no new exceptions to the Title Policy other than Permitted Encumbrances (other than Permitted Encumbrances set forth in clause (vi) of the definition thereof unless actually bonded or discharged) since the date of the last Additional Advance (with affirmative insurance that no Taxes or Other Charges (other than Taxes and Other Charges being contested in accordance with the Loan Agreement) are delinquent, and (ii) increases the Title Policy liability amount by the amount of the Additional Advance as of the new Date of Coverage (as defined in the ALTA 33 Disbursement Endorsement).

8. Each of the representations and warranties of Borrower and Guarantor contained in each of the Loan Documents will be true, complete and correct in all material respects as if made on (and with respect to facts and circumstances existing as of) the Advance Date, except for any changes in facts or circumstances occurring since the Closing Date that do not constitute a Default

or Event of Default or were not caused by the occurrence of a Default or Event of Default and, in any event, do not result in a Material Adverse Effect.

9. Borrower has obtained all Construction Permits required under Legal Requirements for the actual stage of construction on the Property and delivered to Lender a copy of each of the Construction Permits.

10. Borrower has paid or reimbursed all of Lender's outstanding fees and expenses (including fees and expenses of the Construction Consultant, and all other fees, costs and expenses of (including fees and expenses of outside legal counsel) relating to the Loan to the extent then due and payable, pursuant to the applicable provisions of this Agreement and the other Loan Documents.

11. Except as otherwise permitted under the Loan Documents, all material and fixtures incorporated in the construction of the Project have been purchased so that their absolute ownership has vested in Borrower immediately upon delivery to the Property and Borrower has produced and furnished, if required by Lender, the contracts, bills of sale or other agreements under which title to such materials and fixtures is claim.

12. The Loan is in balance as provided in Section 2.1.11 of the Loan Agreement.

13. There is no pending or threatened litigation known to Borrower or its counsel against Borrower, Master Tenant, Guarantor, Manager, General Contractor or the Property which, if decided unfavorably, could reasonably be expected to result in (i) a change in Control of Borrower, Master Tenant or Manager, (ii) a Material Adverse Effect, or (iii) the failure of Guarantor to satisfy the Financial Covenant Requirement.

14. Borrower has delivered to Lender all documents, reports, certificates, affidavits and other information, in form and substance reasonably satisfactory to Lender or Construction Consultant, as each may reasonably require, to evidence compliance by Borrower with the terms and conditions to be complied with by Borrower in connection with the disbursement of the applicable Additional Advance.

15. Borrower has delivered to Lender evidence of compliance with all recommendations set forth in the Environmental Report or any future environmental report or assessment requested by Lender under the terms of the Environmental Indemnity; provided, that, by undertaking the measures identified in and pursuant to Section 2.1.6(j) of the Loan Agreement, Lender shall not be deemed to be exercising any control over operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor.

16. No Interest and Carry Cost Shortfall exists.

17. Other than matters fully disclosed to Lender which are curable and are being cured as part of the work comprising the Required Improvements, and subject to Borrower's right to contest in accordance with Section 5.1.2(b) of the Loan Agreement, the Property complies in all material respects with all Legal Requirements.

18. (i) Other than matters being cured as part of the work comprising the Required Improvements, the Property complies in all material respects with all Legal Requirements, (ii) if any Restoration is continuing, Borrower is diligently pursuing such Restoration and Lender has determined that the non-completion of such Restoration prior to the making of the Additional Advance is not reasonably likely to have a Material Adverse Effect, and (iii) no Casualty or Condemnation has occurred that permits any tenant party to a Lease a termination right (or such right shall have been waived or lapsed).

19. On the Advance Date, no event has occurred that would reasonably be expected to result in Borrower being unable to achieve any Major Milestone within the time period applicable to such Major Milestone, as determined by Lender.

20. Borrower has caused, at Lender's election, either (i) payment and performance Bonds, in form and substance reasonably satisfactory to Lender and issued by sureties satisfactory to Lender have been maintained with respect to the obligations of each Trade Contractor; and/or (ii) a sub-guard insurance policy in form and substance reasonably acceptable to Lender has been maintained with respect to the obligations of each Trade Contractor, provided, that the Bonds are in an amount not less than the full contract price for each such Trade Contract required to be bonded pursuant to Section 2.1.6(v) of the Loan Agreement.

21. Borrower has provided satisfactory evidence that the Closing Date Minimum Equity Requirement is satisfied and no distributions have been made.

22. The Master Lease is in full force and effect and no default has occurred under the Master Lease that remains uncured.

[The below items should be included for Additional Advances for the Payment of Approved Project Expenditures.]

23. Borrower has delivered to Lender an Officer's Certificate with respect to any construction work constituting the applicable Approved Project Expenditures to be funded by such Additional Advance certifying that whatever portion of such work has been Completed to date has been Completed in good and workmanlike manner substantially in accordance with all applicable Legal Requirements and the Plans and Specifications.

24. Borrower has delivered to Lender (i) an updated Construction Budget for the Project, in form and substance reasonably satisfactory to Lender, which indicates the Costs (other than Interest and Carry Costs) anticipated to complete the Required Improvements, after giving effect to Costs (other than Interest and Carry Costs) incurred during the period since the Closing Date, or the date of the last preceding Draw Request, as the case may be, and (ii) an anticipated costs report in form and substance reasonably acceptable to Lender, which indicates the Costs (other than Interest and Carry Costs) anticipated to complete the Required Improvements, after giving effect to Costs incurred during the previous calendar month (or the date of the last preceding Draw Request, as the case may be), and projected Costs; provided, that, no Line Item in the Construction Budget with respect to Approved Project Expenditures shall be eligible for funding from the proceeds of an Additional Advance until 100% of such Line Item has been bought out and

Lender and Construction Consultant have reviewed the related sub contract(s) and, if applicable, Major Trade Contractor Consent(s).

25. Borrower has delivered to Lender a reconciliation by Borrower of the progress and cost of the construction of the Project through the date of the Draw Request with the Construction Schedule and the Construction Budget, together with a projection of such progress and costs through to Completion of the Project.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

MORTGAGE BORROWER:

COMPLEX THERAPEUTICS LLC,
a Delaware limited liability company

By: _____
Name:
Title:

MEZZANINE BORROWER:

COMPLEX THERAPEUTICS MEZZANINE LLC,
a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT F

INTENTIONALLY OMITTED

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

INTENTIONALLY OMITTED

EXHIBIT I

INTENTIONALLY OMITTED

EXHIBIT J

INTENTIONALLY OMITTED

EXHIBIT K-1

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)]

Reference is hereby made to the Loan Agreement dated as of [ ], 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between [_____], a [_____] (together with its successors and assigns, "Lender"), and Complex Therapeutics LLC, a Delaware limited liability company ("Borrower"), and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.2.3 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform Borrower, and (2) the undersigned shall have at all times furnished Borrower with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By:_____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT K-2

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)]

Reference is hereby made to the Loan Agreement dated as of [ ], 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between [_____], a [_____] (together with its successors and assigns, "Lender"), and Complex Therapeutics LLC, a Delaware limited liability company ("Borrower")and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.2.3 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT K-3

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)]

Reference is hereby made to the Loan Agreement dated as of [ ], 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between [_____], a [_____] (together with its successors and assigns, "Lender"), and Complex Therapeutics LLC, a Delaware limited liability company ("Borrower"), and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.2.3 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF PARTICIPANT]

By:_____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT K-4

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)]

Reference is hereby made to the Loan Agreement dated as of [ ], 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between [_____], a [_____] (together with its successors and assigns, "Lender"), and Complex Therapeutics LLC, a Delaware limited liability company ("Borrower"), and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.2.3 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Loan Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Lender and Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform Borrower, and (2) the undersigned shall have at all times furnished Borrower with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By:_____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT L

INITIAL CONSTRUCTION BUDGET

[***]

EXHIBIT M

INITIAL CONSTRUCTION SCHEDULE

[***]

SCHEDULE I

EXISTING CONSTRUCTION DOCUMENTS

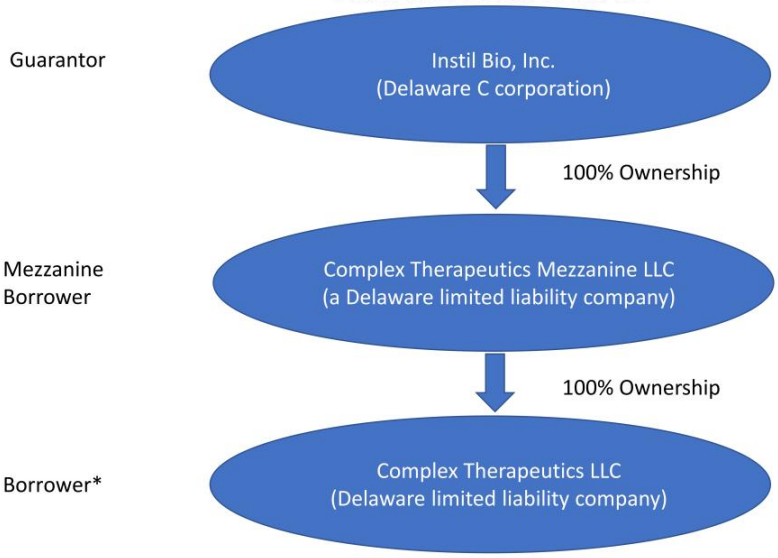
[***]

SCHEDULE II

ORGANIZATIONAL STRUCTURE

[ATTACHED]

ORGANIZATIONAL CHART



18408-18412 Oxnard Street, Los Angeles, California 91356

*To Borrower's knowledge based on the public reporting made as of March 31, 2022, no individual or entity owns, directly or indirectly, more than 10% of the Borrower other than FMR LLC and Curative Ventures V LLC.

SCHEDULE III

LIST OF MATERIAL AGREEMENTS

[ATTACHED]

Schedule III - List of Material Agreements

None, service contracts will stay with Instil Bio, Inc. per matrix.

SCHEDULE IV

LIST OF DESIGN PROFESSIONALS

[***]

SCHEDULE V

CONSTRUCTION PERMITS

[ATTACHED]

Schedule V - Construction Permits

Clinical Building Permits

Permit #	Brief Description	Address	Date Issued on	Amount	Licensed Contractor	Description
21016 - 10000 - 06831	Bldg-Alter/Repair	18412 W Oxnard St	4/21/2021	$1,222.31	TURNER CONSTRUCTION COMPANY	eplan Modify the existing slab.
20042 - 10000 - 21651	Plumbing	18412 W Oxnard St	5/6/2021	$1,524.31	MUIR-CHASE PLUMBING CO INC	PLUMBING TI. INCLUDES POTABLE WATER AND WASTE/VENT. 3" WATER METER WITH BACKFLOW DEVICE AND PRV
20016 - 10000 - 28026	Bldg-Alter/Repair	18412 - 18424 W Oxnard St	5/7/2021	$9,995.41	TURNER CONSTRUCTION COMPANY	T.I. TO EXISTING OFFICE AND MANUFACTURING FACILITY. REMOVE EXISTING RATED CORRIDOR TO CONNECT TO ADJACENT BUILDING. CHANGE THE EXISTING BUILDING CONSTRUCTION TYPE FROM V-B TO III-B. REWORK EXTERIOR STAIRS, NEW STAIR TO ROOF AND NEW
20020 - 10001 - 02289	Nonbldg-New	18412 W Oxnard St	5/7/2021	$1,392.96	TURNER CONSTRUCTION COMPANY	EARLY START SITE PREPARATION WORK FOR " RESTRIPE PARKING LOT, NEW ACCESSIBLE RAMP AND NEW EQUIPMENT CONCRETE PAD"
20030 - 10000 - 06263	Grading	18412 W Oxnard St	5/7/2021	$769.16	TURNER CONSTRUCTION COMPANY	GRADING FOR PARKING LOT. 75 CU YD CUT 250 CU YD FILL 175 NET CU YD IMPORT
20041 - 10000 - 39638	Electrical	18412 W Oxnard St B2	5/12/2021	$5,060.87	ROSENDIN ELECTRIC INC	FULL PC TO A TI FULL PC TO A TI TO COMMERCIAL PROPERTY BUILDINGS 1 AND 2.
21041 - 10000 - 05696	Electrical	18424 W Oxnard St B1	5/12/2021	$2,097.16	ROSENDIN ELECTRIC INC	FULL PC TO A TI TO COMMERCIAL PROPERTY BUILDINGS 1 AND 2.
20044 - 10000 - 11181	HVAC	18412 W Oxnard St	6/9/2021	$3,006.88	CONTROL AIR ENTERPRISES LLC	HVAC TENANT IMPROVEMENT.
21042 - 20000 - 16025	Plumbing	18412 W Oxnard St BLDG 1, 2	9/1/2021	$357.52	MUIR-CHASE PLUMBING CO INC	Installation of low-pressure gas system.

Commercial Building Permits

Permit #	Brief Description	Address	Date Issued on	Amount	Licensed Contractor	Description
21042 - 20000 - 05846	Plumbing	18408 W Oxnard St	3/24/2021	$59.95	TURNER CONSTRUCTION COMPANY	SEWER CAP PERMIT FOR DEMOLITION OF BUILDING NO. 2 21307 SQFT OPEN OFFICES/STAGE/PRODUCTION UNDER PERMIT 21019-10000-00275
21042 - 20000 - 05847	Plumbing	18360 - 18364 W Oxnard St	3/24/2021	$59.95	TURNER CONSTRUCTION COMPANY	SEWER CAP PERMIT FOR DEMOLITION OF BUILDING NO. 2 21307 SQFT OPEN OFFICES/STAGE/PRODUCTION UNDER PERMIT 21019-10000-00270
21019 - 10000 - 00270	Bldg-Demolition	18360 - 18364 W Oxnard St	4/13/2021	$1,791.74	TURNER CONSTRUCTION COMPANY	DEMOLITION OF OFFICE BUILDING, CLEAR LOT, FENCE AND CANOPY REQUIRED
21019 - 10000 - 00275	Bldg-Demolition	18408 W Oxnard St	4/13/2021	$1,791.74	TURNER CONSTRUCTION COMPANY	DEMO (E) OFFICE BUILDING, CLEAR LOT, FENCE AND CANOPY REQUIRED
21030 - 10000 - 02055	Grading	18412 W Oxnard St	8/17/2021	$3,465.66	TURNER CONSTRUCTION COMPANY	ROUGH GRADING FOR A NEW COMERCIAL MANUFACTURING BUILDING FOR CELL-THERAPY PRODUCTS-
21041 - 10000 - 21468	Electrical	18412 W Oxnard St	9/1/2021	$19,779.14	TURNER CONSTRUCTION COMPANY	(EPLAN) FULL PLAN CHECK FOR ELECTRICAL SYSTEM FOR NEW CONSTRUCTION UNDER BUILDING PERMIT 21010-10000-00719.
21044 - 20000 - 06428	HVAC	18412 W Oxnard St	9/13/2021	$6,233.71	CONTROL AIR ENTERPRISES LLC	MECHANICAL SYSTEM FOR NEW COMMERCIAL MANUFACTURING BUILDING FOR CELL-THERAPY PRODUCTS.
21010 - 10000 - 00719	Bldg-Alter/Repair	18412 - 18424 W Oxnard St	10/6/2021	$105,273.73	TURNER CONSTRUCTION COMPANY	FOUNDATION ONLY PERMIT FOR A NEW COMERCIAL MANUFACTURING BUILDING
21020 - 10000 - 01633	Nonbldg-New	18412 - 18424 W Oxnard St	11/2/2021	$2,100.07	TURNER CONSTRUCTION COMPANY	SITE RETAINING WALLS , SLOPED S.O.G., AND RAISED PLANTER WALLS.
21010 - 10000 - 00719	Bldg-New	18408 W Oxnard St	12/1/2021	$540,342.54	TURNER CONSTRUCTION COMPANY	NEW COMMERCIAL MANUFACTURING BUILDING
21042 - 20000 - 10871	Plumbing	18412 W Oxnard St	12/14/2021	$5,752.48	CONTROL AIR ENTERPRISES LLC	PLUMBING SYSTEM PLAN CHECK FOR POTABLE WATER, WASTE & VENT , STORM DRAIN. 4'' water meter, 4'' RPBP, two PRV.
21010 - 10000 - 00719	Bldg-Alter/Repair	18412 - 18424 W Oxnard St	2/7/2022	$310.41	WALTERS & WOLF GLASS COMPANY	SUPPLEMENTAL TO PERMIT # 21010-10000-00719 DEFERRED SUBMITTAL FOR GLASS CURTAIN WALLS.
21010 - 10003 - 00719	Bldg-Alter/Repair	18408 W Oxnard St	2/7/2022	$310.41	WALTERS & WOLF GLASS COMPANY	SUPPLEMENTAL TO PERMIT # 21010-10000-00719 DEFERRED SUBMITTAL FOR GLASS CURTAIN WALLS.

Permit #	Brief Description	Address	Date Issued on	Amount	Licensed Contractor	Description
21042 - 20001 - 10871	Plumbing	18412 W Oxnard St	2/16/2022	$148.24	CONTROL AIR ENTERPRISES LLC	medium pressure gas system 5 psi. Partial permit fees paid under original plan check.
21044 - 20002 - 06428	HVAC	18412 W Oxnard St	3/31/2022	$227.81	CONTROL AIR ENTERPRISES LLC	SUPPLEMENTAL TO PERMIT 21044-20000-06428. Revision to approved plans.
22041 - 90000 - 16334	Electrical, Special Equipment	18408 W Oxnard St	4/13/2022	$274.46	TAFT ELECTRIC COMPANY	Grounding for Temporary Generator - Anning Johnson
22041 - 90000 - 16335	Electrical, Special Equipment	18408 W Oxnard St	4/13/2022	$274.46	TAFT ELECTRIC COMPANY	Grounding for temporary generator #3 used by the flooring contractor
22041 - 90000 - 16336	Electrical, Public Safety Only	18408 W Oxnard St	4/13/2022	$575.41	TAFT ELECTRIC COMPANY	Install fire alarm and security devices in walls and ceiling. primary permit to follow

SCHEDULE VI

LIST OF REAs

None.

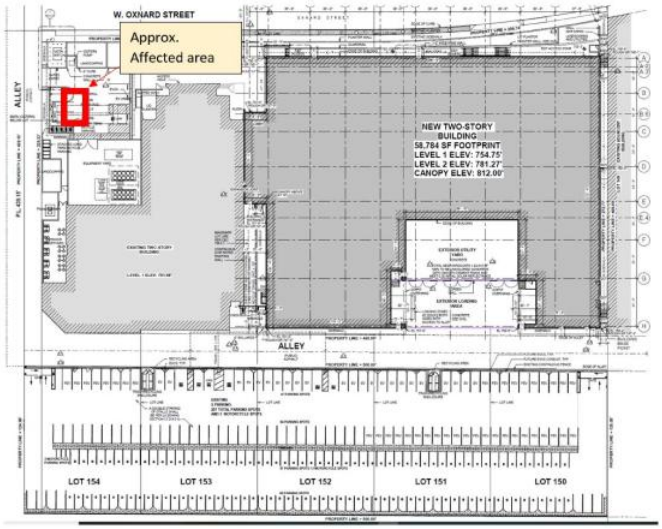
SCHEDULE VII

EXCEPTION TO PHYSICAL CONDITION REPRESENTATION

[ATTACHED]

SCHEDULE 4.1.2(j)

On June 1, 2022, the General Contractor informed Borrower that the General Contractor observed some surface settlement at the manhole cover (see below picture) directly above the landscape irrigation cisterns, which are located underneath the outer portion of the north-west parking lot of the Building B (see below site plan). As of the date hereof, the General Contractor is investigating the cause of the settlement, and has notified its insurance company of a potential claim. As of the date hereof, the General Contractor estimates repairs will cost between approximately $50,000 and $200,000, and take three to four weeks to complete, depending on the cause of the surface settlement.



[***] Certain information in this document has been omitted from this exhibit because it is both (i) not material and (ii) is the type that the Registrant treats as private or confidential.

MEZZANINE LOAN AGREEMENT

Dated as of June 10, 2022

Between

COMPLEX THERAPEUTICS MEZZANINE LLC,
as Borrower

and

OPG HERMES INVESTMENTS (DE) LLC,
as Lender

Property: 18408-18412 Oxnard Street, Los Angeles, California

Loan Amount: $30,000,000

TABLE OF CONTENTS

EXHIBITS & SCHEDULES

MEZZANINE LOAN AGREEMENT

THIS MEZZANINE LOAN AGREEMENT, dated as of June 10, 2022 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), is made by and between OPG HERMES INVESTMENTS (DE) LLC, a Delaware limited liability company (together with its successors and assigns, "Lender"), and COMPLEX THERAPEUTICS MEZZANINE LLC, a Delaware limited liability company ("Borrower").

RECITALS

WHEREAS, OPG HERMES INVESTMENTS (DE) LLC, a Delaware limited liability company (together with its successors and assigns, "Mortgage Lender") has made a mortgage loan in the maximum principal sum of up to $55,000,000 (the "Mortgage Loan Amount") to COMPLEX THERAPEUTICS LLC, a Delaware limited liability company ("Mortgage Borrower") pursuant to that certain Loan Agreement, dated as of the date hereof, by and among Mortgage Lender and Mortgage Borrower (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Mortgage Loan Agreement"). The Mortgage Loan is evidenced by that certain "Note" (as defined in the Mortgage Loan Agreement) executed by Mortgage Borrower in favor of Mortgage Lender, in the maximum principal amount of the Mortgage Loan Amount (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Mortgage Note") and is further evidenced by the documents defined as the "Loan Documents" in the Mortgage Loan Agreement, and the Mortgage Note is secured by the Security Instrument;

WHEREAS, Borrower is the legal and beneficial owner of one hundred percent (100%) of all of the Equity Interests (as defined below) in Mortgage Borrower;

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms and conditions of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

SECTION 1.1. Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"Acceptable Counterparty" means a counterparty to an Interest Rate Cap Agreement, or the guarantor of such counterparty's obligations under an Interest Rate Cap Agreement (provided that the form and substance of such guaranty is acceptable to Lender) that has a long-term unsecured debt rating of not less than "A" by S&P and "A2" from Moody's, which rating shall not include a "t" or otherwise reflect a termination risk.

"Acceptable LLC" has the meaning set forth in the definition of Special Purpose Entity.

"Accounts" means, collectively, the Clearing Account, the Cash Management Account, and each of the Reserve Accounts.

"Act" has the meaning set forth in the definition of Special Purpose Entity.

"Additional Advance" has the meaning set forth in Section 2.1.3 hereof.

"Advance Date" means, with respect to each Additional Advance, the date on which such Additional Advance is disbursed to Borrower pursuant to this Agreement.

"Advance Item" means, individually and collectively as the context may require, Approved Project Expenditures and Interest and Carry Costs.

"Affiliate" means, as to any Person, any other Person that (a) directly or indirectly owns twenty percent (20%) or more of the Equity Interests in such Person, and/or (b) is in Control of, is Controlled by or is under common Control with such Person, and/or (c) is a director, partner, officer or employee of such Person, and/or (d) is the spouse, issue, parent or officer of such Person.

"Affiliated Manager" means any Manager that is an Affiliate of Borrower or Mortgage Borrower.

"Agreement" has the meaning set forth in the introductory paragraph hereto.

"Alternate Rate" means, with respect to each Interest Accrual Period, the per annum rate of interest of the Alternate Rate Index determined as of the Determination Date immediately preceding the commencement of such Interest Accrual Period plus the Alternate Rate Spread; provided that in no event will the Alternate Rate be less than the Minimum Rate.

"Alternate Rate Index" means a floating rate index determined by Lender in its sole but good faith discretion (a) that is commonly accepted by market participants in commercial real estate loans as an alternative to Term SOFR and (b) that is publicly recognized by the International Swaps and Derivatives Association (ISDA) as an alternative to Term SOFR; provided that in no event will the Alternate Rate Index be less than the Rate Index Floor.

"Alternate Rate Loan" means the Loan at such time as interest thereon accrues at a rate of interest based upon the Alternate Rate.

"Alternate Rate Spread" means, in connection with any conversion of the Loan from (a) a Term SOFR Loan to an Alternate Rate Loan, the difference (expressed as the number of basis points) of (i) Term SOFR as of the Determination Date for which Term SOFR was last applicable to the Loan plus the Spread minus (ii) the Alternate Rate Index as of such Determination Date, or (b) a Prime Rate Loan to an Alternate Rate Loan, the difference (expressed as the number of basis points) of (i) the Prime Rate Index as of the Determination Date for which the Prime Rate Index was last applicable to the Loan plus the Prime Rate Spread minus (ii) the Alternate Rate Index as of such Determination Date; provided, however, that in either such case, if such difference is a negative number, then the Alternate Rate Spread shall be zero.

"Applicable Rate Index" means (i) Term SOFR for so long as the Loan is a Term SOFR Rate Loan, (ii) the Alternate Rate Index for so long as the Loan is an Alternate Rate Loan or (iii) the Prime Rate Index for so long as the Loan is a Prime Rate Loan.

"Appraisal" means a written statement setting forth an opinion of the market value of the Property that (i) has been independently and impartially prepared by an appraiser directly engaged by Lender, (ii)

complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, including the minimum appraisal standards for national banks promulgated by the Comptroller of the Currency pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (FIRREA), (iii) has been prepared on "as-stabilized" basis, (iv) has been prepared not more than sixty (60) days prior to the relevant date and (v) has been reviewed as to form and content and approved by Lender, in its reasonable discretion.

"Approved Accounting Method" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination, consistently applied.

"Approved Annual Budget" has the meaning set forth in Section 5.1.1(f)(iv) hereof.

"Approved Bank" means a bank or other financial institution that has a minimum long term unsecured debt rating of at least "A" by S&P or "A2" by Moody's.

"Approved Extraordinary Expenses" has the meaning set forth in Section 3.1.(b) hereof.

"Approved Project Expenditures" means all Costs (other than Interest and Carry Costs) incurred by Borrower with respect to the Project (a) in accordance with the Construction Budget or the applicable Approved Annual Budget, as applicable, or (b) as may otherwise be reasonably approved by Lender from time to time.

"Architect" means Ewing Cole, Inc., the architect engaged by (or on behalf of) Mortgage Borrower with respect to the design and construction of the Project, together with any successor or additional architect engaged by (or on behalf of) Mortgage Borrower in accordance with Section 5.1.3(k).

"Architect Agreement" means that certain AIA Document B101-Standard Form of Agreement Between Owner and Architect, dated February 25, 2021 and any other agreements for architectural services which Mortgage Borrower may enter into with any Architect in accordance with Section 5.1.3(k), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Architect Consent" means any consents and agreements required pursuant to the terms of this Agreement to be executed and delivered by an Architect to Lender with respect to any Architect Agreements entered into by and between Mortgage Borrower and any Architect, which, in each case, shall be, in form and substance reasonably acceptable to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"As-Stabilized Loan-to-Value Ratio" means as of the date of its calculation, the ratio of (a) the sum of (x) the Outstanding Principal Balance as of the date of such calculation, and (y) the Mortgage Loan Outstanding Principal Balance as of the date of such calculation, to (b) the "as-stabilized" value of the Property, as determined by an Appraisal ordered by Lender.

"Assignment of Interest Rate Cap Agreement" has the meaning set forth in Section 2.2.7(a) hereof.

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

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

"Bankruptcy Action" means with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property or the Collateral; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due, or (f) such Person commencing (or have commenced against it) a proceeding for the dissolution or liquidation of it.

"Bankruptcy Code" means 11 U.S.C. § 101 et seq., as the same may be amended from time to time.

"Bond" means a payment bond and a performance bond (i) in the form of AIA Document A312, or in such other form as may be reasonably acceptable to Lender, (ii) with dual obligee riders that name Lender as a co-obligee with Mortgage Borrower, and (iii) issued by a surety reasonably satisfactory to Lender.

"Borrower" has the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

"Borrower Party" means, individually and collectively, (i) Borrower, SPE Component Entity (if any), Guarantor, Mortgage Borrower, Mortgage Borrower SPE Component Entity (if any), Master Tenant, and any Affiliated Manager, (ii) any Affiliate of any of the foregoing, and (iii) any officers, directors, employees, or agents of any of the foregoing.

"Building A" has the meaning set forth in the Master Lease.

"Building B" has the meaning set forth in the Master Lease.

"Business Day" means any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, are not open for business.

"Carry Costs Guaranty" means that certain Mezzanine Carry Costs Guaranty, dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Cash Expenses" means, for any period, the operating expenses for the operation of the Property as set forth in the Construction Budget or the then-effective Approved Annual Budget or, to the extent an annual budget has not been approved by Lender in accordance with the terms of this Agreement, to the extent that such expenses are actually incurred by Borrower (excluding (i) any deposits into the Tax Reserve

Account and the Insurance Reserve Account that are being applied by Lender for payment of Taxes and Insurance Premiums, as applicable, in accordance with the terms of this Agreement, (ii) any expenses which Master Tenant reimburses Borrower for pursuant to the Master Lease, and (iii) any expenses that Master Tenant pays in accordance with the express terms of the Master Lease, provided, that, in the case of the immediately preceding clause (iii), there is no event of default by Master Tenant under the Master Lease.

"Cash Management Account" means the deposit account established pursuant to the Cash Management Agreement, to the extent the same is required pursuant to this Agreement.

"Cash Management Agreement" means an agreement in form and substance acceptable to Lender to be entered into by and among Cash Management Bank, Borrower and Lender, to the extent the same is required under this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Cash Management Bank" means such bank or banks selected by Lender to maintain the Cash Management Account (or any Reserve Accounts to the extent they are not subaccounts of the Cash Management Account), in each case, to the extent the same is required pursuant to this Agreement.

"Cash Management Event" means the existence of any of the following: (a) the Closing Date; (b) an Event of Default; (c) any Bankruptcy Action with respect to Borrower, Mortgage Borrower, Master Tenant, Guarantor, or any Affiliated Manager; or (d) the determination by Lender at any time that the Debt Yield is not at least eight and one-half percent (8.5%) (provided, that in the event of a failure of Borrower to deliver the information and documentation required under Section 5.1.1(f) by the required delivery date hereunder, at Lender's option the Debt Yield will be presumed to be less than the levels required above unless and until such information and documentation are provided to Lender and demonstrate otherwise).

"Cash Management Period" means the period commencing upon the occurrence of a Cash Management Event and terminating upon the occurrence of a Cash Management Termination Event with respect to all then existing Cash Management Events.

"Cash Management Termination Event" means the occurrence of any of the following: (a) in the event the related Cash Management Event occurred as a result of an Event of Default, such Event of Default shall no longer exists (without implying that Borrower has a right to cure an Event of Default), no other Default or Event of Default then exists, and Lender shall not have otherwise accelerated the Loan, moved for a receiver, commenced foreclosure proceedings, or otherwise begun exercising remedies; (b) (i) in the event that the related Cash Management Event occurred as a result of a Bankruptcy Action relating to Borrower, Mortgage Borrower, Master Tenant or Guarantor, as applicable, such Bankruptcy Action no longer exists and there has been no Material Adverse Effect as a result thereof, and (ii) in the event that the related Cash Management Event occurred as a result of a Bankruptcy Action relating to any Affiliated Manager, the replacement of such Affiliated Manager in accordance with the terms and conditions of this Agreement, and (c) with respect to the Cash Management Event described in clause (a) or (d) of the definition thereof, (i) Substantial Completion shall have occurred and (ii) Lender has determined that the Debt Yield is at least eight and one-half percent (8.5%) for two (2) consecutive calendar quarters.

"Casualty" has the meaning set forth in Section 6.2 hereof.

"Cause" means, with respect to an Independent Director or Independent Manager, (a) acts or omissions by such Person that constitute fraud, bad faith, gross negligence or willful disregard of such Person's duties under the applicable agreements, (b) that such Person has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a felony under any law applicable to such Person, (c) that such Independent Director or Independent Manager is unable to perform his or her duties

as an Independent Director or Independent Manager due to death, disability, or incapacity, or (d) that such Independent Director or Independent Manager no longer meets the definition of "Independent Director" or "Independent Manager".

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) all requests, rules, guidelines or directives thereunder or issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act or any amendments thereto after the Closing Date, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change Order" means any amendment, supplement or other modification from and after the Closing Date in any respect to (i) the Plans and Specifications, (ii) the Construction Schedule, (iii) the Construction Budget or (iv) any Construction Contract.

"Clearing Account" means the deposit account established pursuant to the Clearing Account Agreement, to the extent the same is required pursuant to the terms of this Agreement.

"Clearing Account Agreement" means an agreement entered into among Clearing Bank, Borrower, Manager (if any) and Lender in form and substance acceptable to Lender, to the extent the same is required pursuant to the terms of this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Clearing Bank" means a bank or banks selected by Borrower and approved in writing by Lender in Lender's sole discretion, in each case, to the extent the same is required under the terms of this Agreement.

"Closing Certificate" means that certain Closing Certificate executed by Borrower as of the Closing Date.

"Closing Date" means the date of this Agreement.

"Closing Date Minimum Equity Requirement" means the direct and indirect owners in Borrower and Mortgage Borrower, in the aggregate, have invested at least $50,059,031 of cash equity in the Property (including the acquisition cost thereof) as determined by Lender.

"Closing Date Term SOFR" means 1.19944%.

"Code" means the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Collateral" has the meaning set forth in the Pledge Agreement.

"Co-Lender Agreement" has the meaning set forth in Section 10.29(b) hereof.

"Combined Advance" means, as of any date, (a) the Additional Advance being made or to be made by Lender pursuant to this Agreement, plus (b) the Mortgage Loan Additional Advance being made or to be made by Mortgage Lender pursuant to the Mortgage Loan Agreement.

"Commercially Reasonable Efforts" means, with respect to Borrower, Mortgager Borrower or Guarantor, as applicable, the continuous and diligent use of all commercially reasonable efforts in good faith taking into account the interests of Lender, including, if commercially reasonable, the commencement and prosecution of litigation or other enforcement of Borrower's, Mortgager Borrower's and/or Guarantor's rights under applicable agreements, at law or in equity. The use of commercially reasonable efforts shall require Borrower, Mortgager Borrower and Guarantor to disregard the interests of its Affiliates. Borrower's, Mortgager Borrower's or Guarantor's lack of funds to pay for usual and customary reasonable legal and other costs and expenses related to Borrower's, Mortgager Borrower's or Guarantor's efforts to perform shall not excuse Borrower, Mortgager Borrower or Guarantor from fully pursuing such efforts.

"Complete" means, with respect to the Approved Project Expenditures, that (i) Substantial Completion has occurred, (ii) all Punchlist Items have been completed, (iii) the Property is free of all mechanics', materialmen's, and other similar Liens (or such liens have otherwise been bonded over to Lender's reasonable satisfaction), (iv) Master Tenant has commenced paying full unabated rent with respect to the entire Property, including without limitation "Building A" and "Building B" (as each such term is defined in the Master Lease), (v) Lender has received evidence acceptable to Lender that all Legal Requirements and all private restrictions and covenants relating to the Property have been complied with or satisfied and that all necessary approvals from Governmental Authorities with respect to the Improvements have been obtained, (vi) Lender has received copies of all warranties from suppliers covering materials, equipment and appliances included within the applicable component of the work, and (vii) the conditions set forth in Section 2.1.19 have been satisfied to the satisfaction of Lender. The terms "Completed" and "Completion" shall have the same meaning when used in the Loan Documents.

"Completion Due Date" means December 1, 2023.

"Completion Guaranty" means that certain Mezzanine Completion Guaranty Agreement, dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Condemnation" means a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Alternate Rate Index or the Prime Rate Index, any technical, administrative or operational changes (including, without limitation, changes to the definitions of "Business Day", "Determination Date", "Interest Accrual Period", "Payment Date" "U.S. Government Securities Business Day", preceding and succeeding business day conventions, rounding of amounts, timing and frequency of determining rates and making payments of interest, the applicability and length of lookback periods, and other technical, administrative or operational matters) that Lender decides in good faith, from time to time, may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Lender in a manner substantially consistent with market practice for floating rate loans held on Lender's balance sheet and secured by U.S. commercial real estate assets (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of any such

rate exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party or by which it or any of its property is bound (other than the organizational documents of such Person).

"Construction Budget" means the construction and development budget prepared by, or on behalf of, Mortgage Borrower for the construction and development of the Project, as the same may be adjusted due to changes or reallocations made in accordance with Section 2.1.7 and Section 5.1.3(c) hereof, and which, (A) shall contain Line Items with respect to the Approved Project Expenditures and setting forth (i) the Line Items for all direct and indirect Costs estimated to be incurred in connection with the Completion of the Approved Project Expenditures (including the Contingency with respect to the Approved Project Expenditures), and (ii) whether each such Line Item constitutes a Hard Cost or a Soft Cost, (B) shall contain a Line Item with respect to the estimated Interest and Carry Costs and setting forth the Line Items for all direct and indirect Costs estimated to be incurred in connection with the payment in full of the Interest and Carry Costs and (C) in any event (i) sets forth Borrower's estimates for budgeted construction categories of all items of direct and indirect Costs to be incurred or payable with respect to the foregoing (including monthly interest on the Loan) and (ii) specifies each direct and indirect Cost that is to be funded from proceeds of each of the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms of this Agreement. The initial Construction Budget is attached hereto as Exhibit L.

"Construction Consultant" means CBRE, Inc., or such other Person as may be designated and engaged by Lender in its sole discretion from to time as construction consultant to advise, consult and render reports to Lender concerning the status of the development and construction of the Project.

"Construction Contract" means the Architect Agreement, the General Contractor Agreement, each Major Trade Contract, any other Trade Contract to which Borrower, Mortgage Borrower, General Contractor or an Affiliate of Borrower or Mortgage Borrower is a party, and each agreement to which a Design Professional is party, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time to time in accordance with the terms and conditions of this Agreement.

"Construction Documents" means, collectively, all Construction Contracts, the Plans and Specifications, the Construction Budget, the Construction Permits and all Change Orders, as the same may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Construction Drawings" means the drawings, calculations and final specifications acceptable for permitting, bidding and construction of the Required Improvements.

"Construction Permits" means, collectively, all authorizations, consents and approvals, licenses and permits given or issued by Governmental Authorities which are required, from time to time, for the development and construction of the Project substantially in accordance with all Legal Requirements and the Plans and Specifications, as the same may be amended, replaced, supplemented, assigned or otherwise modified from time to time in accordance with the terms of this Agreement and applicable Legal Requirements.

"Construction Schedule" means a schedule for the projected progress of the development and construction of the Project, setting forth a construction progress schedule reflecting, among other things, the anticipated dates of completion, which shall include a trade-by-trade breakdown of the estimated periods of commencement and completion of the specific work to be completed in connection with the completion of the Project substantially in accordance with the Plans and Specifications and Legal Requirements, as the same may be amended, restated, replaced, supplemented, updated or otherwise modified from time to time in accordance with the terms of this Agreement. The initial Construction Schedule is attached hereto as Exhibit M.

"Contingency" means the contingency line item set forth in the Construction Budget, initially in the amount of $3,106,237 and available for Costs, pursuant to this Agreement, subject to compliance at all times with the Lien Law.

"Contractor" means any contractor, subcontractor, sub-subcontractor, supplier or provider of labor, materials, equipment and/or services in connection with the construction of the Project or any Design Professional.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. "Controlled" and "Controlling" shall have correlative meanings.

"Cost Saving" has the meaning set forth in Section 2.1.11(d) hereof.

"Costs" means, collectively, all costs and expenses of constructing the Project (or, with respect to Reimbursable Costs, all costs and expenses of construction of the Project prior to the Closing Date, not to exceed $18,236,032) and operating the Property (including, without limitation, all Approved Project Expenditures and Interest and Carry Costs) through the Maturity Date whether or not set forth in the Construction Budget or the Approved Annual Budget.

"Debt" means the Outstanding Principal Balance, together with all interest accrued and unpaid thereon, and all other sums (including the Prepayment Premium) due from Borrower under the Loan Documents to which it is a party.

"Debt Service" means, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement.

"Debt Yield" means, as of any date of determination, the amount (expressed as a percentage) determined by dividing the UNOI by the sum of (a) the Outstanding Principal Balance and (b) the Mortgage Loan Outstanding Principal Balance.

"Default" means the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"Default Rate" means a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) five percent (5%) above the Interest Rate.

"Deficiency" means, as of any date of determination, the amount by which the sum of (i) such portion of the Loan and the Mortgage Loan (so long as Mortgage Lender is not in default of its obligations to fund Mortgage Loan Additional Advances thereunder), in each case, as remains to be advanced as of such date in respect of Approved Project Expenditures (but only to the extent such unadvanced amounts are permitted (or would be permitted, upon satisfaction of applicable conditions precedent) pursuant to the

Loan Documents to be applied to the applicable Costs and excluding undisbursed amounts in the Construction Budget for Interest and Carry Costs and other sums to be advanced to pay non-construction costs such as marketing costs), plus (ii) amounts that are guaranteed pursuant to the Equity Funding Guaranty (provided that no claim is then being pursued by Lender in respect of any of the Guarantees and Guarantor is not then in default or in breach of any of its obligations in respect of any of the Guarantees) with respect to Approved Project Expenditures, plus (iii) any unused Deficiency Collateral as of such date, is less than the actual sum, as estimated by Lender or Construction Consultant in its good faith judgment, which will be required to Complete the Project substantially in accordance with the Plans and Specifications (taking into account all Landlord Requested Changes and all Tenant Requested Changes (each such term as defined in the Master Lease), in each case, approved in accordance with the Master Lease and the Loan Documents, and as the Plans and Specifications may otherwise be amended as provided herein), in substantial accordance with the then current Construction Schedule (as the same may be amended as provided herein), and all Legal Requirements and this Agreement, and to pay all unpaid Costs in connection therewith, in each case, exclusive of any Interest and Carry Costs and other sums to be advanced to pay non-construction costs such as marketing expenses. Such estimate shall be binding and conclusive, provided that it is made in good faith and absent manifest error.

"Deficiency Account" has the meaning set forth in the Mortgage Loan Agreement

"Deficiency Collateral" has the meaning set forth in Section 2.1.12(b) hereof.

"Design Drawings" means the drawings and outline specifications that illustrate and describe the refinement of the design of the Required Improvements, establishing the scope, relationships, forms, size, materials, systems and appearance of the Required Improvements by means of plans, sections and elevations, typical construction details and equipment layouts.

"Design Professionals" means, collectively, all architects, engineers, consultants, and similar professionals retained by or on behalf of Borrower or Mortgage Borrower or their respective Affiliates in connection with the design of the Project (including the Architect), all of which shall be licensed professionals in the State (if so required by the Legal Requirements) and shall be subject to approval by Lender prior to such engagement in connection with the Project, not to be unreasonably withheld, conditioned or delayed. Lender has approved the Design Professions listed on Schedule IV.

"Determination Date" means, with respect to any determination of the Applicable Rate Index applicable to an Interest Accrual Period, the date that is two (2) U.S. Government Securities Business Days preceding the first day of the applicable Interest Accrual Period.

"Downgraded Counterparty" means a counterparty to an Interest Rate Cap Agreement, or the guarantor of such counterparty's obligations under an Interest Rate Cap Agreement that has a long-term unsecured debt rating of "A-" or lower by S&P and "A3" or lower from Moody's.

"Draw Request" has the meaning set forth in Section 2.1.5(a) hereof.

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

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

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

"Eligible Account" means a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least $50,000,000.00 and is subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

"Eligible Institution" means a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least "A-1" by S&P, "P-1" by Moody's, and "F-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less or, in the case of letters of credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "A" by Fitch and S&P and "A2" by Moody's.

"Embargoed Person" means any Person (a) that is subject to trade restrictions under United States law, including the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated under any such United States laws, with the result that transacting business with such Person (whether directly or indirectly) is or would be prohibited by law; (b) that is listed in the annex to, or who is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (as amended or supplemented, the "Executive Order") or any other Prescribed Laws; (c) that is owned or Controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order or any other Prescribed Laws; (d) with whom a Person is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order and any other Prescribed Laws; (e) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order or any other Prescribed Laws; (f) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or at any replacement website or other replacement official publication of such list; (g) that is named on any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC, or on any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America; (h) that has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any violation of Prescribed Laws, or is currently under investigation by any Governmental Authority for alleged criminal activity; or (i) who is an Affiliate of a Person listed in clauses (a) through (h) above.

"Engineer" means each engineer with respect to the Project on the date hereof, together with any successor or additional engineers engaged by (or on behalf of) Borrower or Mortgage Borrower or their

respective Affiliate to perform any structural, mechanical, electrical and/or soil engineering services with respect to all or any portion of the Project.

"Engineer Agreement" means each agreement for engineering services which Borrower or Mortgage Borrower has entered into or may enter into with any Engineer in accordance with Section 5.1.3(k), as the same may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Engineer Consent" means any consents and agreements required pursuant to the terms of this Agreement to be executed and delivered by an Engineer to Lender with respect to any Engineer Agreements entered into by and between Mortgage Borrower and any Engineer, which, in each case, shall be, in form and substance reasonably acceptable to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Environmental Indemnity" means that certain Mezzanine Environmental Indemnity Agreement, dated as of the Closing Date, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Environmental Report" means that certain Phase I Environmental Site Assessment Report, dated as of May 6, 2022, prepared by Partner Engineering and Science, Inc., as Project No. 22-366205.1.

"Equity Collateral Enforcement Action" has the meaning set forth in Section 8.2(xxii) hereof.

"Equity Funding Guaranty" means that certain Mezzanine Guaranty of Equity Obligations, dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Equity Interests" means (a) partnership interests (general or limited) in a partnership; (b) membership interests in a limited liability company; (c) shares or stock interests in a corporation, and (d) the beneficial ownership interests in a trust.

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

"Estimated Interest and Carry Available Amount" has the meaning set forth in Section 2.1.9(d) hereof.

"Estimated Interest and Carry Costs" has the meaning set forth in Section 2.1.9(d) hereof.

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

"Event of Default" has the meaning set forth in Section 7.1 hereof.

"Exchange Act" means the Securities and Exchange Act of 1934, as amended.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Lender being organized under the laws of, or having its principal office or, in the case of any

Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or commitment, or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.2.3(a), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Lender's failure to comply with Section 2.2.3(b); and (d) any withholding Taxes imposed under FATCA.

"Excusable Delay" means any delay or number of delays due to conditions beyond the reasonable control of Borrower or Mortgage Borrower and/or their respective Affiliates (in each case, so long as Borrower continuously and diligently uses (and cause Mortgage Borrower to continuously and diligently use) all Commercially Reasonable Efforts to mitigate the effect thereof), including, without limitation, strikes, stays, judgments, orders, decrees, labor disputes, governmental restrictions, acts of God, the elements, enemy action, civil commotion, fire, casualty, accidents, shortages of, or inability to obtain, labor, utilities or material, actual or threatened health emergency (including, without limitation, epidemic, pandemic (including, for the avoidance of doubt, the ongoing COVID-19 pandemic), famine, disease, plague, quarantine, and other health risk); provided, however, that (i) any lack of funds in and of itself shall not be deemed to be a condition beyond the reasonable control of Borrower or Mortgage Borrower and (ii) any failure by any contractor or sub-contractor to perform its obligations under any contractor or sub-contractor agreement in and of itself shall not be deemed to be a condition beyond the reasonable control of Borrower and Mortgage Borrower (unless due to the bankruptcy or insolvency of such contractor or sub-contractor); provided that in no event shall Excusable Delay exceed sixty (60) consecutive calendar days or ninety (90) days in the aggregate.

"Executive Order" has the meaning set forth in the definition of "Embargoed Person".

"Existing Construction Documents" means, collectively, the Construction Documents in effect as of the Closing Date, as more particularly described on Schedule I hereto.

"Extension Option" has the meaning set forth in Section 2.3.1 hereof.

"Extension Shortfall" has the meaning set forth in Section 2.3.1(k) hereof.

"Extension Term" has the meaning set forth in Section 2.3.1 hereof.

"Extraordinary Expenses" has the meaning set forth in Section 5.1.1(f)(iv).

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

"Financial Covenant Requirements" means, collectively, the Guarantor Net Worth and Liquid Assets (each such term as defined in the Recourse Guaranty) requirements set forth in the Recourse Guaranty.

"Fitch" means Fitch, Inc.

"Foreign Lender" means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes.

"General Contractor" means (i) Turner Construction Company or (ii) any other bondable general contractor or construction manager, as the case may be, licensed in the State, engaged by Borrower or Mortgage Borrower or its Affiliate with respect to the construction of the Project and approved by Lender, such approval not to be unreasonably withheld, conditioned or delayed, and for which Lender has received a general contractor in the form of the General Contractor Agreement Consent.

"General Contractor Agreement" means (i) that certain AIA Document A133-Standard Form Agreement Between Owner and Construction Manager as Constructor, dated as of October 26, 2020, between Mortgage Borrower and General Contractor, as amended by those two (2) certain Guaranteed Maximum Price Amendments, dated as of December 17, 2020, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of December 31, 2020, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of January 27, 2021, by those two (2) certain Guaranteed Maximum Price Amendment, dated March 5, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of March 30, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of April 20, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of April 26, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of May 13, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of May 21, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of May 27, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of June 20, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of July 23, 2021, as further amended by that certain Guaranteed Maximum Price Amendment, dated as of August 25, 2021, and as further amended by that certain Guaranteed Maximum Price Amendment, dated as of September 15, 2021, (b) any other documentation executed by and between Mortgage Borrower and General Contractor evidencing or relating to the guaranteed maximum price thereunder and (c) any guaranty of General Contractor's obligations under the General Contractor Agreement provided by any Person, and (ii) any general contractor or other agreement which may be entered into by (or on behalf of) Mortgage Borrower or its Affiliate with any successor or additional or other General Contractor subject to the requirements of Section 5.1.3(k), as each of the foregoing in (i) and (ii) may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"General Contractor Agreement Consent" means that certain Mezzanine Consent of General Contractor and Subordination of Fees, dated as of the Closing Date, executed and delivered by Borrower and General Contractor to Lender, as the same may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Governmental Authority" means any court, board, agency, bureau, department, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

"Guarantor" means Instil Sponsor, together with its successors and permitted assigns.

"Guarantees" means, collectively, the Recourse Guaranty, the Carry Cost Guaranty, the Completion Guaranty and the Equity Funding Guaranty, each dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Hard Costs" means, collectively, all costs and expenses constituting Costs of the Project set forth in the Construction Budget which are denominated in the Construction Budget as "Hard Costs".

"HVCRE" means any loan classified as a Highly Volatile Commercial Real Estate Loan by the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) including the rules, guidelines and directives promulgated pursuant to Basel III.

"Improvements" has the meaning set forth in the granting clause of the Security Instrument.

"In Balance" has the meaning set forth in Section 2.1.11(a) hereof.

"Increased Costs" has the meaning set forth in Section 2.2.5(a) hereof.

"Indebtedness" means for any Person, on a particular date, the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations of such Person that are evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations of such Person for the deferred purchase price of property or services (including trade obligations for which such Person is liable); (d) obligations of such Person under letters of credit; (e) obligations of such Person under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; (g) obligations secured by any liens granted by such Person, whether or not the obligations have been assumed or are those of any other Person, and (h) without duplication of the foregoing, any contingent obligations of such Person (determined in accordance with the Approved Accounting Method).

"Indemnified Party" has the meaning set forth in Section 10.13(b) hereof.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document, and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Independent" means, when used with respect to any Person, a Person that: (a) does not have any direct financial interest or any material indirect financial interest in Borrower or in any Affiliate of Borrower; (b) is not connected with Borrower or any Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer, or person performing similar functions; and (c) is not a member of the immediate family of a Person defined in clause (a) or (b) above.

"Independent Accountant" means a "Big Four" accounting firm or another accounting firm of nationally recognized, certified public accountants which is Independent and which is selected by Borrower and reasonably acceptable to Lender.

"Independent Director" or "Independent Manager" means, of any Special Purpose Entity, or if such Special Purpose Entity is a limited partnership, the general partner of such Special Purpose Entity, an individual who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience and who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc. (or its affiliate NRAI Entity Services, LLC), Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors or Independent Managers, another nationally-recognized company reasonably approved by Lender, in each case that is not an Affiliate

of the Borrower Parties and that provides professional Independent Directors and Independent Managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Manager or Independent Director, or as a member of the board of directors or board of managers of such corporation or limited liability company, as applicable, and for the five-year period prior to his or her appointment as an Independent Director has not been and during the continuation of his or her serving as an Independent Director will not be, any of the following:

(a) a member (other than a Special Member), manager, director, trustee, officer, employee, attorney, or counsel of any of the Borrower Parties or their Affiliates (provided that such person may be an Independent Director or Independent Manager of Borrower as long as they are not a member, manager, director, trustee, officer, employee, attorney, or counsel of any other Borrower Party or Affiliate of a Borrower Party, except that a Person who otherwise satisfies the definition of Independent Director or Independent Manager other than this subparagraph (a) by reason of being the independent director or independent manager of a "special purpose entity" that is an Affiliate of Borrower shall not be disqualified from serving as an Independent Director or Independent Manager of Borrower if such Person is either (i) a professional Independent Director or Independent Manager or (ii) the fees that such individual earns from serving as independent director or independent manager of Affiliates of Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year);

(b) a creditor, customer, supplier, service provider (including provider of professional services) or other Person who derives any of its purchases or revenues from its activities with any Borrower Party or any Affiliate of a Borrower Party (other than an Independent Manager or Independent Director provided by a nationally-recognized company that routinely provides professional Independent Directors or Independent Managers and other corporate services to any Borrower Party or any Affiliate of a Borrower Party in the ordinary course of business);

(c) a direct or indirect legal or beneficial owner in any Borrower Party or any Affiliate of a Borrower Party;

(d) a member of the immediate family of any member, manager, employee, attorney, customer, supplier or other Person referred to above; and

(e) a Person Controlling or under the common Control of anyone listed in subparagraphs (a) through (d) above.

"**Initial Advance**" has the meaning set forth in Section 2.1.2 hereof.

"**Initial Maturity Date**" means the Payment Date in July 9, 2025.

"**Initial Payment Date**" means the Payment Date occurring in July, 2022.

"**Instil Sponsor**" means Instil Bio, Inc., a Delaware corporation.

"**Insurance Reserve Account**" has the meaning set forth in Section 3.2.2(a) hereof.

"**Insurance Premiums**" has the meaning set forth in Section 6.1(b) hereof.

"**Interest Accrual Period**" means, (i) with respect to the Initial Payment Date, the period commencing on the Closing Date up to but not including the Initial Payment Date, and (ii) with respect to any other Payment Date, the period commencing on and including the ninth (9th) day of the preceding

calendar month and ending on and including the eighth (8th) day of the calendar month in which such Payment Date occurs.

"Interest and Carry Costs" means all amounts required to be deposited or paid (as applicable) pursuant to Section 3.1(b)(i) through (ix) of the Mortgage Loan Agreement (including, without limitation, all fees, costs and expenses payable to Lender under the Loan Documents or Mortgage Lender under the Mortgage Loan Documents).

"Interest and Carry Costs Advance Amount" means an amount equal to $217,866.

"Interest and Carry Cost Line Item" means the Line Item or Line Items set forth in the Construction Budget in an amount equal to $1,210,369 and available for Interest and Carry Costs pursuant to this Agreement and the Mortgage Loan Agreement.

"Interest and Carry Cost Shortfall" has the meaning set forth in Section 2.1.9(d) hereof.

"Interest Rate" means, for any Interest Accrual Period, (i) the Term SOFR Rate for so long as the Loan is a Term SOFR Rate Loan, (ii) the Alternate Rate for so long as the Loan is an Alternate Rate Loan or (iii) the Prime Rate for so long as the Loan is a Prime Rate Loan.

"Interest Rate Cap Agreement" has the meaning set forth in Section 2.2.7(a); provided, that, after delivery of a Replacement Interest Rate Cap Agreement or a Substitute Interest Rate Cap Agreement to Lender, the term "Interest Rate Cap Agreement" shall be deemed to include such Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement and such Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement shall be subject to all requirements applicable to the Interest Rate Cap Agreement.

"Late Payment Charge" has the meaning set forth in Section 2.4.2 hereof.

"Lead Lender" has the meaning set forth in Section 10.29(a) hereof.

"Lease" means the Master Lease any other lease, sublease or sub-sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and (a) every modification, amendment or other agreement relating to such lease, sublease, sub-sublease, or other agreement entered into in connection with such lease, sublease, sub-sublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Legal Requirements" means all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, building codes, land laws, judgments, decrees and injunctions of Governmental Authorities affecting the Loan, any Secondary Market Transaction with respect to the Loan, Borrower, Mortgage Borrower, Master Tenant, Guarantor, the Collateral and/or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including the Securities Act, the Exchange Act, Regulation AB, and regulations promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any statute replacing or amending the same), the Americans with Disabilities Act of 1990, as amended, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower, Mortgage Borrower, Master Tenant, Guarantor, the Collateral or any part

thereof, or the Property or any part thereof, including any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

"Lender" has the meaning set forth in the introductory paragraph hereto, together with its successors and assigns (including the holder of each Note).

"Letter of Credit" means an irrevocable, unconditional, freely transferable (without cost to Lender), clean sight draft letter of credit, as the same may be replaced, split, substituted, modified, amended, supplemented, assigned or otherwise restated from time to time, which (a) names a Person other than Borrower as the account party, (b) either does not expire sooner than, or can be renewed for successive one (1) year periods ending not sooner than, thirty (30) days after the Maturity Date (or such earlier date as is thirty (30) days after such Letter of Credit is no longer required pursuant to the terms of this Agreement), (c) entitles Lender to draw thereon in New York City based solely on a statement purportedly executed by an officer of Lender stating that it has the right to draw thereon, (d) is issued by a domestic Approved Bank or the U.S. agency or branch of a foreign Approved Bank, or if there are no domestic Approved Banks or U.S. agencies or branches of a foreign Approved Bank then issuing letters of credit, then such letter of credit may be issued by a domestic bank, the long term unsecured debt rating of which is the highest such rating then given by the Rating Agency or Rating Agencies, as applicable, to a domestic commercial bank, in any event having an office in New York City where presentation may be made by Lender, and (e) is otherwise in form and substance acceptable to Lender. If at any time the bank issuing any such Letter of Credit shall cease to be an Approved Bank, or if Borrower fails to cause such Letter of Credit to be renewed or replaced no later than thirty (30) days prior to any annual expiration thereof, Lender shall have the right immediately to draw down the same in full (or in part) and hold the proceeds of such draw as collateral for the Loan in a Reserve Account.

"Lien" means any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, Mortgage Borrower, the Property or any portion thereof or any interest therein, the Collateral or any portion thereof or any interest therein, or any direct or indirect interest in Borrower, Mortgage Borrower, SPE Component Entity or Mortgage Borrower SPE Component Entity, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialman's and other similar liens and encumbrances.

"Lien Law" means the lien law of the State as in effect from time to time, with respect to mechanic's liens and lien priority.

"Line Item" means a line item of cost or expense set forth in the Construction Budget, as the same may be adjusted in compliance with Section 2.1.11 or Section 5.1.3(c).

"Liquidation Event" means the occurrence of any of the following (without implying that the any of the following are permitted hereunder other than as expressly provided here): (i) any Casualty to the Property or any material portion thereof, (ii) any Condemnation of the Property or any material portion thereof, (iii) a Transfer of the Property in connection with realization thereon following an Event of Default under the Mortgage Loan, including without limitation a foreclosure sale, (iv) any refinancing of the Property or the Mortgage Loan or (v) the receipt by Mortgage Borrower of any excess proceeds realized under its Owner's Title Policy after application of such proceeds by Mortgage Borrower to cure any title defect.

"Loan" means the loan in the maximum principal amount of the Loan Amount made by Lender to Borrower pursuant to this Agreement.

"Loan Amount" means the sum of $30,000,000.

"Loan Documents" means, collectively, this Agreement, the Note, the Pledge Agreement, the Guarantees, the Environmental Indemnity, the Manager Consent, the General Contractor Agreement Consent, each Architect Consent, each Engineer Consent, each Major Trade Contractor Consent, the Cash Management Agreement, the Clearing Account Agreement, any Assignment of Interest Rate Cap Agreement, the Closing Certificate, the Master Lease Recognition Agreement and all other certificates, documents, agreements or instruments now or hereafter executed and/or delivered in connection with the Loan (as each may be amended, modified, extended, consolidated or supplemented from time to time).

"Loss" or "Losses" means, with respect to any Person, all liabilities, obligations, losses, damages, fines, penalties, actions, proceedings, judgments, suits, claims, debts, costs, expenses, charges, fees, awards, amounts paid in settlement, demands, and disbursements of any kind or nature whatsoever (including reasonable attorneys' fees) of or suffered or incurred by such Person in connection with or relating to the Loan, the Property, the Collateral, or any other collateral for the Loan (but not including (a) special, speculative, exemplary, or punitive damages, or (b) consequential damages in the nature of alleged "lost profits" or "lost opportunities", in each case with respect to the foregoing clauses (a) and (b) except to the extent that a party seeking indemnification of such amount has paid or is required to pay such measure of damages other than as a result of (and to the extent of) its own gross negligence, willful misconduct or fraud).

"Major Milestones" means the fulfillment of the following milestones for the Project as determined by Lender in its sole but good faith discretion: (i) Substantial Completion shall have occurred no later than the Substantial Completion Due Date; and (ii) Completion shall have occurred no later than the Completion Due Date.

"Major Trade Contract" means, (a) each of those certain agreements, dated as of August 1, 2020 and November 1, 2020, between Mortgage Borrower and Project Manager, or (b) each Trade Contract, (i) if such Trade Contract has been executed prior to the Closing Date, under which there are Costs remaining to complete after the Closing Date equal to or in excess of $1,000,000, and (ii) if such Trade Contract is executed from and after the Closing Date, that has a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any Change Order or Change Orders, equal to or in excess of $1,000,000; provided that, for purposes of this definition, multiple Trade Contracts with a single Trade Contractor, or an Affiliate thereof, as the case may be, shall be deemed to be one Trade Contract.

"Major Trade Contractor" means any Trade Contractor under a Major Trade Contract.

"Major Trade Contractor Consent" means each consent and agreement required pursuant to the terms of this Agreement to be executed and delivered by a Major Trade Contractor to Lender in substantially the form attached hereto as Exhibit B with respect to any Major Trade Contracts entered into by and between Mortgage Borrower and any Major Trade Contractor, which, in each case, shall be, in form and substance reasonably acceptable to Lender and the applicable Major Trade Contractor, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

"Management Agreement" means any property management agreement entered into in accordance with the terms of this Agreement between Borrower or Mortgage Borrower and a Qualified

Manager that is reasonably acceptable to Lender, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof.

"Manager" means a Qualified Manager that enters into a Management Agreement and delivers to Lender a Manager Consent, in each case, in accordance with the terms and provisions of this Agreement.

"Manager Consent" means any Mezzanine Consent of Manager and Subordination of Management Fees, entered into among Lender, Borrower, Mortgage Borrower and Manager in accordance with the terms of this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Master Lease" means that certain Instil Bio Life Science Campus Lease, dated as of the Closing Date, between Mortgage Borrower, as landlord, and Master Tenant, as tenant, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof.

"Master Lease Payment Outside Date" has the meaning set forth in Section 4.1.2(l)(i).

"Master Lease Payments" means all Rent (as defined in the Master Lease) paid by Master Tenant pursuant to the Master Lease.

"Master Lease Recognition Agreement" means that certain Mezzanine Recognition Agreement, dated as of the Closing Date, among Lender, Borrower, Mortgage Borrower and Master Tenant, with respect to the Master Lease, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof.

"Master Tenant" means Instil Sponsor.

"Material Adverse Effect" means a material adverse effect on (a) the Property or the Collateral or, in each case, the value or use thereof, (b) the business, profits, management, operations or condition (financial or otherwise) of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity, Master Tenant, and Guarantor, taken as a whole, the Collateral or the Property, (c) the enforceability, validity, perfection or priority of the lien of the Pledge Agreement or the other Loan Documents, or (d) the ability of any Borrower Party to perform its obligations under the Loan Documents to which it is a party; provided, however, that current financial and market conditions engendered by the SARS-CoV-2 global pandemic shall not be given effect in determining whether a Material Adverse Effect has occurred with respect to a Borrower Party unless such conditions result in a material adverse effect specific to the business, condition (financial or otherwise), the Property, the Collateral, or operations of Borrower, Mortgage Borrower, Guarantor and their respective Affiliates, taken as a whole, after the Closing Date.

"Material Agreements" means each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, other than the Management Agreement, the Construction Documents, the Master Lease and the other Leases, as to which either (i) there is an obligation of Borrower to pay more than $100,000 per annum; or (ii) the term thereof extends beyond one (1) year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments).

"Maturity Date" means the Initial Maturity Date or, if applicable, the applicable date to which the Initial Maturity Date has been extended pursuant to Section 2.3 hereof, or such other date on which the final payment of the Debt becomes due and payable as herein provided, whether at the stated maturity date, by declaration of acceleration, or otherwise.

"Maximum Legal Rate" means the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Loan and as provided for herein or the other Loan Documents, under the laws of the state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Mezzanine Funding Share" means 35.29%.

"Milestone Non-Compliance Event" means that any Major Milestone has not been timely satisfied as provided in the definition of "Major Milestones".

"Minimum Rate" means the Rate Index Floor plus the Spread.

"Monthly Debt Service Payment Amount" means, as of any Payment Date, all accrued and unpaid interest that has accrued on the Outstanding Principal Balance at the Interest Rate for the Interest Accrual Period in effect as of the day immediately preceding such Payment Date.

"**Moody's**" means Moody's Investors Service, Inc.

"Mortgage Borrower" has the meaning set forth in the Recitals hereto.

"Mortgage Borrower SPE Component Entity" means the SPE Component Entity (as defined in the Mortgage Loan Agreement).

"Mortgage Debt" means the Debt (as defined under the Mortgage Loan Agreement).

"Mortgage Deficiency Provisions" has the meaning set forth in Section 2.1.12(f).

"Mortgage Funding Share" means 64.71%.

"Mortgage Lender" has the meaning set forth in the Recitals hereto.

"Mortgage Loan" means that certain loan in the original principal amount of $55,000,000 made of even date herewith by Mortgage Lender to Mortgage Borrower.

"Mortgage Loan Accounts" means the "Accounts" as defined in the Mortgage Loan Agreement.

"Mortgage Loan Agreement" has the meaning set forth in the Recitals hereto.

"Mortgage Loan Additional Advance" means "Additional Advance" as defined in the Mortgage Loan Agreement.

"Mortgage Loan Amount" has the meaning set forth in the Recitals hereto.

"Mortgage Loan Cash Management Account" means the "Cash Management Account" under and as defined in the Mortgage Loan Agreement.

"Mortgage Loan Cash Management Bank" means the "Cash Management Bank" under and as defined in the Mortgage Loan Agreement.

"Mortgage Loan Clearing Bank" means the "Clearing Bank" under and as defined in the Mortgage Loan Agreement.

"Mortgage Loan Debt" means the "Debt" under and as defined in the Mortgage Loan Agreement.

"Mortgage Loan Debt Service" means, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Loan Agreement.

"Mortgage Loan Deficiency Account" has means the "Deficiency Account" under and as defined in the Mortgage Loan Agreement.

"Mortgage Loan Documents" means all documents evidencing and/or securing the Mortgage Loan and all documents executed and/or delivered in connection therewith, as the same may be amended, modified and/or supplemented from time to time.

"Mortgage Loan Event of Default" means an "Event of Default" as defined in the Mortgage Loan Agreement.

"Mortgage Loan Excess Cash Flow Reserve Account" means the "Excess Cash Flow Reserve Account" as defined in the Mortgage Loan Agreement.

"Mortgage Loan Note" has the meaning set forth in the Recitals hereto.

"Mortgage Loan Outstanding Principal Balance" means, as of any date, the outstanding principal balance of the Mortgage Loan.

"Mortgage Loan Reserve Funds" means the "Reserve Funds" under and as defined in the Mortgage Loan Agreement.

"Mortgage Loan Shortfall Account" means the "Shortfall Account" under and as defined in the Mortgage Loan Agreement.

"Mortgage Shortfall Provisions" has the meaning set forth in Section 2.1.9(e).

"Net Liquidation Proceeds" shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (i) Lender's and/or Mortgage Lender's reasonable costs incurred in connection with the recovery thereof, (ii) the costs incurred by Mortgage Borrower in connection with a restoration of the Property made in accordance with the Mortgage Loan Documents, (iii) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents to Mortgage Lender, (iv) in the case of a foreclosure sale, disposition or Transfer of the Property in connection with realization thereon following an Event of Default under the Mortgage Loan, such reasonable and customary costs and expenses of sale or other disposition (including attorneys' fees and brokerage commissions), (v) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (vi) in the case of a refinancing of the Mortgage Loan, such costs and expenses (including attorneys' fees) of such refinancing as shall be reasonably approved by Lender and (vii) the amount of any prepayments, yield maintenance charges and/or prepayment premiums required pursuant to the Mortgage Loan Documents and/or the Loan Documents in connection with any such Liquidation Event.

"Net Operating Income" has the meaning set forth in the Mortgage Loan Agreement.

"Net Proceeds" has the meaning set forth in the Mortgage Loan Agreement.

"Net Proceeds Threshold" means the sum of One Million and No/100 Dollars ($1,000,000).

"Non-**Lienable Work**" means work conducted at, or for the benefit of, the Property, with respect to which work, no Person shall have the right under applicable Legal Requirements to file or record a Lien against the Property in respect of any non-payment of amounts due and owing to such Person.

"Note" means one or more loan promissory note(s) made by Borrower in favor of a Lender, as the same may be amended, restated, replaced, supplemented, extended or otherwise modified from time to time.

"Obligations" means, collectively, Borrower's obligations for the payment of the Debt and the performance of the all obligations of Borrower contained in the Loan Documents.

"OFAC" has the meaning set forth in the definition of "Prescribed Laws".

"**Officer's Certificate**" means a certificate delivered to Lender by Borrower that is signed by an authorized senior officer of Borrower or of the entity that Controls Borrower, as applicable, in the form attached hereto as Exhibit C.

"Off-Site Materials" has the meaning assigned to such term in the definition of Stored Materials.

"Operating Expenses" has the meaning set forth in the Mortgage Loan Agreement.

"Operating Income" has the meaning set forth in the Mortgage Loan Agreement.

"Operating Permits" means, collectively, all authorizations, consents and approvals given by and licenses and permits issued by Governmental Authorities which are required for the ownership, use and occupancy of the Property in accordance with all Legal Requirements (other than Construction Permits) and for the performance and observance of all obligations and agreements of Borrower contained herein or in the other Loan Documents that relate to the ownership, use and occupancy of the Property, including the ownership, use and occupancy of the Project following Completion of the same.

"Other Charges" means all ground rents, assessments, maintenance charges, impositions other than Property Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

"Other Connection Taxes" means, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

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

"Outstanding Principal Balance" means, as of any date, the outstanding principal balance of the Loan.

"**Owner's Title Policy**" means an owner's title insurance policy, issued or co-insured by the Title Company, on ALTA form 2006 and otherwise in form and substance satisfactory to Lender.

"Oxford Acquisition" means the acquisition of the Property by any Oxford Entity (excluding any acquisition of the Property by any Person in connection with the exercise by Lender of any of its rights and/or remedies under this Agreement or the other Loan Documents) during the period commencing on the Closing Date and ending on the date that is twelve (12) months following the Closing Date.

"Oxford Entity" means Oxford Properties Group or any Affiliate (pursuant to clause (b) of the definition thereof) of Oxford Properties Group.

"Payment Date" means the ninth (9^{th}) day of each calendar month during the term of the Loan or, if such day is not a Business Day, the immediately preceding Business Day.

"Permitted Encumbrances" means, (a) with respect to the Property, collectively (i) the Liens and security interests created by the Mortgage Loan Documents, (ii) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy or Survey, (iii) Liens, if any, for Taxes or Other Charges imposed by any Governmental Authority not yet due or delinquent or which are being contested by Borrower or Mortgage Borrower in accordance with the terms and conditions of this Agreement, (iv) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's reasonable discretion, (v) inchoate mechanics' and materialmens' liens, (vi) actual mechanics' and materialmens' liens provided same are discharged or bonded within thirty (30) days of the filing thereof (but in any case prior to the date on which any foreclosure or other realization thereon is scheduled to occur if sooner than such 30-day period) or which are otherwise being contested by Borrower or Mortgage Borrower in accordance with the terms and conditions of this Agreement, (vii) the Master Lease, (viii) Liens arising in connection with Permitted Equipment Leases, (ix) other than the Master Lease, the Leases entered into prior to the Closing Date or after the Closing Date in accordance with the terms and conditions of this Agreement, and (x) immaterial Transfers and grants of easements, restrictions, covenants, reservations and rights of way in the ordinary course of business, which, in each case, are (A) permitted by the terms of Section 5.1.1(d)(iii) and (B) entered into in full compliance with the terms of Section 5.1.1(d)(iii), and (xi) Liens (1) of the Mortgage Loan Clearing Bank and Mortgage Loan Cash Management Bank arising under Section 4-210 of the UCC on items in the course of collection and (2) in favor of Clearing Bank and Cash Management Bank arising as a matter of law encumbering deposits (including the right of set-off) arising in the ordinary course of business in connection with the maintenance of such accounts, and (b) with respect to the Collateral, the Liens of the Loan Documents.

"Permitted Equipment Leases" means equipment leases or other similar instruments entered into with respect to equipment and/or Personal Property provided, that, in each case, such equipment leases or similar instruments (i) are entered into on commercially reasonable terms and conditions in the ordinary course of Borrower's business, (ii) relate to equipment and/or Personal Property which is (A) used in connection with the operation and maintenance of the Property in the ordinary course of Borrower's business and (B) readily replaceable without material interference or interruption to the operation of the Property, and (iii) have annual payments not exceeding $100,000 in the aggregate.

"Permitted Indebtedness" means (a) in the case of Mortgage Borrower, (i) the Mortgage Debt, and (ii) unsecured trade and operational debt incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of Mortgage Borrower, in amounts not to exceed 2% of the sum of the Loan Amount and the Mortgage Loan Amount, which liabilities are not

payable more than sixty (60) days past the date incurred, are paid when due and are not evidenced by a note, (iii) intentionally omitted, and (iv) Taxes imposed by any Governmental Authority not yet delinquent or which are being contested in accordance with the terms and conditions of this Agreement, and (b) in the case of Borrower, unsecured trade and operational debt incurred in the ordinary course of business relating to the ownership of its Equity Interest in Mortgage Borrower, in amounts not to exceed $25,000, which liabilities are not paid more than sixty (60) days past the date incurred, are not evidenced by a note, and are paid when due.

"Permitted Transfers" has the meaning set forth in Section 5.1.1(d) hereof.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Personal Property" has the meaning set forth in the granting clause of the Security Instrument.

"Plans and Specifications" means the plans and specifications for the construction of the Project approved by Lender as of the Closing Date and any other plans and specifications for the construction of the Project prepared or to be prepared by (or on behalf of) Borrower after the Closing Date, including any other architectural, structural, foundation and elevator plans and specifications prepared by Architect and any other mechanical, electrical, plumbing and fire protection plans and specifications prepared by any Person retained or to be retained by Borrower, Architect or General Contractor as approved in writing by Lender and Construction Consultant, to the extent such approval is required by the terms of this Agreement, in each case, as the same may be amended by Change Orders applicable thereto, provided that such Change Orders have been approved to the extent required pursuant to Section 5.1.3(g), in each case as the same may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

"Pledge Agreement" means that certain Mezzanine Pledge and Security Agreement, dated as of the Closing Date, by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the provisions thereof.

"PLL Policy" has the meaning set forth in Section 6.1(a)(ix) hereof.

"Policy" and "Policies" has the meaning set forth in Section 6.1(b) hereof.

"Prepaid Revenues" has the meaning set forth in Section 3.1(b) hereof.

"Prepayment Date" has the meaning set forth in Section 2.5.1 hereof.

"Prepayment Premium" means, with respect to the principal amount of the Loan being prepaid on or prior to the applicable Prepayment Premium End Date, other than in connection with Oxford Acquisition, a payment to Lender in an amount equal to the product of (a) the Interest Rate as of the date of the prepayment), (b) the portion of the Loan being repaid, and (c) a fraction, the numerator of which is the number of days between the date through which interest on the amount being prepaid has been paid in full and the Prepayment Premium End Date and the denominator of which is 360. Notwithstanding the foregoing, with respect to any prepayment made after the Prepayment Premium End Date, the amount of the Prepayment Premium shall be zero.

"Prepayment Premium End Date" means, (a) if the determination of the Prepayment Premium is being made with respect to a prepayment in connection with a Third Party Sale, June 9, 2023, and (b) if

the determination of the Prepayment Premium is being made in any case other than with respect to a prepayment in connection with a Third Party Sale, December 9, 2023.

"Prescribed Laws" means, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. § 1701 et. seq., (d) the Racketeer Influenced and Corrupt Organizations Act, (e) all requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC"), and (f) all other Legal Requirements relating to money laundering, anti-bribery and corruption or terrorism.

"Prime Rate" means a fluctuating rate per annum equal to the Prime Rate Index plus the Prime Rate Spread; provided, however in no event shall the Prime Rate be deemed to be less than the Minimum Rate.

"Prime Rate Index" means the annual rate of interest published in The Wall Street Journal from time to time as the "Prime Rate." If The Wall Street Journal ceases to publish the "Prime Rate," Lender shall select an equivalent publication that publishes such "Prime Rate," and if such "Prime Rates" are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index. Notwithstanding the foregoing, in no event shall Prime Rate Index be less than the Rate Index Floor.

"Prime Rate Loan" means the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

"Prime Rate Spread" means, in connection with the conversion of the Loan from a Term SOFR Loan to a Prime Rate Loan, the difference (expressed as the number of basis points) of (a) Term SOFR as of the Determination Date for which Term SOFR was last applicable to the Loan plus the Spread minus (b) the Prime Rate as of such Determination Date; provided, however, that if such difference is a negative number, the Prime Rate Spread shall be zero.

"Project" means the construction, development, Completion and payment in full of all work relating to the Required Improvements as more specifically set forth herein and in accordance with the Plans and Specifications, all Legal Requirements and all other applicable requirements of the Loan Documents.

"Project Advance Amount" means an amount equal to $11,393,102.

"Project Manager" means Savills, Inc.

"Property" means each parcel of real property described on Exhibit A attached hereto, the Improvements thereon and all Personal Property owned by Mortgage Borrower and encumbered by the Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clause of the Security Instrument and referred to therein as the "Property".

"Property Taxes" means all real estate and personal property taxes, assessments, water rates or sewer rents (excluding income taxes), now or hereafter levied or assessed or imposed against the Property or part thereof, together with all interest and penalties thereon.

"Punchlist Items" means, individually and/or collectively, as the context may require, minor or insubstantial details of construction, decoration, mechanical adjustment or installation the non-completion of which does not prevent the use, occupancy or operation of the Required Improvements for their intended purposes and does not result in a violation of any Management Agreement, the Master Lease or any other Lease.

"Qualified Manager" means, in the judgment of Lender, a reputable and experienced management organization possessing experience in managing ten (10) or more properties of similar type, quality and size as the Property and approved by Lender.

"Rate Conversion" means conversion of the Loan to an Alternate Rate Loan or Prime Rate Loan.

"Rate Index Floor" means Closing Date Term SOFR.

"Rating Agencies" means each of S&P, Moody's, Fitch, DBRS, Inc., Morningstar, Inc., or Kroll Bond Ratings, or any other nationally recognized statistical rating agency which has been approved by Lender.

"REA" means, collectively, as the same may be amended, restated, supplemented or otherwise modified from time to time, any reciprocal easement agreement or similar document affecting the Property now or hereafter of record, as more particularly described on Schedule VI hereto.

"Recourse Guaranty" means that certain Mezzanine Guaranty Agreement, dated as of the Closing Date, from Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Recourse Liabilities" has the meaning set forth in Section 8.2 hereof.

"Reimbursable Costs" has the meaning set forth in Section 2.1.2 hereof.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York or any successor thereto.

"Replacement Interest Rate Cap Agreement" has the meaning set forth in Section 2.2.7(b).

"Required Borrower Equity Advance" means, with respect to each Combined Advance, non-borrowed cash equity in an amount equal to forty-nine percent (49%) of the total Costs that are the subject of such Combined Advance.

"Required Equity/Control Requirements" means, collectively, (i) Guarantor owns 100% of the direct equity interest in Borrower, (ii) Borrower owns 100% of the direct equity interest in Mortgage Borrower, and (iii) Guarantor Controls Borrower and Mortgage Borrower.

"Required Improvements" means the construction on the Land (as defined in the Security Instrument), in accordance with the Plans and Specifications, the Master Lease and all applicable Legal Requirements, of Building B, consisting of an approximately 70,930 square foot, two-story lab manufacturing and warehouse building, including all site improvements, utility work and other improvements appurtenant thereto.

"Reserve Accounts" means, collectively, the Tax Reserve Account, the Insurance Reserve Account, the Unfunded Loan Proceeds Account, the Deficiency Account, the Shortfall Account and any other reserve or escrow account established under the Loan Documents from time to time.

"Reserve Funds" means, collectively, any and all funds held in any Reserve Account from time to time.

"Reserve Item" means, individually and collectively as the context may require, (i) Insurance Premiums and/or (ii) Taxes and Other Charges.

"Restoration" means the repair and restoration of the Property after a Casualty or Condemnation as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation (subject to changes in zoning codes, building codes, or other applicable laws), with such alterations as may be reasonably approved by Lender.

"Restricted Party" means, collectively, Borrower, any SPE Component Entity, Mortgage Borrower, any Mortgage Borrower SPE Component Entity, any Affiliated Manager and Guarantor.

"Retainage" means the total amount actually held back by Mortgage Borrower or General Contractor, as the case may be, from each Trade Contractor with respect to the value of its work in place with respect to the Project, equal to ten percent (10%) (unless a greater retainage amount is provided for in any applicable Construction Contract) of the value of such Trade Contractor's work incurred by Mortgage Borrower with respect to such Trade Contractor for work in place as of the date of the Draw Request in question, as verified from time to time by Construction Consultant pursuant to the provisions of this Agreement, provided that (i) from and after such time as such Trade Contract has achieved 50% Completion (as shown on an Architect's certificate, in form and substance reasonably satisfactory to Lender, submitted with a Draw Request), the portion of each subsequent Draw Request applicable to such Trade Contract to be held back by Mortgage Borrower as "Retainage" for the General Contractor Agreement shall be reduced to five percent (5%) (unless a greater retainage percentage is provided for in any applicable Construction Contract) and (ii) all "Retainage" is disbursed only in accordance with the provisions of Section 2.1.15.

"Revenues" has the meaning set forth in the Mortgage Loan Agreement.

"Shortfall Account" has the meaning set forth in Section 2.1.9(d) hereof.

"Soft Costs" means, collectively, all costs and expenses set forth in the Construction Budget which are denominated as "Soft Costs".

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC company

"Secondary Market Transaction" has the meaning set forth in Section 9.1 hereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Instrument" has the meaning set forth in the Mortgage Loan Agreement.

"Servicer" has the meaning set forth in Section 10.28 hereof.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator and as published on the SOFR Administrator's Website.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**SOFR Administrator's Website**" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SPE Component Entity" means: (i) if Borrower is a limited partnership, the Special Purpose Entity that is the general partner of Borrower; or (ii) if Borrower is a limited liability company other than an Acceptable LLC, the Special Purpose Entity that is the managing member of Borrower; provided, however, if Borrower is an Acceptable LLC or a corporation, the term "SPE Component Entity" shall have no meaning when used in this Agreement.

"Special Member" has the meaning set forth in the definition of "Special Purpose Entity".

"Special Purpose Entity" means a Person, other than an individual, which, since the date of its formation and at all times prior to, on and after the date thereof, has complied with and shall at all times comply with the following requirements:

(a) was, is and will be formed solely for the purpose of (i) in the case of Mortgage Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, financing, managing and operating the Property, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, (ii) in the case of Borrower, acquiring, owning, holding, selling, transferring, exchanging and financing the Collateral, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing or (iii) in the case of any applicable SPE Component Entity, acting as the general partner or managing member (as applicable) of Borrower;

(b) has not been, is not, and will not be engaged in any business unrelated to (i) in the case of Mortgage Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, financing, managing and operating the Property, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, (ii) in the case of Borrower, acquiring, owning, holding, selling, transferring, exchanging and financing the Collateral, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, or (iii) in the case of any applicable SPE Component Entity, acting as the general partner or managing member (as applicable) of Borrower;

(c) has not had, does not have and will not have any assets other than (i) in the case of Mortgage Borrower, the Property and those related to the ownership and operation of the Property (including, without limitation, replacement thereof as permitted by the Mortgage Loan Documents), (ii) in the case of Borrower, the Collateral, or (iii) in the case of any applicable SPE Component Entity, its Equity Interest in Borrower;

(d) has not engaged in, sought or consented to, and will, to the fullest extent permitted by law, not engage in, seek or consent to, (i) any dissolution, winding up, liquidation, consolidation, merger, or sale of all or substantially all of its assets, (ii) except as permitted under the terms of this Agreement, any transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company), or (iii) any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition without the written consent of Lender;

(e) has been, is, and intends to remain solvent and has paid and intends to continue to

pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same have or shall become due, and has maintained, is currently maintaining and will endeavor to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, the foregoing shall not require any owner of Borrower to make any additional capital contributions;

(f) has not failed, and will not fail, to correct any known misunderstanding regarding the separate identity of such entity;

(g) has maintained and will maintain its accounts, financial statements, books, and records separate from any other Person and has not permitted, and will not permit, its assets to be listed as assets on the financial statement of any other entity except as required by the Approved Accounting Method (provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (ii) such assets shall be listed on Borrower's own separate balance sheet;

(h) has filed and will file its own tax returns, except to the extent that it (i) has been or is required to file consolidated tax returns by law or (ii) is treated as a disregarded entity for federal or state tax purposes;

(i) other than as permitted in this Agreement, (i) has not commingled, and will not commingle, its funds or assets with those of any other Person and (ii) has not participated and will not participate in any cash management system with any other Person;

(j) has held and will hold its assets in its own name;

(k) has maintained and will maintain an arm's-length relationship with its Affiliates;

(l) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations; provided, however, the foregoing shall not require any owner of Borrower to make any additional capital contributions;

(m) has observed and will observe in all material respects all partnership, corporate or limited liability company formalities, as applicable;

(n) has not had, and will not have, any Indebtedness other than Permitted Indebtedness;

(o) except in connection with the Loan Documents, has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for, the debts of any other Person (except to the extent SPE Component Entity is liable for the debts and obligations of Borrower by virtue of being the general partner of Borrower) and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except, in each case, as permitted pursuant to this Agreement;

(p) has not acquired and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate (other than the securities of Borrower or Mortgage Borrower held by any applicable SPE Component Entity or Mortgage Borrower SPE Component Entity);

(q) has allocated and will allocate, fairly and reasonably, any overhead expenses that are shared with any Affiliate, including paying for shared office space and services performed by any employee of an Affiliate;

(r) has maintained and used, now maintains and uses, and will maintain and use, separate stationery, invoices and checks bearing its name, and all stationery, invoices, and checks utilized by such Person or utilized to collect its funds or pay its expenses have borne and shall bear its own name and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being such Person's agent;

(s) has not pledged and will not pledge its assets for the benefit of any other Person other than Lender in connection with the Loan;

(t) has conducted and will conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower, and has held itself out and identified itself, and will hold itself out and identify itself, as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person, except in each case for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in Subsection (x) below, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(u) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(v) has not made and will not make loans to any Person or hold evidence of Indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(w) has not identified and will not identify its constituent partners, members or shareholders (as applicable), or any Affiliate of any of them, as a division or part of it, and has not identified itself, and shall not identify itself, as a division of any other Person;

(x) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, and (ii) in connection with this Agreement;

(y) has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify, its partners, officers, directors, managers or members, as the case may be, unless such an obligation is, as of the Closing Date, fully subordinated to the Obligations and will continue at all times to constitute a claim against such Special Purpose Entity that is subordinated to the Obligations in the event that cash flow in excess of the amount required to pay the Obligations is insufficient to pay such obligation;

(z) except as provided in the Loan Documents, does not and will not have any of its obligations guaranteed by any Affiliate;

(aa) if such entity is a limited partnership, has had, now has and will have (i) as its only general partners, Special Purpose Entities that are corporations or Acceptable LLCs that own at least one

percent (1%) of the equity of the limited partnership, and (ii) a partnership agreement providing that (A) such entity will not dissolve upon the bankruptcy of any partner, including any general partner, (B) the vote of a majority-in-interest of the remaining partners is sufficient to, and such partners shall, continue the life of the partnership in the event of such bankruptcy of the general partner, and (C) if the vote of a majority-in-interest of the remaining partners to continue the life of the partnership following the bankruptcy of the general partner is not obtained, the partnership may not liquidate the Property without the consent of the Lender for as long as the Loan is outstanding;

(bb) if such entity is a corporation, has had, now has and will have at least one (1) Independent Director, and has not caused or allowed, and will not cause or allow, the board of directors of such entity to take any Bankruptcy Action (or to collude with, or otherwise assist, solicit, or cause to be solicited an involuntary Bankruptcy Action) or any other action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless at least one (1) Independent Director shall have participated in such vote and all of the directors have participated in such vote;

(cc) except as provided in clause (dd) below, if such entity is a limited liability company, has been, now is, and will be a limited liability company formed under the laws of the State of Delaware that will have an operating agreement which provides that as long as any portion of the Debt remains outstanding: (i) the company shall have at least one (1) Independent Manager that shall be a duly-appointed "manager" of the limited liability company within the meaning of Section 18-101(10) of the Delaware Limited Liability Company Act (the "Act"), and the limited liability company shall not take any Bankruptcy Action (or to collude with, or otherwise assist, solicit, or cause to be solicited an involuntary Bankruptcy Action) unless (A) such Bankruptcy Action is approved by the prior unanimous written consent of all members and managers thereof (including any Independent Manager), and (B) at the time of such action such limited liability company has at least one (1) manager who is an Independent Manager (provided, however, the managers shall only have the rights and duties expressly set forth in the limited liability company agreement); (ii) upon the occurrence of any event that causes the last member of the limited liability company to cease to be a member of such limited liability company (other than upon an assignment by such member of all of its limited liability company interest in such limited liability company and the admission of the transferee in accordance with the limited liability company agreement), (A) the person(s) acting as Independent Manager of such limited liability company shall, without any action of any Person and simultaneously with such member ceasing to be a member of such limited liability company, automatically be admitted as the "Special Member" (an Independent Manager in such capacity, a "Special Member") and shall preserve and continue the existence of such limited liability company without dissolution, and (B) without limiting the provisions of clause (A), upon the occurrence of any event that causes the last remaining member of the limited liability company to cease to be a member of the limited liability company or that causes the sole member to cease to be a member of the limited liability company (other than upon continuation of the limited liability company without dissolution upon an assignment by the member of all of its limited liability company interest in the limited liability company and the admission of the transferee in accordance with the limited liability company agreement), to the fullest extent permitted by law, the personal representative of such member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in such limited liability company, agree in writing to continue the limited liability company without dissolution and to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of such limited liability company, effective as of the occurrence of the event that terminated the continued membership of such member in such limited liability company; (iii) no Special Member may resign or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to such limited liability company as a Special Member, and (B) such successor Special Member has also accepted its appointment as an Independent Manager and executed a counterpart to the limited liability company agreement; provided, however, the Special Member shall automatically cease to be a member of the limited liability company upon the admission to the limited liability company of a substitute member;

(iv) the Special Member shall be a member of the limited liability company that has no interest in the profits, losses and capital of the limited liability company and has no right to receive any distributions of limited liability company assets; pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the limited liability company and shall not receive a limited liability company interest in the limited liability company; (v) a Special Member, in its capacity as Special Member, may not bind the limited liability company; (vi) except as required by any mandatory provision of the Act, a Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the limited liability company, including the merger, consolidation or conversion of the limited liability company; (vii) in order to implement the admission to the limited liability company of each Special Member, each Person acting as an Independent Manager shall execute a counterpart to the limited liability company agreement; (viii) prior to its admission to the limited liability company as Special Member, each Person acting as an Independent Manager shall not be a member of the limited liability company; (ix) such limited liability company shall be dissolved, and its affairs shall be wound up only upon the first to occur of the following (but subject to clause (ii) above): (A) the termination of the legal existence of the last remaining member of such limited liability company or the occurrence of any other event which terminates the continued membership of the last remaining member of such limited liability company in such limited liability company unless the business of such limited liability company is continued in a manner permitted by its limited liability company agreement or the Act, or (B) the entry of a decree of judicial dissolution of the limited liability company under Section 18-802 of the Act; (x) neither the bankruptcy of any member of the limited liability company or the Special Member shall cause such member or Special Member, respectively, to cease to be a member of such limited liability company and upon the occurrence of such an event, the business of such limited liability company shall continue without dissolution; (xi) in the event of dissolution of such limited liability company, such limited liability company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of such limited liability company in an orderly manner), and the assets of such limited liability company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (xii) to the fullest extent permitted by law, except as otherwise expressly provided in the limited liability company agreement, each member of the limited liability company and the Special Members shall irrevocably waive any right or power that they might have to cause such limited liability company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of such limited liability company, to compel any sale of all or any portion of the assets of such limited liability company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of such limited liability company (a limited liability company meeting the criteria of this clause (cc) is referred to herein as an "Acceptable LLC");

(dd) if such entity is a limited liability company that is not an Acceptable LLC, has had, now has and will have at least one (1) member that is a Special Purpose Entity that is a corporation or an Acceptable LLC that owns at least one percent (1%) of the Equity Interests in such limited liability company;

(ee) the organizational documents of such entity shall further provide that: (i) such entity shall not be permitted take any action which, under the terms of any organizational documents of such entity, requires a unanimous written consent of the board of directors or managers of such entity unless at the time of such action there shall be at least one (1) Independent Manager or Independent Director serving in such capacity as required by the terms hereof; (ii) no Independent Director or Independent Manager may be removed or replaced except for Cause; (iii) any resignation, removal or replacement of any Independent Director or Independent Manager shall not be effective without five (5) Business Days prior written notice to Lender accompanied by a statement as to the reasons for such removal, the identity of the proposed replacement Independent Director or Independent Manager, and a certificate that the replacement Independent Director or Independent Manager satisfies the applicable terms and conditions of

the definition of "Independent Director" or "Independent Manager"; (iv) to the fullest extent permitted by applicable law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Director or Independent Manager shall consider only the interests of the constituent owners of such entity and such entity (including such entity's creditors) in acting or otherwise voting on a Bankruptcy Action (which such fiduciary duties to the owners of such entity and such entity's creditors, in each case, shall be deemed to apply solely to the extent of their respective economic interests in such entity exclusive of (A) all other interests, (B) the interests of other affiliates of the owners of such entity and such entity, and (C) the interests of any group of affiliates of which the owners of such entity or such entity is a part); (v) other than as provided in clause (iv) above, to the fullest extent permitted by law the Independent Director or Independent Manager shall not have any fiduciary duties to any owners of such entity, any directors of such entity, or any other Person; (vi) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (vii) to the fullest extent permitted by applicable law, including Section 18-1101(e) of the Act, an Independent Director or Independent Manager shall not be liable to such entity, any owners of such entity, or any other Person bound by the limited liability company agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director or Independent Manager acted in bad faith or engaged in gross negligence or willful misconduct;

(ff) has complied and will comply with all of the terms and provisions contained in its organizational documents;

(gg) the statement of facts contained in its organizational documents are true and correct and will remain true and correct;

(hh) has and will have an express acknowledgment in its organizational documents that Lender is an intended third-party beneficiary of the "special purpose/separateness/bankruptcy remote" provisions (as applicable) of such organizational documents; and

(ii) has not and will not consent to any other Person (i) operating its business in the name of such Person, (ii) acting in the name of such Person, (iii) using such Person's stationery or business forms, (iv) holding out its credit as being available to satisfy the obligations of such Person, (v) having contractual liability for the payment of any of the liabilities of such Person (except pursuant to the limited extent provided under the Loan Documents), or (vi) failing to at all times specify to all relevant third parties that it is acting in a capacity other than as the applicable Special Purpose Entity.

"Spread" means eight hundred ninety-two (892) basis points (i.e., 8.92%).

"Springing Recourse Event" has the meaning set forth in Section 8.3 hereof

"State" means the State of California.

"Stored Materials" means materials purchased by Mortgage Borrower at or prior to the date of a Draw Request for use in the Project, but either (i) stored at a bonded warehouse, and not yet installed or incorporated into the Project ("Unincorporated Materials") or (ii) not yet delivered to the Property ("Off-Site Materials"), in each of the foregoing cases, other than operating supplies, operating equipment and furniture, fixtures, equipment and machinery for the Property. Stored Materials shall cease to be Stored Materials only when the same are installed or incorporated into the Property.

"Stored Materials Cap" has the meaning set forth in Section 2.1.10 hereof.

"Substantially Complete" means (i) the Approved Project Expenditures have been completed in substantial accordance with the Plans and Specifications and all Legal Requirements, subject only to the completion of all Punchlist Items, as evidenced by a written statement or certificate executed by General Contractor or the Architect, as applicable, and verified by the Construction Consultant, (ii) if applicable, a valid certificate of occupancy (or equivalent document, including without limitation, evidence that the applicable Governmental Authority has inspected and approved the completion of the Approved Project Expenditures, or a temporary certificate of occupancy) has been issued by the applicable Governmental Authority permitting the full use of the Property for its intended purposes, (iii) the Property is free of all mechanics', materialmen's, and other similar Liens (or such liens have otherwise been bonded over to Lender's reasonable satisfaction), and (iv) Borrower has delivered to Lender reasonable evidence that the applicable Governmental Authorities have conducted a final inspection of the Property and approved the completion of such work. The terms "Substantially Completed" and "Substantial Completion" shall have the same meaning when used in the Loan Documents.

"Substantial Completion Due Date" means June 1, 2023.

"Substitute Interest Rate Cap Agreement" means an index rate derivative product comparable to the Interest Rate Cap Agreement described in Section 2.2.7(a), which product caps exposure to fluctuations in, as applicable, the Alternate Rate Index or the Prime Rate Index, and which otherwise satisfies all of the conditions set forth in Section 2.2.7 hereof; provided that references in such Section 2.2.7 to the previously applicable Applicable Rate Index shall be replaced with, as applicable, the Alternate Rate Index or the Prime Rate Index; and provided further that the strike rate for such derivative product shall be as determined by Lender (in its sole but good faith direction) as providing a hedge against rising interest rates that is no less beneficial to Borrower and Lender than the Interest Rate Cap Agreement being replaced or required to be purchased, as applicable.

"Substitute Deficiency Provisions" has the meaning set forth in Section 2.1.12(f).

"Substitute Shortfall Provisions" has the meaning set forth in Section 2.1.9(e).

"Survey" means the survey delivered to (and approved by) Lender in connection with the closing of the Loan.

"Tax Reserve Account" has the meaning set forth in Section 3.2.1(a) hereof.

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

"Tenant Direction Letter" means an irrevocable written instruction to all tenants under Leases to deliver all Revenues payable thereunder directly to the Clearing Account in form and substance reasonably acceptable to Lender.

"Third Party Sale" means the sale by Mortgage Borrower of all of its right, title and interest in the Property to a Person that is not Borrower, Mortgage Borrower, Master Tenant, Guarantor or Instil Sponsor or any Affiliate of any of the forgoing pursuant to a bona fide, arms' length sale on market terms, as reasonably determined by Lender.

"Term SOFR" means the Term SOFR Reference Rate for a tenor of one month on the Determination Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Determination Date the Term SOFR Reference Rate for a

tenor of one month has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Determination Date. Notwithstanding the foregoing or anything herein to the contrary, in no event shall Term SOFR be less than the Rate Index Floor.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Lender).

"Term SOFR Loan" means the Loan at such time as interest thereon accrues at a rate of interest based upon the Term SOFR Rate.

"Term SOFR Rate" means, with respect to each Interest Accrual Period, the per annum rate of interest of Term SOFR determined as of the Determination Date immediately preceding the commencement of such Interest Accrual Period plus the Spread; provided that in no event will the Term SOFR Rate be less than the Minimum Rate.

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Title Company" means Fidelity National Title Insurance Company or any successor title company acceptable to Lender and licensed to issue title insurance in the State in which the Property is located.

"Title Insurance Policy" means the title insurance policy obtained by Mortgage Lender in connection with the closing of the Mortgage Loan.

"Trade Contract" means any agreement, contract or purchase order between Mortgage Borrower, an Affiliate of Mortgage Borrower or General Contractor, on the one hand, and any Trade Contractor, on the other hand, pursuant to which such Trade Contractor agrees to provide labor, materials, equipment and/or services in connection with the construction of the Project, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement. The term "Trade Contract" shall not include the Architect Agreement, the General Contractor Agreement or any other agreement, contract or purchase order pertaining solely to professional services to be provided by any other Design Professional.

"Trade Contractor" means any Person that is a contractor, subcontractor, sub-subcontractor, supplier or provider of labor, materials, equipment and/or services in connection with the construction of the Project or any subsidiary and/or affiliate of any of the foregoing, under a Trade Contract.

"Transfer" means any sale, conveyance, transfer, lease, assignment, grant, mortgage, option, encumbrance, hypothecation, pledge, or Lien, in each case whether by operation of law or otherwise, and with respect to an entity shall include the merger of such entity with or into any other entity; provided, however, that this definition shall not include any Condemnation.

"Tranche" has the meaning set forth in Section 9.2(a) hereof.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

"UCC Title Policy" shall mean a title insurance policy in the form reasonably acceptable to Lender issued with respect to the Collateral and insuring the Lien of the Pledge Agreement.

"Unfunded Loan Amount" has the meaning set forth in Section 2.3.2.

"Unfunded Loan Proceeds Account" has the meaning set forth in Section 2.3.2.

"UNOI" means the underwritten net operating income for the Property determined by Lender as the sum of (a) Operating Income for the trailing twelve (12) month period, less (b) actual Operating Expenses incurred in connection with the Property during the twelve (12) month period preceding the date of calculation, with adjustments for any anticipated increases in such Operating Expenses projected to occur during the twelve (12) month period following the date of calculation.

"Unincorporated Materials" has the meaning assigned to such term in the definition of Stored Materials.

"U.S. Government Securities Business Day" means any day except for a Saturday, a Sunday or a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning set forth in Section 2.2.3(e)(ii)(B)(3) hereof.

"WARN Act" shall mean the Worker Adjustment and Retraining Notification Act or any other applicable similar state law.

"Withdrawal Liability" has the meaning given to such term under Part I of Subtitle E of Title IV of ERISA.

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

SECTION 1.2. Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with the Approved Accounting Method. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" means "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. The words "to Borrower's knowledge" or "to the knowledge of Borrower" (or words of similar meaning) shall mean "to the knowledge Borrower and its Affiliates". Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other

Loan Documents to the effect that Borrower (a) represents or warrants on behalf of, or covenants on behalf of, Mortgage Borrower or an Affiliate thereof, (b) shall cause Mortgage Borrower or an Affiliate thereof to act or refrain from acting, to comply with, to permit, to perform, to pay, to furnish, to cure, to remove, to observe, to deliver, to suffer, to initiate, to provide, to make available, to furnish in any manner, or (c) shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower or an Affiliate thereof, such clause or provision is intended to mean, and shall be construed as meaning, (i) that Borrower shall cause Mortgage Borrower or such Affiliate to take such action and in all cases throughout the Loan Documents the words "Borrower shall" or "Borrower shall not" (or words of similar meaning) means "Borrower shall cause Mortgage Borrower (or the applicable Affiliate)" or "Borrower shall not permit Mortgage Borrower (or the applicable Affiliate)", as applicable, to so act or not to so act, as applicable, as the context may require (and any instance in the Loan Documents where such words already appear shall not be deemed or construed to mean that any other instance where such words do not appear were not intended to be interpreted as provided above), and (ii) that Borrower is obligated only in Borrower's capacity with respect to Mortgage Borrower or such Affiliate thereof, and not directly with respect to Mortgage Borrower or such Affiliate thereof in any other manner which would cause Borrower to fail to satisfy the definition of Special Purpose Entity, any other similar covenants contained in Borrower's or Mortgage Borrower's organizational documents, or any other similar covenants contained in any Loan Documents. With respect to terms defined by cross-reference to the Mortgage Loan Documents or other references to the provisions of the Mortgage Loan Documents, such defined terms shall have the definitions, and such other provisions shall be, as set forth in the Mortgage Loan Documents as of the Closing Date, and no modifications to the Mortgage Loan Documents shall have the effect of changing such definitions or provisions (including changes to other definitions or provisions set forth in the Mortgage Loan Documents that are used in or otherwise modify such cross-referenced definitions or cross-referenced provisions) for the purposes of this Agreement unless Lender has approved of such modification in writing. Notwithstanding anything stated herein to the contrary, any provisions in this Agreement cross-referencing or incorporating by reference provisions of the Mortgage Loan Documents shall be effective notwithstanding the termination of the Mortgage Loan Documents by payment in full of the Mortgage Loan or otherwise.

ARTICLE II

GENERAL TERMS

SECTION 2.1. The Loan.

2.1.1 Use of Loan Proceeds. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make, and Borrower hereby agrees to borrow and accept, the Loan on the Closing Date. Any amount borrowed and repaid hereunder may not be reborrowed.

2.1.2 Initial Advance. Borrower shall receive, on the Closing Date, one (1) borrowing hereunder with respect to the Loan in the amount of $18,389,032 (such borrowing hereinafter, the "Initial Advance"). Borrower shall use the proceeds of the Initial Advance only to (a) reimburse certain Costs incurred by Borrower in advance of the Closing Date and approved by Lender (such Costs, the "Reimbursable Costs"), (b) make initial deposits into the Reserve Accounts in the amounts provided herein, and (c) pay costs, fees and expenses incurred in connection with the closing of the Loan, as reasonably approved by Lender.

2.1.3 Additional Advances. Lender agrees to fund additional advances of the Loan Amount requested by Borrower from time to time (each, an "Additional Advance") subject to the satisfaction of the applicable terms and conditions of this Section 2.1. Borrower shall use the proceeds of the Additional

Advances only to pay, in accordance with the terms and conditions of this Agreement, (a) Interest and Carry Costs and (b) Approved Project Expenditures.

2.1.4 Disbursement of Additional Advances. Subject to the satisfaction of the terms and conditions set forth below, Borrower shall be entitled to receive Additional Advances in an aggregate amount not to exceed (i) the Project Advance Amount to fund Approved Project Expenditures and (ii) the Interest and Carry Costs Advance Amount to pay for Interest and Carry Costs. All disbursements shall be applied by Borrower solely for the purposes for which the funds have been disbursed. All Additional Advances, once advanced, shall bear interest at the Interest Rate. It is hereby agreed that Lender shall have no obligation to advance more than the Mortgage Funding Share of the amount of each Combined Advance required to be disbursed under this Agreement.

2.1.5 Additional Advance Borrowing Procedures.

(a) Draw Requests. In connection with a request for each Additional Advance, Borrower shall submit to Lender and Construction Consultant a draw request (each, a "Draw Request") substantially in the form required pursuant to Section 2.1.5(b) not less than ten (10) Business Days (but not more than sixty (60) days) prior to the applicable Advance Date; provided that there shall be no more than one Draw Request for Approved Project Expenditures and no more than one Draw Request for Interest and Carry Cost in each calendar month. Each Draw Request for Approved Project Expenditures shall specify the Hard Costs (which shall not exceed the value of work in place and Stored Materials as supported by invoices and other supporting documentation, as reasonably approved by Construction Consultant, less any Retainage), including deposits paid to any Contractor or Trade Contractor, and Soft Costs (including deposits required to be paid pursuant to any agreement covering Soft Costs)) and Interest and Carry Costs to be paid from the proceeds of the requested Additional Advance. No Additional Advance with respect to the payment of any Advance Item constituting Approved Project Expenditure shall be requested or advanced (x) for an amount that, together with the amount of Additional Advance with respect to the payment of all other Advance Items constituting Approved Project Expenditure then being requested hereunder and under the Mortgage Loan Agreement, is less than $150,000 (other than the last requested Additional Advance with respect to such Advance Item if less) or (y) more frequently than once in any calendar month. Each Draw Request in connection with an Additional Advance for the payment of Hard Costs shall specify the amount of any Retainage previously withheld and which has then become payable by Borrower, with supporting documentation describing in reasonable detail the basis for any such disbursements. All Draw Requests shall be approved by Lender, not to be unreasonably withheld, and, with respect to Hard Costs, reasonably approved for payment by Construction Consultant.

(b) Required Documentation. Each Draw Request submitted hereunder shall include the following:

(i) a requisition letter in the form set forth on Exhibit E attached hereto;

(ii) an Officer's Certificate in the form set forth on Exhibit C attached hereto;

(iii) proof of payment to (x) General Contractor and (y) each Trade Contractor with respect to such Trade Contractor's Non-Lienable Work (which proof of payment, in the case of each such Trade Contractor, shall include, without limitation, copies of all applicable invoices and wire confirmations), as the case may be, evidencing payment in full for all work performed and/or material supplied to the date of the preceding Additional Advance, except for Retainage and any disputed amounts being contested by Borrower in accordance with Section 5.1.2(b) hereof;

(iv) with respect to any Draw Request for payment of Hard Costs, the following:

(A) a completed Application and Certificate for Payment (AIA Documents G702 and G703) that is executed by the General Contractor, Architect (or, if such Application and Certificate for Payment is not executed by Architect, then the Draw Request shall include an Architect's certificate in form and substance reasonably satisfactory to Lender) and/or the Major Trade Contractors, as applicable, each of which shall be certified as true and complete by Borrower and shall be verified by the Construction Consultant;

(B) unconditional or conditional (conditioned upon payment from the requested disbursement) waivers of liens from General Contractor and all Trade Contractors with respect to all Costs (other than Interest and Carry Costs) incurred in connection with the Project since the Closing Date or the last Advance Date, as applicable, dated on or about the date of such Draw Request, in form and substance reasonably acceptable to Lender, covering all work done and all sums received by such Persons through the date such waiver is signed and noting the amounts then due and owing (other than any Retainage), each of which shall be verified by Construction Consultant;

(C) a list of all Trade Contracts executed since the date of the then last preceding Additional Advance, together with a certification by Borrower that copies of such Trade Contracts have been submitted to Construction Consultant prior to the date of such Draw Request, together with, unless previously provided to Lender and to the extent required herein, executed Major Trade Contractor Consents for each new Major Trade Contractor who is to receive proceeds of the applicable Additional Advance;

(D) a list of all Construction Contracts (to the extent not previously provided, including pursuant to clause (C) above) in effect as of such Advance Date and copies of any Construction Contracts (to the extent not previously provided, including pursuant to clause (C) above) and any amendments, restatements, replacements, supplements or other modifications to any Construction Contracts, in each case, executed after the Closing Date or the date of the last Draw Request, as the case may be, in accordance with the terms and conditions of this Agreement;

(E) to the extent not previously delivered to Lender, copies of Change Orders that have not been submitted to Lender prior to the date of such Draw Request, together with (I) a statement by Borrower that copies of the same have been submitted to Construction Consultant simultaneously with or prior to the date of such Draw Request and (II) a list of all Change Orders then to date and a list of all contemplated or pending Change Orders;

(F) evidence reasonably satisfactory to Lender (which evidence may, in Lender's discretion, be in the form of an Officer's Certificate, in form and substance reasonably acceptable to Lender, stating) that the full amount of the applicable portion of the proceeds of the then last preceding Additional Advance have been paid out by Borrower or General Contractor to the Persons with respect

to whom the Additional Advance was disbursed and otherwise in accordance with this Agreement; and

(G) such other information and documentation as may be reasonably requested by Lender or Construction Consultant with respect to the Hard Costs covered by such Draw Request; and

(v) with respect to any Draw Request for payment of Soft Costs, the following:

(A) current requisitions for payment from Trade Contractors to the extent allocable to the Project;

(B) such evidence as Lender reasonably requests that such Soft Costs have been properly incurred and are due and payable and are in amounts set forth in the Construction Budget;

(C) evidence reasonably satisfactory to Lender that the full amount of the portion of the proceeds of the then last preceding Additional Advance have been paid out by Borrower or General Contractor to the Persons with respect to whom such Additional Advance was disbursed and otherwise in accordance with this Agreement; and

(D) invoices, statements or such other information and documentation as Lender reasonably requests with respect to such Soft Costs covered by such Draw Request.

2.1.6 General Conditions Precedent to Additional Advances. Lender shall not be obligated to make an Additional Advance unless all of the following conditions are satisfied:

(a) No Event of Default. No Default or Event of Default exists at the time the Additional Advance is requested or as of the Advance Date;

(b) Draw Request. Lender shall have received a Draw Request in accordance with the requirements of Section 2.1.5(a) hereof, together with all applicable documents required to be delivered with such Draw Request pursuant to Section 2.1.5(b) hereof;

(c) Additional Advance Maximum Amount. No Additional Advance required to be made hereunder shall be in an amount that is more than the lesser of (i) the amount that, together with all previous Additional Advances, equals the Loan Amount, and (ii) with respect to Additional Advances for any Advance Item, the Advance Amount applicable to such Advance Item;

(d) Required Borrower Equity Advance. Lender shall have received evidence reasonably satisfactory to it that Borrower shall have funded (or will simultaneously fund) the Required Borrower Equity Advance applicable to such Additional Advance;

(e) Intentionally Omitted.

(f) Construction Consultant Certification. With respect to each Draw Request relating to Hard Costs, Lender shall have received a certificate or report of Construction Consultant based upon a site observation of the Property made by Construction Consultant not more than thirty (30) days prior to

such Advance Date, in which Construction Consultant shall in substance (i) verify that the portion of the Project completed as of the date of such site observation has been substantially completed in accordance with the Plans and Specifications and (ii) state Construction Consultant's estimate of (A) the percentage of the construction of the Project completed as of the date of such site observation on the basis of work in place as part of the Project and the Construction Budget, (B) the Hard Costs actually incurred for work in place as part of the Project as of the date of such site observation, (C) the sum necessary to complete construction of the Project substantially in accordance with the Plans and Specifications, and (D) the amount of time from the date of such site inspection that will be required to achieve Completion of the Project;

(g) Plans and Specifications. Borrower shall have delivered to Construction Consultant a complete set of any amendments, replacements, supplements or other modifications made to the Plans and Specifications, in each case, made after the Closing Date or the date of the last Draw Request, as the case may be, in accordance with the terms and conditions of this Agreement, and Lender shall have received a list identifying the Plans and Specifications as in effect as of such Advance Date;

(h) Title Date Down. Borrower shall cause the Title Company (or Borrower shall have obtained a commitment from the Title Company) to issue an ALTA 33 Disbursement Endorsement to the Title Insurance Policy, to be dated and effective on the date of disbursement of the Additional Advance which evidences (i) no new exceptions to the Title Insurance Policy other than Permitted Encumbrances (other than Permitted Encumbrances set forth in clause (vi) of the definition thereof unless actually bonded or discharged) since the date of the last Additional Advance (with affirmative insurance that no Taxes or Other Charges (other than Taxes and Other Charges being contested in accordance with this Agreement) are delinquent, and (ii) increases the Title Insurance Policy liability amount by the amount of the Additional Advance as of the new Date of Coverage (as defined in the ALTA 33 Disbursement Endorsement);

(i) Mortgage Loan Advance. Mortgage Lender shall have advanced (or be simultaneously advancing) the Mortgage Funding Share of the amount of the applicable Combined Advance with respect to which Lender is making an Additional Advance hereunder from proceeds of the Mortgage Loan in accordance with the terms of the Mortgage Loan Agreement;

(j) Environmental Compliance. Lender shall have received evidence of Borrower's compliance with all recommendations set forth in the Environmental Report or any future environmental report or assessment requested by Lender under the terms of the Environmental Indemnity; provided, that, by undertaking the measures identified in and pursuant to this Section 2.1.6(j), Lender shall not be deemed to be exercising any control over operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor;

(k) Representations and Warranties. Each of the representations and warranties of Borrower and Guarantor contained in each of the Loan Documents shall be true, complete and correct in all material respects as if made on (and with respect to facts and circumstances existing as of) the Advance Date, except for any changes in facts or circumstances occurring since the Closing Date that do not constitute a Default or Event of Default or were not caused by the occurrence of a Default or Event of Default and, in any event, do not result in a Material Adverse Effect;

(l) Construction Permits. Borrower shall have obtained all Construction Permits then-required under Legal Requirements for the actual stage of construction on the Property and delivered to Lender a copy of each of the Construction Permits;

(m) Payment of Fees. Borrower shall have paid or reimbursed all of Lender's outstanding fees and expenses (including fees and expenses of the Construction Consultant, and all other

fees, costs and expenses of (including fees and expenses of outside legal counsel) relating to the Loan to the extent then due and payable, pursuant to the applicable provisions of this Agreement and the other Loan Documents;

(n) No Other Security Instruments. Except as otherwise permitted under the Loan Documents, all material and fixtures incorporated in the construction of the Project shall have been purchased so that their absolute ownership shall have vested in Borrower immediately upon delivery to the Property and Borrower shall have produced and furnished, if required by Lender, the contracts, bills of sale or other agreements under which title to such materials and fixtures is claim;

(o) Loan Balancing. The Loan shall be In Balance as provided in Section 2.1.11;

(p) Shortfall. No Interest and Carry Cost Shortfall exists;

(q) Compliance with Laws. Other than matters fully disclosed to Lender which are curable and are being cured as part of the work comprising the Required Improvements, and subject to Borrower's right to contest in accordance with Section 5.1.2(b), the Property shall comply in all material respects with all Legal Requirements;

(r) Pending Litigation. There shall be no pending or threatened litigation known to Borrower or its counsel against Borrower, Mortgage Borrower, Master Tenant, Guarantor, Manager, General Contractor, the Collateral or the Property which, if decided unfavorably, could reasonably be expected to result in (i) a change in Control of Borrower, Master Tenant or Manager, (ii) a Material Adverse Effect, or (iii) the failure of Guarantor to satisfy the Financial Covenant Requirement;

(s) No Casualty or Condemnation. (i) Other than matters being cured as part of the work comprising the Required Improvements, the Property shall comply in all material respects with all Legal Requirements, (ii) if any Restoration is then continuing, Borrower is diligently pursuing such Restoration and Lender has determined that the non-completion of such Restoration prior to the making of the Additional Advance is not reasonably likely to have a Material Adverse Effect, and (iii) no Casualty or Condemnation shall have occurred that permits any tenant party to a Lease a termination right (or such right shall have been waived or lapsed);

(t) Milestones. On the Advance Date, no event shall have occurred that would reasonably be expected to result in Borrower being unable to achieve any Major Milestone within the time period applicable to such Major Milestone, as determined by Lender.

(u) HVCRE. Notwithstanding anything to the contrary set forth herein or in any other Loan Document, Lender shall not be obligated to authorize an Additional Advance hereunder which could, in Lender's sole but good faith discretion, cause the Loan to be classified as an HVCRE;

(v) Payment and Performance Bonds; Sub-Guard Insurance. Borrower shall cause, at Lender's election, either (i) payment and performance Bonds, in form and substance reasonably satisfactory to Lender and issued by sureties satisfactory to Lender to be maintained with respect to the obligations of each Trade Contractor; and/or (ii) a sub-guard insurance policy in form and substance reasonably acceptable to Lender to be maintained with respect to the obligations of each Trade Contractor, provided, that the Bonds shall be in an amount not less than the full contract price for each such Trade Contract required to be bonded pursuant to this Section 2.1.6(v);

(w) Closing Date Minimum Equity Requirement. Lender shall have received satisfactory evidence that the Closing Date Minimum Equity Requirement remains satisfied, which

evidence may be in the form of an Officer's Certificate, in form and substance reasonably acceptable to Lender, stating that no distributions have been made;

(x) Master Lease. The Master Lease shall remain in full force and effect and no default shall have occurred under the Master Lease that remains uncured; and

(y) Miscellaneous. Lender shall have received all documents, reports, certificates, affidavits and other information, in form and substance reasonably satisfactory to Lender or Construction Consultant, as each may reasonably require, to evidence compliance by Borrower with the terms and conditions to be complied with by Borrower in connection with the disbursement of the applicable Additional Advance.

2.1.7 Additional Advances for the Payment of Approved Project Expenditures. With respect to each Additional Advance requested for the payment of Approved Project Expenditures, in addition to satisfaction by Borrower of all the applicable conditions precedent set forth in Sections 2.1.5 and 2.1.6 above, Lender shall not be obligated to make such Additional Advance unless all of the following conditions are also satisfied:

(a) Lender shall have received an Officer's Certificate with respect to any construction work constituting the applicable Approved Project Expenditures to be funded by such Additional Advance certifying that whatever portion of such work has been Completed to date has been Completed in good and workmanlike manner in substantial accordance with all applicable Legal Requirements and the Plans and Specifications;

(b) Lender shall have received (i) an updated Construction Budget for the Project in accordance with Section 5.1.3(c) hereof, in form and substance reasonably satisfactory to Lender, which indicates the Costs (other than Interest and Carry Costs) anticipated to complete the Required Improvements, after giving effect to Costs (other than Interest and Carry Costs) incurred during the period since the Closing Date, or the date of the last preceding Draw Request, as the case may be, and (ii) an anticipated costs report in form and substance reasonably acceptable to Lender, which indicates the Costs (other than Interest and Carry Costs) anticipated to complete the Required Improvements, after giving effect to Costs incurred during the previous calendar month (or the date of the last preceding Draw Request, as the case may be), and projected Costs; provided, that, no Line Item in the Construction Budget with respect to Approved Project Expenditures shall be eligible for funding from the proceeds of an Additional Advance until 100% of such Line Item has been bought out and Lender and Construction Consultant have reviewed the related sub-contract(s) and, if applicable, Major Trade Contractor Consent(s);

(c) Lender shall have received a reconciliation by Borrower of the progress and cost of the construction of the Project through the date of the Draw Request with the Construction Schedule and the Construction Budget, together with a projection of such progress and costs through to Completion of the Project; and

(d) in no event will the aggregate of all Additional Advances actually made under this Agreement for the payment of Approved Project Expenditures exceed the Project Advance Amount.

2.1.8 Intentionally Omitted.

2.1.9 Advances to Pay Interest, Fees and Expenses.

(a) Subject to the terms of this Agreement, Additional Advances may be used to pay Interest and Carry Costs. Subject to the remaining provisions of this Section 2.1.9, Borrower hereby

irrevocably requests that Lender make an Additional Advance on each Payment Date to pay Interest and Carry Costs to the extent of the Mortgage Funding Share of any shortfall of amounts on deposit in the Cash Management Account. Additional Advances required to be made by Lender in accordance with the foregoing shall be deposited by Lender into the Cash Management Account for application in the manner and order of priority as set forth in Section 3.1(b) of this Agreement. Any Additional Advance so made shall be deemed to be an Additional Advance made to and received by Borrower and shall be added to the unpaid principal balance of the Loan.

(b) Notwithstanding anything to the contrary contained in this Agreement and without relieving Borrower of any obligation to pay the same, Lender shall have no obligation to make any Additional Advance with respect to Interest and Carry Costs as set forth in this Section 2.1.9 unless each of the conditions precedent to an Additional Advance set forth in Sections 2.1.6(a), (c), (d), (h), (i), (k), (m), (n), (o), (p), (q), (r), (s), (t), (u) and (w) have been satisfied. In addition, with respect to any Additional Advance disbursed in accordance with the foregoing and disbursed to Borrower for payments of Cash Expenses and/or Approved Extraordinary Expenses, in addition to any other requirements set forth in this Agreement, Borrower shall also provide to Lender an Officer's Certificate (i) certifying that such Additional Advance (or a portion thereof) are to be used for the payment of Cash Expenses or Approved Extraordinary Expenses, as applicable, (ii) including copies of all bills, invoices, receipts and other documentation requested by Lender to be reimbursed or paid by the Additional Advance (or a portion thereof), and (iii) stating that all prior Additional Advances requested for the payment of Costs have been spent on Cash Expenses and/or Approved Extraordinary Expenses for which such Additional Advances were made. No such Additional Advance shall be deemed to cure or waive any Default or Event of Default that may then exist. The authorization hereby granted shall be irrevocable, and no further direction or authorization from Borrower shall be necessary for Lender to make any Additional Advance in accordance with this Section 2.1.9. Lender shall not be deemed to be authorized to make an Additional Advance on any Payment Date with respect to Interest and Carry Costs that are then due and payable that have otherwise been paid by Borrower when due and payable and nothing contained in this Section 2.1.9 shall be deemed to prevent Borrower from paying Interest and Carry Costs from its own funds.

(c) Lender agrees that Interest and Carry Costs on any Payment Date shall be paid as follows: (i) first, pursuant to Section 3.1(b) of the Mortgage Loan Agreement, (ii) second, from the Mortgage Loan Shortfall Account, (iii) third, from the Mortgage Loan Excess Cash Flow Reserve Account, (iv) fourth, as (x) an Additional Advance to the extent there are unfunded Loan proceeds available to make such Additional Advance in accordance with the terms of this Agreement, and (y) a Mortgage Loan Additional Advance to the extent there are unfunded Mortgage Loan proceeds available to make such Mortgage Loan Additional Advance in accordance with the terms of the Mortgage Loan Agreement, and (v) fifth, from a current payment from Borrower as and when such Interest and Carry Costs are due.

(d) If, at any time and from time to time, Lender determines that, without duplication, the sum (such sum, the "Estimated Interest and Carry Available Amount") of (i) the then remaining unadvanced Loan Amount and the then remaining unadvanced Mortgage Loan Amount available for application toward the payment of Interest and Carry Costs, plus (ii) any funds then on deposit in the Shortfall Account and any Reserve Account (but only to the extent that the funds then on deposit in the Reserve Account are allocable for payment of Interest and Carry Costs, and provided that Lender's access to such funds is not restricted by (A) Legal Requirements, injunction or other court order, or (B) as a result of any action, inaction or omission by Borrower, Guarantor or any Affiliate of Borrower or Guarantor), plus (iii) amounts that are guaranteed pursuant to the Equity Funding Guaranty (provided that no claim is then being pursued by Lender in respect of any of the Guarantees and Guarantor is not then in default or in breach of any of its obligations in respect of any of the Guarantees) with respect to Interest and Carry Costs, as determined by Lender, would be insufficient to fund the estimated Interest and Carry Costs projected to be payable with respect to the Loan and the Mortgage Loan through the Maturity Date (the "Estimated

Interest and Carry Costs"), as determined by Lender in its good faith discretion (the amount by which the Estimated Interest and Carry Costs exceeds the amount of the Estimated Interest and Carry Available Amount, the "Interest and Carry Cost Shortfall"), Lender shall require that Borrower deposit cash into an interest and shortfall reserve account established and maintained at Cash Management Bank by Lender under the sole dominion and control of Lender (the "Shortfall Account") in an amount equal to the Interest and Carry Cost Shortfall. Any Interest and Carry Cost Shortfall payment that Borrower is required to deposit in accordance with this Section 2.1.9(d) shall be due and payable to Lender not later than five (5) Business Days after Lender's delivery to Borrower of written demand for such payment. Provided that (1) no Event of Default or Mortgage Loan Event of Default has occurred and is continuing, (2) no Interest and Carry Cost Shortfall then exists, and (3) all amounts then due and payable to Lender under this Agreement and the other Loan Documents (including, without limitation, all Reserve Funds required to be deposited by Borrower in accordance with the terms of this Agreement) have been made, amounts then remaining in the Shortfall Account (after deducting thereof any amounts applied by Lender in accordance with the terms of this Agreement) shall be used to pay shortfalls in deposits and/or payments, as applicable, pursuant to Section 3.1(b), subject to the terms and conditions set forth in this Agreement with respect to Additional Advances to pay Interest and Carry Costs.

(e) Borrower shall cause Mortgage Borrower to comply in all respects with the terms and provisions set forth in Section 2.1.9(d) of the Mortgage Loan Agreement (such terms and provisions, collectively, the "Mortgage Shortfall Provisions"). If Mortgage Lender waives any of the Mortgage Shortfall Provisions, or if the Mortgage Loan is refinanced or paid off in full (without a repayment in full of the Loan) and any of the Mortgage Shortfall Provisions are not required under the new mortgage loan, if any, or the Mortgage Shortfall Provisions cease to exist or are reduced, waived or modified in any respect, then Borrower shall, to the extent any portion of the Debt hereunder remains outstanding, if requested by Lender, cause any amounts that would have been deposited into the Mortgage Loan Shortfall Account in accordance with the Mortgage Shortfall Provisions to be paid to and deposited in an account controlled by Lender as though the applicable Mortgage Shortfall Provisions were incorporated herein, mutatis mutandis, and all such other Mortgage Shortfall Provisions shall be incorporated herein, mutatis mutandis (the "Substitute Shortfall Provisions"). In addition, if requested by Lender, Borrower shall execute any documents to evidence the implementation of the Substitute Shortfall Provisions with Lender so long as the Substitute Shortfall Provisions are substantially identical to the Mortgage Shortfall Provisions. Lender shall have the same legal and economic rights and remedies as Mortgage Lender under the Mortgage Shortfall Provisions, provided that in all events the disbursement and application of funds held in any such account controlled by Lender shall be substantially identical to that provided in the Mortgage Shortfall Provisions with respect to the Mortgage Loan Shortfall Account.

2.1.10 Advances for Stored Materials. Lender shall make disbursements for Stored Materials to be utilized in connection with the Project, as applicable, in amounts such that the sum of all Additional Advances and Mortgage Loan Additional Advances on account of all such Stored Materials not yet installed or incorporated into the Project shall not be in excess of $1,500,000 ("Stored Materials Cap") in the aggregate at any one time, it being agreed that once Borrower provides satisfactory evidence to Lender and Construction Consultant that such applicable Stored Materials have been installed or incorporated into the Project, such Stored Materials so installed or incorporated into the Project shall no longer count against the Stored Materials Cap. The aggregate amount of Additional Advances for Stored Materials shall in no event at any time exceed the actual Hard Costs incurred by Borrower for such materials as verified by Construction Consultant pursuant to the provisions of this Agreement. In addition to the foregoing limitations, Additional Advances on account of Stored Materials shall be subject to the other provisions of this Agreement and, prior to any Additional Advance for Stored Materials being made, Lender shall have received the following, in form and substance reasonably satisfactory to Lender:

(a) evidence that the Stored Materials are appropriate for purchase during the then current stage of construction;

(b) (i) as to any Stored Materials, evidence that such Stored Materials are or will be securely stored (A) on site at the Property or (B) in a bonded warehouse off-site properly inventoried and clearly stenciled or otherwise marked to indicate that they are (I) the property of Borrower and (II) the subject of a security interest by Lender and (ii) with respect to Stored Materials stored off-site in accordance with the foregoing, an agreement of the owner of such warehouse to permit Lender and/or Construction Consultant access to the same;

(c) evidence that the Stored Materials have been paid for and are owned by (or upon payment of the amounts to be disbursed in the applicable Draw Request shall be paid for and owned by) Borrower free of all liens or claims of the vendor or any third party;

(d) a perfected, first-priority security interest in such Stored Materials is held by Lender;

(e) as to any Off-Site Materials, evidence reasonably satisfactory to Lender that such Off-Site Materials are segregated and identified as Borrower's property;

(f) as to any Unincorporated Materials, Construction Consultant shall have determined, in a manner reasonably satisfactory to Construction Consultant, that such Unincorporated Materials are not in excess of such building equipment and materials as would be kept at the Property in accordance with good construction practice for current installation or incorporation;

(g) evidence reasonably satisfactory to Lender that the Off-Site Materials or Unincorporated Materials, as the case may be, are insured against casualty, loss and theft for an amount equal to their replacement costs and Lender is named as an additional insured and loss payee with respect thereto;

(h) as to any Off-Site Materials, proof of payment reasonably satisfactory to Lender from the supplier or fabricator of such Off-Site Materials, the cost of which is, in whole or in part, payment for all amounts covered by any prior Draw Request; and

(i) if required by Lender in its reasonable discretion, a certification by the Architect or Construction Consultant that it has inspected such Stored Materials and they are in the condition required under the applicable Trade Contracts.

2.1.11 Loan Balancing and Construction Budget Reallocations.

(a) Loan Balancing. Taking into account Borrower's deposits of Deficiency Collateral with Lender pursuant to Section 2.1.12(b), at all times that any portion of the Debt remains outstanding until the Project is Completed in accordance with the terms and conditions hereof, no Deficiency shall exist (the absence of any Deficiency shall be referred to herein as the Loan being "In Balance"), which determination shall be made by Lender, in Lender's sole but good faith discretion, after taking into account any substantiated Cost Savings and any permitted reallocations of the Contingency and shall be made on both a Line Item by Line Item basis and in the aggregate, and shall be final absent manifest error.

(b) Contingency Line Items. Provided that no Event of Default has occurred and is continuing, Borrower may revise the Construction Budget from time to time without the prior written consent of Lender to move amounts available under the Contingency to other Line Items for Hard Costs or

Soft Costs in the Construction Budget, in the same proportion as the percent of completion of the Project. Any reallocation in excess of the percent of completion of the Project shall be subject to Lender's prior written consent, in Lender's sole but good faith discretion.

(c) Cost Savings. If there is a Cost Saving in a particular Line Item of the Construction Budget and if such Cost Saving is substantiated by evidence reasonably satisfactory to Lender and Construction Consultant that (i) all costs associated with such Line Item have been paid in full, (ii) all mechanics lien waivers with respect to such Line Item have been received (to the extent applicable) and (iii) all mechanics liens associated with such Line Item, if any, have been discharged of record, then Borrower shall have the right upon Lender's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, to apply such Cost Saving to other Line Items or to the applicable "Contingency" in the Construction Budget, in each case, at the option of Borrower; provided, however, that Borrower shall in no event or under any circumstances have the right to:

(i) reallocate any portion of the Interest and Carry Cost Line Item prior to Completion of the Project; or

(ii) reallocate any savings in any Line Item for Hard Costs to a Soft Costs Line Item.

(d) Determination of Cost Savings. For the purposes hereof, "Cost Saving" shall mean, if the component of the construction of the Project (other than Interest and Carry Costs with respect to the Loan) which is the subject of a Hard Cost Line Item shall be reasonably determined by Lender and Construction Consultant to have been completed without the expenditure of the entire amount allocated in the Construction Budget to such Hard Cost Line Item, and, subject to Borrower's right to contest in accordance with Section 5.1.2(b), all Trade Contractors have been paid in full or have an agreed upon final settlement amount for work performed and materials provided with respect to the component of the construction of the Project which is the subject of such Hard Cost Line Item, and all applicable mechanics' lien waivers with respect to such component have been received, the difference between the amount of such Hard Cost Line Item in the Construction Budget and the amount so expended for such Hard Cost Line Item.

(e) New Line Item. Borrower shall not be permitted to create any new Line Items without Lender's prior written consent, not to be unreasonably withheld, conditioned or delayed.

2.1.12 Loan Balancing and Deficiency.

(a) Lender shall not be required to make an Additional Advance pursuant to the provisions of this Agreement or any of the other Loan Documents for more than the aggregate amount of the Line Items in the Construction Budget or if the Loan is otherwise not In Balance, unless Cost Savings from other Line Items have previously been applied in accordance with Section 2.1.11(c) or all or a portion of the Contingency has been reallocated to such Line Item in accordance with Section 2.1.11(b) hereof or any of the actions set forth in Section 2.1.12(b) below are taken (which reallocation may be requested within seven (7) Business Days prior to the delivery of any Draw Request).

(b) If Lender shall determine that a Deficiency exists, Lender shall deliver written notice of such determination to Borrower and Lender shall not be obligated to make any Additional Advances under this Agreement or any of the other Loan Documents until the Loan is In Balance as hereinafter set forth. Within ten (10) Business Days of receipt of such notice of determination, Borrower shall take the following actions, individually or in combination:

(i) subject to Sections 2.1.11(b) and Section 2.1.11(c), apply Cost Savings and/or any permitted reallocation pursuant to Section 2.1.11 hereof such that the aggregate sum of the Deficiency is reduced to zero; or

(ii) deposit cash (the "Deficiency Collateral") into the Mortgage Loan Deficiency Account in an amount such that the amount on deposit in the Deficiency Account (following any application of any Cost Savings and/or any Contingency to the Deficiency in accordance with the terms and conditions hereof, if any), shall be sufficient to reduce the aggregate sum of the Deficiency to zero.

(c) If Borrower deposits the Deficiency Collateral with Lender, such deposit shall be held in the Deficiency Account, and all interest earned thereon shall become part of the Deficiency Collateral. The Deficiency Collateral shall first be exhausted (in accordance with the terms hereof) before any further Additional Advances shall be made and Lender shall have no obligation to make Additional Advances when the Loan is not In Balance.

(d) Borrower shall have no right to any Deficiency Collateral held by Lender, except as described in this Section 2.1.12, and, until expended or applied as provided herein, such Deficiency Collateral held by Lender shall constitute additional security for the Debt. So long as no Event of Default has occurred and is continuing, any amounts held by Lender as Deficiency Collateral shall be drawn and advanced to pay costs for Approved Project Expenditures in the same manner as if such amounts were Additional Advances (it being understood that the condition that Mortgage Lender has made a Mortgage Loan Additional Advance shall be inapplicable (and no Additional Advance shall be made hereunder) so long as funds from the Deficiency Account are being utilized to pay 100% of any Approved Project Expenditures).

(e) If Master Tenant is required to deposit with Mortgage Borrower any amount pursuant to Section 1.1.2.1 of the Master Lease, then Borrower shall cause Mortgage Borrower to direct Master Tenant (subject to the rights of Mortgage Lender under the Mortgage Loan Agreement) to deposit such amount with Lender. Any amount deposited with Lender pursuant to this Section 2.1.12(e) shall be held in the Deficiency Account and shall be applied as Deficiency Collateral in accordance with the terms and conditions set forth in this Agreement.

(f) Borrower shall cause Mortgage Borrower to comply in all respects with the terms and provisions set forth in Sections 2.1.12(b) through (d) of the Mortgage Loan Agreement (such terms and provisions, collectively, the "Mortgage Deficiency Provisions"). If Mortgage Lender waives any of the Mortgage Deficiency Provisions, or if the Mortgage Loan is refinanced or paid off in full (without a repayment in full of the Loan) and any of the Mortgage Deficiency Provisions are not required under the new mortgage loan, if any, or the Mortgage Deficiency Provisions cease to exist or are reduced, waived or modified in any respect, then Borrower shall, to the extent any portion of the Debt hereunder remains outstanding, if requested by Lender, cause any amounts that would have been deposited into the Mortgage Loan Deficiency Account in accordance with the Mortgage Deficiency Provisions to be paid to and deposited in an account controlled by Lender as though the applicable Mortgage Deficiency Provisions were incorporated herein, mutatis mutandis, and all such other Mortgage Deficiency Provisions shall be incorporated herein, mutatis mutandis (the "Substitute Deficiency Provisions"). In addition, if requested by Lender, Borrower shall execute any documents to evidence the implementation of the Substitute Deficiency Provisions with Lender so long as the Substitute Deficiency Provisions are substantially identical to the Mortgage Deficiency Provisions. Lender shall have the same legal and economic rights and remedies as Mortgage Lender under the Mortgage Deficiency Provisions, provided that in all events the disbursement and application of funds held in any such account controlled by Lender shall be substantially

identical to that provided in the Mortgage Deficiency Provisions with respect to the Mortgage Loan Deficiency Account.

2.1.13 Direct Advances. Lender shall have the right (but not the obligation) to make any or all Additional Advances directly to General Contractor, any Trade Contractor that has a direct agreement with Borrower or any other Person to whom payment is due from Borrower, provided that no direct Additional Advance shall be made for any costs being disputed by Borrower pursuant to Section 5.1.2(b) hereof. If an Event of Default is continuing, Additional Advances may be made by deposit in a bank account to be designated by Lender which may be controlled by General Contractor, such Trade Contractor or by such other Person, in each case individually or jointly with Lender, as Lender may elect. Such direct Additional Advances may be made by check payable to the Person to whom an Additional Advance is to be made in accordance with this Section 2.1.13. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable direction and authorization to Lender to so disburse Additional Advances as described in, and in accordance with, this Section 2.1.13. No further direction or authorization from Borrower shall be necessary or required for such direct Additional Advances and all such Additional Advances shall satisfy pro tanto the obligations of Lender hereunder and shall be secured by the Loan Documents as fully as if made directly to Borrower, regardless of the disposition thereof by General Contractor, any Trade Contractor or any other Person.

2.1.14 Partial Advances. If any or all conditions precedent to making an Additional Advance have not been satisfied on the date requested for such Additional Advance, Lender may, at its option in its sole and absolute discretion, waive so many of such conditions precedent as Lender may elect. Lender may, however, without waiving any of its rights or remedies, disburse that portion, if any, of the requested Additional Advance for which all of the conditions precedent have been satisfied. Notwithstanding the foregoing, nothing set forth in this Section 2.1.14 shall require Lender to fund all or any portion of an Additional Advance unless all of the conditions precedent have been satisfied

2.1.15 Retainage. The amount of Loan proceeds disbursed on account of any Additional Advance or portion thereof allocable to any Hard Costs shall be reduced by the Mortgage Funding Share of the portion of the Retainage to be paid out of Additional Advances in accordance with this Agreement and applicable to such Hard Costs. No final Retainage amounts shall be released with respect to a particular Trade Contract prior to the date of final completion of all of the work of the Trade Contractor under such Trade Contract and the expiration of the lien period for an individual subcontract (unless Borrower provides an unconditional lien waiver from the applicable Trade Contractor satisfactory to Lender, in which event such final Retainage shall be funded in connection with the Draw Request therefor). In no event shall Lender be required to disburse any funds on account of Retainage prior to the time such sums are payable pursuant to the applicable Trade Contract.

2.1.16 Costs and Additional Advances. Additional Advances shall be made on the basis of (a) the Line Items for Hard Costs and Soft Costs specified in the Construction Budget or items not detailed in the Construction Budget but which are funded by the Contingency, subject to the provisions of Section 2.1.11 and Section 2.1.12, and (b) the documented cost of work in place and performed and services provided (without reduction for any retainage permitted under any applicable Trade Contract, but subject to the Retainage required under this Agreement), or the extent provided in Section 2.1.10, Unincorporated Materials or Off-Site Materials or deposits made, in each case, in accordance with this Agreement; provided that Lender shall at no time be obligated to make an Additional Advance for work performed, materials furnished or services provided under Construction Contracts that are not fully executed and delivered.

2.1.17 Conditions Precedent. Lender shall not be obligated to make any Additional Advance unless Lender is reasonably satisfied that the applicable conditions precedent to the Additional Advance as set forth in this Section 2.1 have been satisfied by Borrower as of the applicable Advance Date. Without

limiting the foregoing, the requesting of an Additional Advance shall constitute, without necessity of specifically containing a written statement to such effect, a confirmation, representation and warranty by Borrower to Lender that all of the applicable conditions to be satisfied in connection with the making of such Additional Advance have been satisfied (unless waived in writing by Lender) and that all of the representations and warranties of Borrower and Guarantor set forth in the Loan Documents are true and correct as if made on (and with respect to facts and circumstances existing as of) the date on which such Additional Advance is made, except as otherwise permitted by the terms and conditions hereof, and except for any changes in facts or circumstances occurring since the Closing Date that do not constitute a Default or Event of Default or were not caused by the occurrence of a Default or Event of Default and, in any event, do not result in a Material Adverse Effect.

2.1.18 Separate Contracts for Additional Advances; Several Obligations. Borrower covenants and agrees not to take any action whatsoever, at law or in equity (including the assertion of any right of rescission, set-off, counterclaim or defense) against any Lender on account of such Lender failing to fund any portion of the Additional Advance in violation of this Agreement. In the event Borrower breaches the foregoing covenant, Borrower shall indemnify, defend and hold each Lender harmless from any and all Losses incurred by such Lender in any way related to such breach (which agreement to indemnify such Lender shall be a personal liability of Borrower and not subject to Article VIII). Borrower acknowledges and agrees that (a) no Lender shall have any obligation to fund any other Lender's portion of any Additional Advance, and that such obligation shall be the several, sole and exclusive obligation of such Lender, and (b) each Lender's obligations to make its portion of each Additional Advance in accordance with Section 2.1 are a several obligation of such Lender, and an independent contract made by and between such Lender and Borrower separate and apart from any other obligation of any other Lender under the other provisions of the Loan Documents, and that such Lender shall at no time be required to make Additional Advances in an amount that exceeds such Lender's commitment (which shall be equal to a percentage of the Loan Amount that is determined by dividing the portion of the Loan Amount evidenced by the Note executed in favor of such Lender by the total Loan Amount). The obligations of the Borrower under this Agreement and the other Loan Documents shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of the Borrower, or any other party, against any Lender by reason of such Lender's failure to make any Additional Advance. Borrower agrees that it shall not assert (and shall not have) any defense (including the assertion of any right of rescission, set-off, counterclaim or defense) to the payment of Debt owed to any Lender in the event such Lender breaches any obligation to make an Additional Advance that it is required to make hereunder. The making of any Additional Advance by any Lender at the time when an Event of Default exists shall not be deemed a waiver or cure by such Lender of that Event of Default, nor shall such Lender's rights and remedies be prejudiced in any manner thereby. Nothing in this Section 2.1.18 shall be deemed to be a release of any claim that Borrower may have against any Lender for its failure to perform its obligations under this Agreement and the other Loan Documents.

2.1.19 Conditions Precedent to Completion. The Project shall not be deemed Completed unless and until the following conditions are satisfied:

(a) Approval by Construction Consultant. Lender and Construction Consultant shall have received evidence reasonably acceptable to them, or otherwise be reasonably satisfied, that Completion of the Project has occurred.

(b) Final Lien Waivers and Release/Payment Receipts. Subject to Borrower's right to contest pursuant to Section 5.1.2(b) hereof, Lender shall have received from Borrower final unconditional Lien waivers and release/payment receipts from General Contractor and all Trade Contractors party to a Trade Contract in the form required by California Civil Code Section 8138 (or any successor thereto).

(c) Certificates of Occupancy. Lender shall have received a copy of the certificate of occupancy (or an equivalent document) and all other material Operating Permits for the Project.

(d) Final "As-Built" Plans and Specifications. Borrower shall have delivered to Lender the final "as-built" Plans and Specifications for the Project.

(e) Final Survey. Borrower shall have delivered to Lender the final survey of the Property upon Completion by a surveyor licensed in the State and reasonably satisfactory to Lender and the Title Company, and that satisfies Lender's survey requirements.

(f) Certificate of Architect. Lender shall have received a certificate of Completion for the Project certified by Architect and confirmed by Construction Consultant, in its good faith determination, which confirms that Completion has occurred substantially in accordance with the Plans and Specifications and all Legal Requirements, including all Punchlist Items with respect thereto.

(g) Title Date Down. The requirements of Section 2.1.6(h) have been satisfied.

(h) Payment of Fees. Lender shall have received payment for any and all reasonable, actual, out-of-pocket fees then due and payable by Borrower to Lender pursuant to the Loan Documents, including, but not limited to, the reasonable, fees and expenses of Construction Consultant and reasonable, fees, costs and expenses of outside legal counsel of Lender (in each case, to the extent then due and payable).

(i) Certificate of Borrower. Borrower shall have furnished to Lender a certificate from Borrower, currently dated, certifying that: (i) no written notices from any Governmental Authority of any claimed violations of applicable Legal Requirements arising from the development or operation of the Project which have not been cured were served upon Borrower or any contractor or subcontractor or their respective agents or representatives and (ii) there are no circumstances which could give rise to the issuance of any such notice of claimed violation.

(j) Fixtures, Equipment and Inventory. All fixtures, furnishings, equipment, all inventory and all other property contemplated under the Construction Budget and the Plans and Specifications to be incorporated into or installed in the Project shall have been, to the extent required for the Completion of the Project in accordance with the terms hereof, incorporated or installed free and clear of all liens and security interests other than the Permitted Encumbrances.

(k) UCC Searches. Borrower shall have furnished Lender with current searches of all UCC financing statements filed with the Secretary of State of Delaware and the State against Borrower or Mortgage Borrower as debtor, showing that no UCC financing statements are filed or recorded against Borrower or Mortgage in which the collateral is described as any of the collateral for the Loan or the Mortgage Loan, including any fixtures, furnishings and equipment or other personal property located on the Property or used in connection with the Property, other than filings (i) pursuant to the Loan Documents or the Mortgage Loan Documents or (ii) with respect to Permitted Equipment Leases, provided that such UCC financing statements with respect to Permitted Equipment Leases have been filed after the Closing Date and set forth a description of collateral that is limited solely to the collateral under the applicable Permitted Equipment Lease.

SECTION 2.2. Interest Rate.

2.2.1 Interest Calculation. Subject to Section 2.2.2 and Section 2.2.6, interest on the Outstanding Principal Balance shall accrue, from the Closing Date until the Debt is repaid in full, at the Interest Rate, and during the continuance of an Event of Default, at the Default Rate. Interest on the

Outstanding Principal Balance shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate (or the Default Rate, if applicable) and a three hundred sixty (360) day year, by (c) the Outstanding Principal Balance. The Interest Rate applicable to an Interest Accrual Period shall be determined by Lender as set forth herein; provided, however, that Term SOFR for the Interest Accrual Period commencing on the Closing Date through and including July 9, 2022 shall be Term SOFR on the Closing Date, which the parties agree is Closing Date Term SOFR. In connection with the use or administration of Term SOFR, Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of Borrower. Lender will promptly notify Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.2.2 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Outstanding Principal Balance at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.2.3 Taxes.

(a) Payment of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Legal Requirements. If any Legal Requirement requires the deduction or withholding of any Tax from any such payment, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Legal Requirements and, if such Tax is an Indemnified Tax, the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding for Indemnified Taxes has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.2.3(a)) the applicable Lender receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Legal Requirements any Other Taxes. Borrower shall pay to each Lender within ten (10) days after demand therefor, the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.2.3(a)) payable or paid by such Lender or required to be withheld or deducted from a payment to such Lender and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender shall be conclusive absent manifest error. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.2.3(a), Borrower shall deliver to Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender. For purposes of this Section 2.2.3, "Legal Requirements" shall include FATCA.

(b) Status of Lender.

(i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Loan Document shall deliver to Borrower, (A) prior to becoming a party to this agreement or obtaining any interest in the Loan, (B) at the time or times reasonably requested by Borrower, and (C) if any form or certification previously delivered expires or becomes obsolete or inaccurate in any respect, such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, if reasonably requested by Borrower, any Lender shall deliver such other documentation prescribed by applicable Legal Requirements (or reasonably requested by Borrower) as will enable Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be reasonably requested by Borrower) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), whichever of the following is applicable:

1. in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

2. executed copies of IRS Form W-8ECI;

3. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit K-1 attached hereto to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W 8BEN-E; or

4. to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W 8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-2 or Exhibit K-3, each attached hereto, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-4 attached hereto on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be reasonably requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment (and solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement).

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so.

(c) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified pursuant to this Section 2.2.3 (including by the payment of additional amounts pursuant to this Section 2.2.3(c)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.2.3(c) with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.2.3(c) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.2.3(c),

in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.2.3(c) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.2.3(c) shall not be construed to require any indemnified party to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the indemnifying party or any other Person.

(d) Survival. Each party's obligations under this Section 2.2.3 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the commitments to make Additional Advances and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(e) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.2.5, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.2.3(a), then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loan hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to such Sections 2.2.3 or 2.2.5, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

2.2.4 Breakage Indemnity. Borrower shall indemnify Lender against any Losses which Lender may actually sustain or incur in liquidating or redeploying deposits from third parties acquired to effect or maintain the Loan or any part thereof as a consequence of (a) any default by Borrower in payment of the principal of or interest on a Term SOFR Loan, an Alternate Rate Loan or a Prime Rate Loan, as applicable, including, without limitation, any such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain a Term SOFR Loan, an Alternate Rate Loan or a Prime Rate Loan, as applicable, hereunder, (b) any prepayment (whether voluntary or mandatory) of the Term SOFR Loan, an Alternate Rate Loan or a Prime Rate Loan, as applicable, on a day that is not the last day of an Interest Accrual Period, including, without limitation, such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain the Term SOFR Loan, an Alternate Rate Loan or a Prime Rate Loan, as applicable, hereunder, and (c) the conversion (for any reason whatsoever, whether voluntary or involuntary) of the Applicable Rate Index from Term SOFR to an Alternate Rate Index or the Prime Rate Index (or any other conversion of the Interest Rate) with respect to any portion of the Loan Amount on a date other than the last day of an Interest Accrual Period; provided, however, Borrower shall not indemnify Lender from any Losses arising from Lender's willful misconduct or gross negligence. Lender shall deliver to Borrower a statement for any such sums which it is entitled to receive pursuant to this Section 2.2.4, which statement shall be binding and conclusive absent manifest error. Borrower's obligations under this Section 2.2.4 are in addition to Borrower's obligations to pay any Prepayment Premium applicable to a payment or prepayment of the Outstanding Principal Balance. This provision shall survive payment of the Note in full and the satisfaction of all other obligations of Borrower under this Agreement and the other Loan Documents.

2.2.5 Legal Requirements.

(a) If any Change in Law shall (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, advances or loans by, or other credit extended

by, or any other acquisition of funds by, any office of Lender which is not otherwise included in the determination of Term SOFR, the Alternate Rate Index or the Prime Rate Index hereunder, (ii) have the effect of reducing the rate of return on Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy) by any amount deemed by Lender to be material, (iii) subject any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or (iv) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loan made by such Lender or participation therein, and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining the Loan or of maintaining its obligation to make any the Loan, or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, in any such case, upon written request of such Lender and delivery of the certificate described in Section 2.25(c) below, subject to Section 2.25(d) below, Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered (such increases in cost and reductions in amounts receivable hereinafter collectively, the "Increased Costs").

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loan made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 2.2.5(a) or (b) above and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.2.5 shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section 2.2.5 for any Increased Costs incurred or reductions suffered more than twelve (12) months prior to the date that such Lender notifies Borrower of the Change in Law giving rise to such Increased Costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such Increased Costs or reductions is retroactive, then the twelve-month period referred to above shall be extended to include the period of retroactive effect thereof).

2.2.6 Rate Conversion.

(a) In the event that Lender shall have determined in its sole but good faith discretion that Term SOFR cannot be determined as provided in the definition of Term SOFR as set forth herein or Lender shall have reasonably determined that Term SOFR has been succeeded by an Alternate Rate Index, then Lender shall forthwith give notice thereof by telephone of such fact, confirmed in writing, to Borrower at least one (1) Business Day prior to the Determination Date. If such notice is given, the Loan shall be converted, from and after the first day of the next succeeding Interest Accrual Period, (i) to an Alternate

Rate Loan bearing interest based on the Alternate Rate in effect on the related Determination Date provided that (1) Lender has determined in its sole but good faith discretion that Term SOFR has been succeeded by the Alternate Rate Index and (2) Lender has received evidence satisfactory to Lender that conversion to an Alternate Rate Loan does not violate ERISA or (ii) at Lender's option, to a Prime Rate Loan bearing interest based on the Prime Rate in effect on the related Determination Date. Notwithstanding any provision of this Agreement to the contrary, in no event shall (x) Borrower have the right to convert (i) a Term SOFR Rate Loan to a Prime Rate Loan or an Alternate Rate Loan, (ii) an Alternate Rate Loan to a Term SOFR Rate Loan or a Prime Rate Loan, or (iii) a Prime Rate Loan to a Term SOFR Rate Loan or an Alternate Rate Loan, (y) the Prime Rate be less than the Minimum Rate or the Alternate Rate be less than the Minimum Rate.

(b) If, pursuant to the terms of Section 2.2.6(b) above, the Loan has been converted to a Prime Rate Loan but thereafter either (i) Term SOFR can again be determined as provided in the definition of Term SOFR as set forth herein or (ii) Lender has determined in good faith (which determination shall be conclusive and binding upon Borrower absent manifest error) that Term SOFR has been succeeded by an Alternate Rate Index and the conditions set forth in Section 2.2.6(b) above are satisfied, Lender shall give notice thereof to Borrower and convert a Prime Rate Loan to a Term SOFR Rate Loan or to an Alternate Rate Loan, as applicable, by delivering to Borrower notice of such conversion no later than 2:00 p.m. (New York City time), one (1) Business Day prior to the next succeeding Determination Date. If such notice is given, the Loan shall be converted, from and after the first day of the next succeeding Interest Accrual Period, to a Term SOFR Rate Loan or an Alternate Rate Loan, as applicable, bearing interest based on Term SOFR or the Alternate Rate Index, as applicable, in effect on the related Determination Date.

(c) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lenders to make or maintain a Term SOFR Rate Loan or an Alternate Rate Loan as contemplated hereunder, (i) the obligation of Lender hereunder to make a Term SOFR Rate Loan or an Alternate Rate Loan or to convert a Prime Rate Loan to a Term SOFR Rate Loan or an Alternate Rate Loan shall be canceled forthwith and (ii) any outstanding Term SOFR Rate Loan or Alternate Rate Loan shall be converted automatically to a Prime Rate Loan on the first day of the next succeeding Interest Accrual Period or within such earlier period as required by law.

2.2.7 Interest Rate Cap Agreement.

(a) On or prior to the Closing Date, Borrower shall enter into an agreement with (or guaranteed by) an Acceptable Counterparty, which agreement (an "Interest Rate Cap Agreement") shall (i) be in form and substance reasonably satisfactory to Lender, (ii) contain the agreement of such Acceptable Counterparty to make payments to Borrower in the event the Applicable Rate Index exceeds a strike rate of no greater than three percent (3.00%), (iii) require payments based on a notional amount at least equal to the Loan Amount, (iv) not terminate prior to the date that is twenty-four (24) months following the Closing Date, and (v) require payments to be made on the date that is three (3) Business Days prior to the applicable Payment Date. Borrower shall collaterally assign to Lender, pursuant to an assignment agreement in form and substance acceptable to Lender (the "Assignment of Interest Rate Cap Agreement"), all of its right, title and interest (but not its obligations) to receive any and all payments under any Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the collateral assignment to Lender and require that payments be deposited directly into the account designated by Lender) and shall notify the Acceptable Counterparty of such assignment and obtain from such counterparty a confirmation of the assignment of such Interest Rate Cap Agreement to Lender in form and content acceptable to Lender.

(b) Not later than the date that is sixty (60) days prior to the date on which the initial Interest Rate Cap Agreement described in Section 2.2.7(a) terminates, Borrower shall enter into an

agreement with (or guaranteed by) an Acceptable Counterparty, which agreement (a "Replacement Interest Rate Cap Agreement") shall (i) be in form and substance reasonably satisfactory to Lender, (ii) contain the agreement of such Acceptable Counterparty to make payments to Borrower in the event the Applicable Rate Index exceeds a strike rate of no greater than three percent (3.00%), (iii) require payments based on a notional amount at least equal to the Loan Amount, (iv) be effective commencing immediately upon the termination of such initial Interest Rate Cap Agreement and not terminate prior to the Maturity Date, and (v) require payments to be made on the date that is three (3) Business Days prior to the applicable Payment Date. Borrower shall collaterally assign to Lender, pursuant to an Assignment of Interest Rate Cap Agreement, all of its right, title and interest (but not its obligations) to receive any and all payments under any Replacement Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Replacement Interest Rate Cap Agreement (which shall, by its terms, authorize the collateral assignment to Lender and require that payments be deposited directly into the account designated by Lender) and shall notify the Acceptable Counterparty of such assignment and obtain from such counterparty a confirmation of the assignment of such Replacement Interest Rate Cap Agreement to Lender in form and content acceptable to Lender.

(c) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by an Acceptable Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(d) In the event of any downgrade, withdrawal or qualification of the rating of the counterparty under the Interest Rate Cap Agreement such that such counterparty is a Downgraded Counterparty, or in the event of any default by an Acceptable Counterparty under the Interest Rate Cap Agreement, Borrower shall, not later than fifteen (15) days following the receipt by Borrower of notice of such downgrade, withdrawal, qualification, or default (whether received from Lender, the Acceptable Counterparty, or otherwise), then Borrower shall replace the Interest Rate Cap Agreement with an Interest Rate Cap Agreement satisfying the requirements of Section 2.2.7(a) above not later than fifteen (15) days following the receipt by Borrower of notice of such downgrade (whether received from Lender, the Acceptable Counterparty, or otherwise).

(e) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement, in each case, in accordance with the terms and provisions of this Agreement, Lender may (but shall have no obligation to) purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(f) In connection with the Interest Rate Cap Agreement, Borrower shall obtain and deliver to Lender, within twenty (20) Business Days following the Closing Date (or, with respect to a Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement, within twenty (20) Business Days following the effective date of such Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement, as applicable), an opinion from counsel (which counsel may be in-house counsel for the Acceptable Counterparty) for the Acceptable Counterparty (upon which Lender and its successors and assigns may rely) which shall provide, in relevant part, that: (i) the Acceptable Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Agreement; (ii) the execution and delivery of the Interest Rate Cap Agreement by the Acceptable Counterparty, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or

by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property; (iii) all consents, authorizations and approvals required for the execution and delivery by the Acceptable Counterparty of the Interest Rate Cap Agreement, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance; and (iv) the Interest Rate Cap Agreement, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by the Acceptable Counterparty and constitutes the legal, valid and binding obligation of the Acceptable Counterparty, enforceable against the Acceptable Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(g) Notwithstanding anything to the contrary contained in this Section 2.2.7 or elsewhere in this Agreement, in the event a Rate Conversion occurs, then, within ten (10) Business Days after such Rate Conversion, Borrower shall enter into a Substitute Interest Rate Cap Agreement (and in connection therewith, but not prior to Borrower taking all the actions described in this Section 2.2.7(g), Borrower shall have the right to terminate any then-existing Interest Rate Cap Agreement), together with, within five (5) Business Days thereafter, an assignment of interest rate cap agreement with respect to such Substitute Interest Rate Cap Agreement in form and substance substantially similar to the Assignment of Interest Rate Cap Agreement delivered in connection with the then-existing Interest Rate Cap Agreement, together with legal opinions of counsel to the counterparty and Borrower as reasonably required by Lender. Notwithstanding anything to the contrary set forth in this Section 2.2.7, if, following a Rate Conversion, Lender determines (which determination will be based on market customs and/or proposals of industry associations) that a Substitute Interest Rate Cap Agreement is not then generally commercially available from an Acceptable Counterparty, then, Borrower shall not be required to obtain a Substitute Interest Rate Cap Agreement but shall instead be required to purchase such other hedging product as reasonably determined by Lender would afford Lender substantially equivalent protection from increases in the interest rate, which such alternative shall be satisfactory to Lender in its reasonable discretion.

SECTION 2.3. Extension Option.

2.3.1 Borrower shall have the option to extend the term of the Loan beyond the Initial Maturity Date (each such option, an "Extension Option") for two (2) successive one-year terms (the period of each sun extension, an "Extension Term") upon satisfaction of each of the following conditions (it being agreed that, except to the extent expressly provided in this Section 2.3.1, each of the following conditions are required to be satisfied with respect to Borrower's exercise of each Extension Option):

(a) Borrower shall have given at least thirty (30) days' prior written irrevocable notice (but not more than ninety (90) days' prior written notice) to Lender of its election to extend the Maturity Date;

(b) no Default or Event of Default shall have occurred and be continuing on the date of delivery of the notice referred to in clause (a) above or on the Maturity Date;

(c) the Debt Yield calculated as of the Maturity Date shall be at least 8.5%;

(d) with respect to the second Extension Option only, the As-Stabilized Loan-to-Value Ratio calculated as of the Maturity Date shall not be greater than 45%;

(e) the Loan shall be In-Balance and no Interest and Carry Cost Shortfall shall exist;

(f) the Master Lease shall remain in full force and effect and no default shall have occurred under the Master Lease that remains uncured beyond any applicable notice and cure period in Lender's sole but good faith determination;

(g) Completion of the Project shall have occurred;

(h) Borrower and Guarantor shall have executed and delivered amendments to and reaffirmations of any or all of the Loan Documents as may be reasonably requested by Lender;

(i) each of the representations and warranties of Borrower and Guarantor contained in each of the Loan Documents shall be true, complete and correct in all material respects as of the Maturity Date, except for any changes in facts or circumstances occurring since the Closing Date that do not constitute a Default or Event of Default or were not caused by the occurrence of a Default or Event of Default and, in any event, do not result in a Material Adverse Effect;

(j) Borrower shall have paid to Lender a fee in the amount of 0.25% of the Outstanding Principal Balance plus any amounts available to be advanced as Additional Advances under this Agreement, and shall have paid or reimbursed all of Lender's outstanding fees and expenses, in accordance with the terms of this Agreement and the other Loan Documents;

(k) if Lender determines that the Estimated Interest and Carry Available Amount calculated as of the first day of the applicable Extension Term would be insufficient to fund the estimated Interest and Carry Costs projected to be payable with respect to the Loan and the Mortgage Loan through the last day of the applicable Extension Term (the amount of any such shortfall, an "Extension Shortfall"), Borrower shall deposit cash into the Unfunded Loan Proceeds Account in an amount equal to the Extension Shortfall;

(l) Borrower either (i) extends the term of the Interest Rate Cap Agreement (or, if following a Rate Conversion, the Substitute Interest Rate Cap Agreement) then in effect to a date not earlier than the extended Maturity Date, or (ii) enters into a new Interest Rate Cap Agreement (or, if following a Rate Conversion, the Substitute Interest Rate Cap Agreement) and assigns the same to Lender pursuant to such documents as Lender may require, which Interest Rate Cap Agreement (or, if following a Rate Conversion, the Substitute Interest Rate Cap Agreement) expires no earlier than the extended Maturity Date, and which extension or new agreement complies with the requirements set forth in Section 2.2.7 and has the effect of capping Term SOFR (or, following, a Rate Conversion, as applicable, the Alternate Rate Index or the Prime Rate Index) at a strike price equal to 3.00%, on a notional principal amount not less than the Outstanding Principal Balance;

(m) Mortgage Borrower shall have extended the Maturity Date (as defined in the Mortgage Loan Agreement) of the Mortgage Loan to a date not sooner than the applicable extended Maturity Date hereunder (including that all conditions precedent to such extension shall have been satisfied by Mortgage Borrower or waived in writing by Mortgage Lender); and

(n) Mortgage Borrower shall have satisfied all requirements set forth in Section 2.3.1 of the Mortgage Loan Agreement for such extension of the Mortgage Loan (except to the extent that the only condition not satisfied thereunder is Borrower's simultaneous satisfaction of the conditions set forth in this Section 2.3.1) and the Mortgage Loan has been extended pursuant to the terms and conditions of the Mortgage Loan Agreement.

2.3.2 Unfunded Loan Proceeds. If (i) any Loan proceeds have not been advanced (such unadvanced amounts hereinafter, the "Unfunded Loan Amount") on or prior to the Initial Maturity Date and (ii) Borrower has elected to exercise the first Extension Option in accordance with the terms and conditions of Section 2.3.1 hereof, then, Lender, at its sole election, may elect by written notice to Borrower given no less than ten (10) Business Days prior to the anticipated advance date, advance all or such applicable portion of the Unfunded Loan Amount into an Eligible Account under the sole dominion and control of Lender (the "Unfunded Loan Proceeds Account") subject to Borrower's satisfaction of the conditions precedent to an Extension Term set forth in Section 2.3.1. With respect to such portion of the Unfunded Loan Amount that is not funded into the Unfunded Loan Proceeds Account in accordance with this Section 2.3.2, Lender's commitment to fund such amounts shall terminate on the Initial Maturity Date. Lender shall be released from all obligations under this Agreement and the other Loan Documents with respect to such terminated portion of the commitment. So long as no Event of Default is continuing, any amount funded into the Unfunded Loan Proceeds Account (including any Extension Shortfall deposited therein and any amounts deposited therein by Mortgage Lender pursuant to Section 2.3.2 of the Mortgage Loan Agreement) shall be disbursed to Borrower on each Payment Date by Lender to pay Interest and Carry Cost Shortfalls, subject to the terms and conditions set forth in this Agreement with respect to Additional Advances to pay Interest and Carry Costs.

SECTION 2.4. Loan Payment.

2.4.1 Required Payments. Borrower shall pay to Lender on the Initial Payment Date (which shall be the first Payment Date hereunder) and on each Payment Date thereafter up to and including the Maturity Date, the Monthly Debt Service Payment Amount, which payments (prior to an Event of Default) shall be applied (i) first to amounts due and payable with respect to the Loan other than principal and interest (but including interest at the Default Rate), and then (ii) to accrued and unpaid interest at the Interest Rate, and then (iii) to the Outstanding Principal Balance. So long as no Event of Default then exists, all payments received by Lender with respect to the Loan shall be applied by Lender to amounts due with respect to each Note on a pro rata and pari passu basis, based on the outstanding principal amount due under each Note and the interest rate applicable thereto; provided, however, that from and after an Event of Default, all payments received by Lender shall be applied by Lender to amounts due with respect to the Notes in such order and priority as Lender shall determine in its sole discretion. Borrower shall pay the entire Debt to Lender on the Maturity Date.

2.4.2 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount (such amount, a "Late Payment Charge") equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Late Payment Charges shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

2.4.3 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Accrual Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day. Following an Event of Default, and for so long as such Event of Default

continues, any prepayment shall be applied to payments of principal of the Loan and other amounts due under the Loan Documents in such order and priority as Lender may determine in its sole discretion. All payments received by Lender during the existence of an Event of Default (other than an Event of Default resulting from a failure to repay the Debt on the Maturity Date) shall be deemed to have been made on the next occurring Payment Date.

SECTION 2.5. Prepayments.

2.5.1 Voluntary Prepayments. Except as otherwise expressly provided herein, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. Borrower may, at its option and upon at least thirty (30) days prior written notice to Lender specifying the Business Day on which such prepayment is to be made (a "Prepayment Date") (which notice may be revoked by Borrower at any time prior to the Prepayment Date provided that Borrower shall reimburse Lender for any costs incurred by Lender as a result of such revocation), prepay the Debt in whole, but not in part (except as otherwise expressly permitted under this Agreement), provided that such prepayment is accompanied by (a) all interest accrued on the amount of the Loan being so prepaid through and including the last day of the Interest Accrual Period in effect as of such Prepayment Date, (b) all other sums due and payable under this Agreement and the other Loan Documents, including, but not limited to any amounts due under Section 2.2.4 hereof and all of Lender's out-of-pocket costs and expenses (including reasonable attorney's fees and disbursements) incurred by Lender in connection with such prepayment, and (c) the Prepayment Premium applicable to such payment (if any). Unless an Event of Default then exists, any voluntary prepayment of the Loan and the Mortgage Loan shall be made such that Lender and Mortgage Lender shall receive their respective pro rata share of any principal amount so repaid (based on the respective outstanding principal balances of the Loan and the Mortgage Loan in effect at such time). Notwithstanding the foregoing, in no event shall Borrower be permitted to prepay the Debt on a date during an Interest Accrual Period (other than a prepayment of the Debt in whole on a Payment Date) which is prior to the Determination Date for such Interest Accrual Period.

2.5.2 Liquidation Event. (a) In the event of a Liquidation Event, Borrower shall cause the related Net Liquidation Proceeds to be paid directly to Lender. On the Payment Date following each date on which Lender actually receives a distribution of Net Liquidation Proceeds, Borrower is deemed to have authorized Lender to prepay the outstanding principal balance of the Mezzanine Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Accrual Period in which such Payment Date occurs. Any amounts of Net Liquidation Proceeds in excess of the Debt shall be paid to Borrower. Any prepayment received by Lender pursuant to this Section 2.5.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Monthly Date.

(b) Borrower shall notify Lender of any contemplated Liquidation Event not later than one (1) Business Day following the first date on which Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of the Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date written notice of such foreclosure sale is received by Borrower or Mortgage Borrower, and (ii) a refinancing of the Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.5.2 shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of the Property set forth in this Agreement and the other Loan Documents.

SECTION 2.6. Release on Payment in Full. Lender shall execute and deliver to or at the direction of Borrower, upon the written request and at the expense of Borrower, upon payment in full of all

principal and interest due on the Loan, any applicable Prepayment Premium, and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, a release of the Lien of the Pledge Agreement and other Loan Documents with respect to the Collateral, in form and content reasonably acceptable to Lender.

ARTICLE III

CASH MANAGEMENT; RESERVE ACCOUNTS

SECTION 3.1. Cash Management. Borrower shall cause Mortgage Borrower to cause all Revenues to be deposited and applied in accordance with the Mortgage Loan Documents, and otherwise cause Mortgage Borrower to comply with the requirements of Section 3.1 of the Mortgage Loan Agreement, subject to the terms and conditions of the Mortgage Loan Documents. If the terms and conditions of Article III of the Mortgage Loan Agreement shall be waived by Mortgage Lender while the Debt is outstanding, or if the Mortgage Loan shall be repaid in full while the Debt is outstanding, then Lender shall have the right, at its option, to require Borrower to cause Mortgage Borrower to enter into cash management arrangements in form and substance similar to that required pursuant to Article III of the Mortgage Loan Agreement as of the Closing Date which terms and conditions, together with all related defined terms, are hereby incorporated herein by this reference, mutatis mutandis, such that terms therein applicable to the Mortgage Loan, Mortgage Borrower and Mortgage Lender apply to this Loan, Borrower and Lender, respectively. In such event, Borrower shall (and shall cause Mortgage Borrower to) execute and deliver to Lender such documents and agreements as Lender may reasonably require in order to establish such accounts on substantially the same terms and conditions as are set forth in Article III of the Mortgage Loan Agreement as of the Closing Date (including an amendment to this Agreement incorporating the applicable terms and conditions of said Article III of the Mortgage Loan Agreement and related defined terms), and to create and perfect a Lien thereon (together with such opinions of counsel relating thereto as Lender may reasonably require). In addition, if Lender has notified Borrower that Lender has determined that a Cash Management Event exists but Mortgage Lender has (for any reason) not declared such Cash Management Event to exist under the Mortgage Loan Agreement (or has not otherwise required (for any reason) that all Revenues be delivered to the Mortgage Loan Cash Management Account pursuant to the terms and conditions of the Mortgage Loan Documents), Borrower shall (or shall cause Mortgage Borrower to) nonetheless deliver all Revenues received by Mortgage Borrower directly to the Cash Management Account established by Lender pursuant to this Agreement, in which event Lender, so long as no Event of Default exists, shall apply such Revenues in the order described in Article III of the Mortgage Loan Agreement.

SECTION 3.2. Required Deposits.

3.2.1 Tax Reserve Account.

(a) Borrower shall, on each Payment Date, deposit into an Eligible Account established by Lender from time to time (the "Tax Reserve Account") the amount that Lender reasonably estimates will be necessary in order to accumulate sufficient funds to pay, at least thirty (30) days prior to their respective due dates, all Property Taxes and Other Charges due within the ensuing twelve (12) months (the amount of such deposit required on any Payment Date, the "Tax Reserve Deposit Amount"). Amounts deposited into the Tax Reserve Account are referred to herein as the "Tax Reserve Funds." If at any time, Lender reasonably determines that the Tax Reserve Funds will not be sufficient to pay the Property Taxes and Other Charges, Lender shall notify Borrower of such determination and Borrower shall deposit the shortfall amount determined by Lender into the Tax Reserve Account within five (5) Business Days following written notice from Lender to Borrower. Notwithstanding the foregoing or anything to the contrary herein, after the Closing Date, Lender shall disburse into the Tax Reserve Account in the order of priority of application set forth in Section 2.1.9(c) hereof, (i) amounts available for deposit into the Tax

Reserve Account pursuant to Section 3.1(b)(i) hereof, (ii) amounts then on deposit in the Shortfall Account allocable for the payment of Property Taxes and Other Charges, (iii) amounts then on deposit in the Mortgage Loan Excess Cash Flow Reserve Account allocable for the payment of Property Taxes and Other Charges, and (iv) Additional Advances available for payment of Property Taxes and Other Charges, in each case, for the payment of Property Taxes and Other Charges in an amount equal to the then-required Tax Reserve Deposit Amount (such disbursement to be made by Lender, the "Tax Disbursement Amount"). Lender's disbursement of the Tax Disbursement Amount shall satisfy Borrower's obligations to make a deposit into the Tax Reserve Account in such amount, provided that, (x) if the Tax Disbursement Amount is less than the then-required Tax Reserve Deposit Amount, Borrower shall deposit such deficiency in accordance with the terms of this Section 3.2.1(a), and (y) with respect to disbursement of amounts on deposit in the Shortfall Account, such disbursement shall be required only so long as Lender's access to such amounts is not restricted by (A) Legal Requirements, injunction or other court order, or (B) as a result of any action, inaction or omission by Borrower, Guarantor or any Affiliate of Borrower or Guarantor.

(b) Provided no Event of Default shall exist, Lender shall apply the funds in the Tax Reserve Account to payments of the Property Taxes and Other Charges for which such funds have been reserved on their respective due dates. In making any such payment, Lender may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof. If Lender so elects at any time, Borrower shall provide, at Borrower's expense, a tax service contract for the term of the Loan issued by a tax reporting agency acceptable to Lender. If Lender does not so elect, Borrower shall reimburse Lender for the out-of-pocket cost of making annual tax searches throughout the term of the Loan.

(c) Notwithstanding the foregoing provisions of this Section 3.2.1, Borrower shall not be required to deposit the Tax Reserve Deposit Amount as set in Section 3.2.1(a) at any time that, in Lender's determination, (i) Master Tenant pays all Property Taxes and Other Charges directly to the appropriate taxing authority in accordance with the express terms of the Master Lease, (ii) there is no event of default by Master Tenant under the Master Lease, and (iii) Borrower provides Lender, or causes to be provided to Lender, evidence of payment of such Property Taxes and Other Charges prior to delinquency. Borrower shall immediately commence depositing all Tax Reserve Deposit Amounts as required by Lender pursuant to Section 3.2.1, within five (5) Business Days of receipt of notice from Lender of Borrower's failure to comply with items (i), (ii), or (iii) in the immediately preceding sentence, and such failure is not cured within such five (5) Business Day period, which such notice shall instruct Borrower, in such event, to immediately commence making all additional deposits of the Tax Reserve Deposit Amount.

3.2.2 Insurance Reserve Account.

(a) Borrower shall, on each Payment Date, deposit into an Eligible Account established by Lender from time to time (the "Insurance Reserve Account") the amount that Lender estimates will be necessary in order to accumulate sufficient funds to pay, at least thirty (30) days prior to its expiration, all Insurance Premiums for Policies required hereunder due within the ensuing twelve (12) months (the amount of such deposit required on any Payment Date, the "Insurance Reserve Deposit Amount"). Amounts deposited pursuant into the Insurance Reserve Account are referred to herein as the "Insurance Reserve Funds". If at any time, Lender reasonably determines that the Insurance Reserve Funds will not be sufficient to pay the Insurance Premiums, Lender shall notify Borrower of such determination and Borrower shall deposit the shortfall amount determined by Lender into the Insurance Reserve Account within five (5) Business Days following written notice from Lender to Borrower. Notwithstanding anything to the contrary herein, after the Closing Date, Lender shall disburse into the Insurance Reserve Account in the order of priority of application set forth in Section 2.1.9(c) hereof, (i) amounts available for deposit into the Insurance Reserve Account pursuant to Section 3.1(b)(ii) hereof, (ii) amounts then on deposit in the Shortfall Account allocable for payment of Insurance Premiums, (iii)

amounts then on deposit in the Mortgage Loan Excess Cash Flow Reserve Account allocable for payment of Insurance Premiums, (iv) Additional Advances available for payment of Insurance Premiums, in each case, for the payment of Insurance Premiums in an amount equal to the then-required Insurance Reserve Deposit Amount (such disbursement to be made by Lender, the "Insurance Disbursement Amount"). Lender's disbursement of the Insurance Disbursement Amount shall satisfy Borrower's obligations to make a deposit into the Insurance Reserve Account in such amount, provided that, (x) if the Insurance Disbursement Amount is less than the then-required Insurance Reserve Deposit Amount, Borrower shall deposit such deficiency in accordance with the terms of this Section 3.2.2(a), and (y) with respect to disbursement of amounts on deposit in the Shortfall Account, such disbursement shall be required only so long as Lender's access to such amounts is not restricted by (A) Legal Requirements, injunction or other court order, or (B) as a result of any action, inaction or omission by Borrower, Guarantor or any Affiliate of Borrower or Guarantor.

(b) Provided no Event of Default shall exist, Lender will apply the funds in the Insurance Reserve Account to payments of Insurance Premiums for Policies required hereunder. In making any such payment, Lender may do so according to any bill, statement or estimate procured from an insurer or agent without inquiry into the accuracy thereof.

(c) Notwithstanding the foregoing provisions of this Section 3.2.2, Borrower shall not be required to deposit the Insurance Reserve Deposit Amount as set in Section 3.2.2(a) at any time that, in Lender's determination, (i) Master Tenant pays all Insurance Premiums for Policies required hereunder directly to the appropriate payee in accordance with the express terms of the Master Lease, (ii) there is no event of default by Master Tenant under the Master Lease, and (iii) Borrower provides Lender, or causes to be provided to Lender, evidence of payment of such Insurance Premiums for Policies required hereunder prior to delinquency. Borrower shall immediately commence depositing all Insurance Reserve Deposit Amounts as required by Lender pursuant to Section 3.2.2, within five (5) Business Days of receipt of notice from Lender of Borrower's failure to comply with items (i), (ii), or (iii) in the immediately preceding sentence, and such failure is not cured within such five (5) Business Day period, which such notice shall instruct Borrower, in such event, to immediately commence making all additional deposits of the Insurance Reserve Deposit Amount.

SECTION 3.3. Adjustments to Reserve Accounts. If at any time Lender determines in its good faith discretion that the funds available in any Reserve Account will not be sufficient to pay for the cost or expense for which such funds have been required to be deposited with Lender hereunder by the date required therefor, or if Lender determines in its good faith discretion (based on the then-current Approved Annual Budget or on review of a physical conditions report for the Property, among other sources) to reassess its estimate of the amount necessary to be reserved for any such costs or expenses, then, at Lender's option, Borrower shall increase its monthly payments to Lender under with respect to the applicable Reserve Account(s) by the amount that Lender so notifies Borrower is required and/or deposit the shortfall amount determined by Lender into the applicable Reserve Account(s) within five (5) Business Days of notice from Lender. The insufficiency of any balance in any Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

SECTION 3.4. Disbursements from the Reserve Accounts. Lender shall disburse funds from the applicable Reserve Account for the payment of the applicable Reserve Item, but not more frequently than once in any thirty (30) day period, upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender (together with evidence reasonably required by Lender to evidence satisfaction of the conditions set forth in this Section 3.4) at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Reserve Item for which such payment is requested; and (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default exists. Lender shall not be required to make

disbursements from the Reserve Accounts unless such requested disbursement is in an amount greater than $50,000 (or a lesser amount if the total amount in the applicable Reserve Account is less than $50,000 in which case only one disbursement of the amount remaining in the account shall be made). No funds shall be disbursed from a Reserve Account for the payment of a Reserve Item for which funds have been reserved in a different Reserve Account (or for a Reserve Item for which no funds have been reserved). Any amount remaining in a Reserve Account after the Debt has been paid in full shall be returned to Borrower.

SECTION 3.5. Accounts Generally. The Accounts are, and shall each be treated as, a "securities account" as such term is defined in Section 8-501(a) of the UCC or a "deposit account" as such term is defined in Section 9-102(a)(29) of the UCC, as the context may require. Each item of property (whether investment property, financial asset, securities, instrument, cash or other property) credited to the Accounts shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC. Borrower agrees that the each applicable bank shall, subject to the terms of this Agreement, treat Lender as entitled to exercise the rights that comprise any financial asset credited to the Accounts. All securities or other property underlying any financial assets credited to the Accounts (other than cash) shall be registered in the name of the applicable bank, indorsed to the such bank (or in blank) or credited to another securities account maintained in the name of the applicable bank, and in no case will any financial asset credited to any such account be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower. Subject to the terms and conditions of this Agreement, the Accounts shall be under the sole dominion and control of Lender (which dominion and control may be exercised by Servicer). Lender and Servicer shall have the sole right to make withdrawals from the Accounts (without limiting the terms and conditions of this Agreement or the Clearing Account Agreement), and all out-of-pocket costs and expenses for establishing and maintaining the Accounts incurred by Lender or Cash Management Bank shall be paid by Borrower. Lender may replace the Accounts or establish new Accounts from time to time in its sole discretion, and Borrower hereby agrees that it shall take all reasonable action necessary to facilitate the transfer of the respective obligations, duties and rights of the any applicable bank to the successor thereof selected by Lender in its sole discretion. If Lender transfers or assigns the Loan, at Lender's request, the names/beneficiaries of the Accounts may be changed by such transferee of the Loan. Funds in the Clearing Account and the Cash Management Account shall not bear interest (except, with respect to the Cash Management Account, to the extent that the Reserve Accounts are actually subaccounts of the Cash Management Account). In no event shall Lender or any Servicer be required to select any particular interest-bearing account or the account that yields the highest rate of interest, provided that selection of the account shall be consistent with the general standards at the time being utilized by Lender or such Servicer, as applicable, in establishing similar accounts for loans of comparable type. All such interest that so becomes part of the applicable Reserve Account shall be disbursed in accordance with the disbursement procedures contained herein applicable to such Reserve Account; provided, however, that Lender may, at its election, retain any such interest for its own account during the occurrence and continuance of an Event of Default. Provided no Event of Default has occurred and is continuing beyond any applicable cure periods, Lender or Servicer will direct such bank or financial institution where Reserve Accounts are established from time to time to invest funds in the Reserve Accounts in an interest bearing account at a money market rate customarily offered by such bank or financial institution (provided, however, that interest paid or payable with respect to any such account may not be based on the highest rate of interest payable by Lender or such bank or institution on deposits and shall not be calculated based on any particular external interest rate or interest rate index, nor shall any such interest reflect the interest rate utilized by Lender or such bank or institution to calculate interest payable on deposits held with respect to any particular loan or borrower or class of loans or borrowers, and Lender shall have no liability with respect to the amount of interest paid and/or loss of principal). Any interest or other earnings which may accrue on the amounts held in Reserve Accounts shall be added to the applicable Reserve Account and be allocated and/or disbursed in accordance with the terms hereof applicable to such Reserve Account. The Reserve Funds shall not constitute trust funds and may be held in Lender's name and commingled with other monies held by Lender.

SECTION 3.6. Distributions from Mortgage Borrower. Borrower and Lender acknowledge that, subject to, and in accordance with the terms of the Mortgage Loan Agreement, during the continuance of a Mortgage Loan Event of Default, Mortgage Lender may elect to remit no amount to Lender, but the same shall not excuse Borrower from any of its obligations hereunder or under the Loan Documents. Lender may conclusively rely upon any notice received from Mortgage Lender with respect to the amount then payable under the Mortgage Loan Agreement and with respect to the occurrence, continuance or termination of a Mortgage Loan Event of Default. Lender shall be under no duty to inquire into or investigate the validity, accuracy or content of any such notice. Any transfer of Mortgage Borrower's funds from any of the Mortgage Loan Accounts or other sources to or for the benefit of the Borrower is intended by the parties to constitute, and shall constitute, distributions from Mortgage Borrower to Borrower and shall be treated as such on the books and records of each party. All such distributions must comply with the requirements of Section 18-607 of the Delaware Limited Liability Company Act. No provision of the Loan Documents is intended to nor shall create a debtor-creditor relationship between Mortgage Borrower and Mezzanine Lender.

SECTION 3.7. Waiver of Required Deposits; Transfer of Reserve Funds Under Mortgage Loan; Grant of Lien. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall be relieved of its obligation to make deposits to the Reserve Accounts pursuant to Sections 3.2.1 and 3.2.2 and Section 3.4 above for so long as (i) Mortgage Borrower is required to, as and to the extent set forth therein, and does make all such required deposits pursuant to Sections 3.2.1 and 3.2.2 of the Mortgage Loan Agreement, as and to the extent set forth therein, and (ii) Lender receives evidence of the making of such deposits, as and to the extent set forth therein, and of the payment of all Property Taxes and premiums for required Policies hereunder. Borrower shall not cause or permit Mortgage Borrower to use the Mortgage Loan Reserve Funds for any purpose other than as expressly permitted by Section 3.2 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to simultaneously provide Lender with copies of any notices, information, documentation or other deliveries provided by Mortgage Borrower to Mortgage Lender in connection with any release of funds in any Mortgage Loan Account (or any request for a release of funds from any Mortgage Loan Account, as applicable) pursuant to Article III of the Mortgage Loan Agreement, and Lender shall have the right to request and obtain additional information in connection with any such request if and to the extent that Mortgage Lender has the right to request and obtain such additional information pursuant to the Mortgage Loan Agreement. If Mortgage Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement (other than pursuant to the express terms of the Mortgage Loan Agreement), which reserves or escrow accounts are also required in accordance with the terms of this Section 3.2, or if the Mortgage Loan is refinanced or paid in full (without a prepayment in full of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan approved by Lender, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement to be transferred to and deposited with Lender in accordance with the terms of this Section 3.7 (and Borrower shall enter into supplemental agreements that are similar in form and substance to the Mortgage Loan Documents, as Lender may reasonably require in connection therewith), and, if any letters of credit have been substituted by Mortgage Borrower for any such reserves or escrows as may be specifically permitted by the Mortgage Loan Agreement, then Borrower shall also cause such letters of credit to be transferred to Lender to be held by Lender upon the same terms and provisions as set forth in the Mortgage Loan Agreement.

SECTION 3.8. Intentionally Omitted.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.1. Borrower Representations. Borrower represents and warrants as of the Closing Date that:

4.1.1 Borrower.

(a) Organization.

(i) Each of Borrower and SPE Component has been duly organized and is validly existing and in good standing in the jurisdiction in which it is organized and has the requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business in, and is in good standing in, the State and each other jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. Borrower's principal place of business as of the Closing Date is the address set forth in the introductory paragraph of this Agreement. The organizational chart attached hereto as Schedule II shows all Persons that (a) (i) except as set forth in the immediately following clause (ii), own ten percent (10%) or more of the direct or indirect ownership interests in Borrower, and (ii) to Borrower's knowledge, own ten percent (10%) or more of the direct or indirect ownership interests in Borrower constituting publicly traded shares on a nationally or internationally recognized stock exchange and (b) Control Borrower.

(ii) Each of Mortgage Borrower and Mortgage Borrower SPE Component has been duly organized and is validly existing and in good standing in the jurisdiction in which it is organized and has the requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Mortgage Borrower is duly qualified to do business in, and is in good standing in, the State and each other jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Mortgage Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. Borrower has delivered to Lender true and correct copies of the organizational documents of Mortgage Borrower, all of which are in full force and effect. Borrower has the power and authority and requisite ownership interests in Mortgage Borrower to control the actions of Mortgage Borrower, and upon the realization of the Collateral, Lender or any other party succeeding to Borrower's interest in the Collateral would have such control. Without limiting the foregoing, Borrower has sufficient control over Mortgage Borrower or to cause Mortgage Borrower to (i) take any action on Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

(b) Authority; Enforceability. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of

whether enforcement is sought in a proceeding in equity or at law). The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, SPE Component Entity or Guarantor (including the defense of usury), nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and none of Borrower, SPE Component Entity or Guarantor has asserted any right of rescission, set-off, counterclaim or defense with respect to the Loan Documents.

(c) No Conflicts.

(i) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower, SPE Component Entity, and/or Guarantor, as applicable, does not (a) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any of such Person's organizational or governing documents, (b) conflict with or result in a breach of any, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of such Person pursuant to the terms of, any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which such Person is a party or by which any of such Person's property or assets is subject, or (c) result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over such Person or any of such Person's properties or assets. Any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower, SPE Component Entity, and/or Guarantor, as applicable, of this Agreement or any other Loan Documents to which it is a party has been obtained and is in full force and effect.

(ii) The execution, delivery and performance of the Mortgage Loan Agreement and the other Mortgage Loan Documents by Mortgage Borrower, Mortgage Borrower SPE Component Entity, and/or Guarantor, as applicable, does not (a) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any of such Person's organizational or governing documents, (b) conflict with or result in a breach of any, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents and the Mortgage Loan Documents) upon any of the property or assets of such Person pursuant to the terms of, any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which such Person is a party or by which any of such Person's property or assets is subject, or (c) result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over such Person or any of such Person's properties or assets. Any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower, SPE Component Entity, and/or Guarantor, as applicable, of the Mortgage Loan Agreement or any other Mortgage Loan Documents to which it is a party has been obtained and is in full force and effect.

(d) Litigation; Judgments. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or to Borrower's knowledge, threatened against or affecting Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Entity, Guarantor, the Collateral or the Property, that, with respect to Guarantor only, (i) would reasonably be expected to result in a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the transactions contemplated by the Loan

Documents. Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Entity, and Guarantor are not in default or violation with respect to any order, writ, injunction, decree or demand of any Governmental Authority. If the Property is subject to a Management Agreement, to Borrower's knowledge, (i) there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or threatened against or affecting Manager that, if determined adversely, would be reasonably likely to have a Material Adverse Effect, and (ii) Manager is not in default or violation with respect to any order, writ, injunction, decree or demand of any Governmental Authority that would be reasonably likely to have a Material Adverse Effect.

(e) Agreements.

(i) Borrower is not a party to any agreement or instrument and has not subjected itself, the Collateral or the Property to, and none of it, the Collateral or the Property is subject to, any restriction which would reasonably be expected to have a Material Adverse Effect. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower, the Collateral or the Property are bound. Borrower and SPE Component Entity have no material financial obligations under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or SPE Component Entity is a party or by which Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Entity, the Collateral or the Property is otherwise bound, other than (A) Permitted Indebtedness, and (B) other obligations which, in each case, would not reasonably be expected to have a Material Adverse Effect.

(ii) Mortgage Borrower is not a party to any agreement or instrument and has not subjected itself or the Property to, and neither it nor the Property are subject to, any restriction which would reasonably be expected to have a Material Adverse Effect. Mortgage Borrower is not in default following applicable notice and cure periods in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Mortgage Borrower or the Property is bound which would reasonably be expected to have a Material Adverse Effect. Mortgage Borrower and Mortgage Borrower SPE Component Entity have no material financial obligations under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Mortgage Borrower or Mortgage Borrower SPE Component Entity is a party or by which Mortgage Borrower, Mortgage Borrower SPE Component Entity, or the Property is otherwise bound, other than (A) Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and (B) other obligations which, in each case, would not reasonably be expected to have a Material Adverse Effect.

(f) Solvency. Neither Borrower nor Mortgage Borrower has (a) entered into the transaction contemplated by this Agreement or the Mortgage Loan Agreement, as applicable, or executed the Loan Documents or the Mortgage Loan Documents, as applicable, with the actual intent to hinder, delay or defraud any creditor and (b) failed to receive reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will be, immediately following the making of the Loan, greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small

capital to carry out its business as conducted or as proposed to be conducted. The fair saleable value of Mortgage Borrower's assets is and will be, immediately following the making of the Mortgage Loan, greater than Mortgage Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Mortgage Borrower's assets do not and, immediately following the making of the Mortgage Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Neither Borrower nor Mortgage Borrower intends to, or believes that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower or Mortgage Borrower, as applicable, and the amounts to be payable on or in respect of the obligations of Borrower or Mortgage Borrower, as applicable). No petition in bankruptcy has been filed against Borrower, SPE Component Entity, Mortgage Borrower or Mortgage Borrower SPE Component Entity and none of Borrower, SPE Component Entity, Mortgage Borrower or Mortgage Borrower SPE Component Entity has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, SPE Component Entity, Mortgage Borrower or Mortgage Borrower SPE Component Entity, or any of their respective direct or indirect owner is contemplating either the filing of a Bankruptcy Action by Borrower, SPE Component Entity, Mortgage Borrower or Mortgage Borrower SPE Component Entity or the liquidation of all or a major portion of its assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower, SPE Component Entity, Mortgage Borrower or Mortgage Borrower SPE Component Entity. None of the Property or any portion thereof or the Collateral or any portion thereof is the subject of, and none of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor is a debtor in, state or federal bankruptcy, insolvency or similar proceeding. None of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity, Guarantor, or any Person owning a direct ownership interest in any of the foregoing in excess of ten percent (10%) (other than as a result solely of the ownership of publicly traded shares on a nationally or internationally recognized stock exchange) has ever been in a state or federal bankruptcy or insolvency proceeding or convicted of a felony. To Borrower's knowledge, no Person owning publicly traded shares on a nationally or internationally recognized stock exchange constituting a direct ownership interest in Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor of ten percent (10%) or more has ever been in a state or federal bankruptcy or insolvency proceeding or convicted of a felony.

(g) No Plan Assets. None of Borrower, SPE Component Entity (if any), Mortgage Borrower or Mortgage Borrower SPE Component Entity (if any) (a) is, sponsors, or is obligated to contribute to an "employee benefit plan" (within the meaning of §3(3) of ERISA) which is subject to Title I of ERISA or §4975 of the Code, and none of the assets of such Person constitute "plan assets" (within the meaning of 29 C.F.R. §2510.3-101) for purposes of §3(42) of ERISA, or (b) is a "governmental plan" (within the meaning of §3(32) of ERISA) or subject to any state statute regulating investments of, or fiduciary obligations with respect to, such "governmental plans" which is similar to the provisions of §406 of ERISA or §4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement (including the exercise by Lender of any of its rights under the Loan Documents).

(h) Special Purpose Entity/Separateness. Each of Borrower, SPE Component Entity (if any), Mortgage Borrower and Mortgage Borrower SPE Component Entity is (and has been, at all times since their formation) a Special Purpose Entity. All of the facts and assumptions contained in any substantive consolidation opinion delivered to Lender in connection with the Loan are true and correct in all material respects. Each of Borrower and Mortgage Borrower has been and is in compliance with all Legal Requirements and has received all permits necessary for it to operate its contemplated business. Neither Borrower nor Mortgage Borrower is, or has been, involved in any dispute with any taxing authority. Each of Borrower and Mortgage Borrower has paid all Taxes and Other Charges. Borrower has never owned any property other than the Collateral and has never engaged in any business except the ownership

of the Collateral. Mortgage Borrower has never owned any property other than the Property and has never engaged in any business except the ownership and operation of the Property. Neither Borrower nor Mortgage Borrower is now or has ever been a party to any lawsuit, arbitration, summons or legal proceeding. Borrower has no material contingent or actual obligations not related to the Collateral. Mortgage Borrower has no material contingent or actual obligations not related to the Property. Any debt incurred by Mortgage Borrower other than the Mortgage Debt that is secured by the Property has been satisfied in full on or before the date hereof, none of Borrower, Mortgage Borrower or Guarantor have any remaining liabilities or obligations in connection with such debt, and all collateral and security for such debt has been released on or prior to the date hereof.

(i) Certain Regulations. Neither Borrower nor Mortgage Borrower is (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money; (iv) a "bank holding company" or a direct or indirect subsidiary of a "bank holding company" as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System; or (v) a "foreign person" within the meaning of § 1445(f)(3) of the Code. No part of the proceeds of the Loan or the Mortgage Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents or the Mortgage Loan Agreement or the other Mortgage Loan Documents.

(j) Embargoed Person; Prescribed Laws. As of the Closing Date (and as of any subsequent date on which this representation is re-made or deemed to be re-made): (i) none of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor, and none of the funds or other assets of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor constitute property of, or are beneficially owned (directly or indirectly) by, any Embargoed Person; (ii) no Embargoed Person has any direct or indirect interest of any nature whatsoever in Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor, as applicable, with the result that the investment in Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor, as applicable (whether directly or indirectly), is or would be prohibited by law or the Loan is or would be in violation of law; (iii) none of the funds of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity, or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor, as applicable (whether directly or indirectly), is or would be prohibited by law or the Loan is or would be in violation of law; (iv) none of the Persons that own a direct or indirect ownership interest in Borrower or Mortgage Borrower (A) is a government or representative of a jurisdiction or a financial institution that has been designated by the U.S. Secretary of the Treasury under Section 311 of the USA PATRIOT Act as of primary money laundering concern (a list of these jurisdictions and financial institutions can be found on the Financial Crimes Enforcement Network website at www.fincen.gov.), (B) resides or has a place of business in, or is organized under the laws of, a country or territory subject to economic sanctions administered or enforced by OFAC or which is designated as a non-cooperative country or territory by the Financial Action Task Force on Money Laundering (which list of non-cooperative countries and territories can be found on the FATF web site), (C) is a senior foreign political figure (defined as a senior official in the executive, legislative, administrative, military or judicial branches of a non-U.S. government (whether elected or not), a senior

official of a major non-U.S. political party, or a senior executive of a non-U.S. government-owned corporation, and includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure), or any immediate family member (including parents, siblings, spouse, children and in-laws) or close associate (meaning a Person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial U.S. and non-U.S. financial transactions on behalf of the senior foreign political figure) of a senior foreign political figure (other than certain passive indirect sovereign wealth fund investors that are indirect owners of Borrower who do not otherwise fall within clauses (A) through (C) above); (v) no portion of the Property has been or will be purchased with proceeds of any illegal activity; (vi) Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity and Guarantor are (and have always been) operated under policies, procedures and practices, if any, that are in compliance with the Prescribed Laws and available to Lender for review and inspection during normal business hours and upon reasonable prior notice; (vii) none of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity Guarantor, or any Person that Controls them is in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States, nor any official of any State, claiming a violation or possible violation of Prescribed Laws. Borrower represents and warrants that, in connection with this Agreement, Borrower, Mortgage Borrower and, to Borrower's knowledge, each Person that has an economic interest in Borrower or Mortgage Borrower, has complied with and will continue to comply with all applicable anti-bribery and corruption laws and regulations, including the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010. Borrower shall, at all times throughout the term, maintain and enforce appropriate policies, procedures and controls to ensure compliance with the Anti-Corruption Obligation.

(k) Minimum Equity Requirement Satisfaction. As of the Closing Date, direct and indirect owners in Borrower, in the aggregate, have invested no less than the Closing Date Minimum Equity Requirement.

(l) Required Equity/Control Requirements. The Required Equity/Control Requirements are satisfied.

4.1.2 Property.

(a) Title. Mortgage Borrower has good, marketable and insurable fee simple title to the part of the Property comprising real property (including, without limitation, the entirety of the alley running through, and along the periphery of, the Property, which alley has been dedicated for public use by virtue of an easement vested in the City of Los Angeles for street purposes) and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances (as defined in the Mortgage Loan Agreement). Borrower has good and insurable title to the Collateral, free and clear of all Liens whatsoever except the Permitted Encumbrances. There are no Liens on the direct or indirect Equity Interests in Borrower or Mortgage Borrower (other than the Lien created by the Loan Documents and Permitted Encumbrances and Liens encumbering shares publicly traded on a nationally or internationally recognized stock exchange). None of the Property or any part thereof, the Collateral or any part thereof, or any direct or indirect Equity Interests in Borrower or Mortgage Borrower, are subject to any purchase options, rights of first refusal, rights of first offer or other similar rights in favor of any Person. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or the Collateral or Borrower's ability to repay the Loan or Mortgage Borrower's ability to repay the Mortgage Loan. The Pledge Agreement creates a valid, perfected first priority lien in and to Borrower's right, title and interest to the Collateral, subject only to Permitted Encumbrances. There are no claims for payment for work, labor or materials affecting the Property or the Collateral, which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan

Documents or the Mortgage Loan Documents. This Agreement, together with the other applicable Loan Documents, creates a valid and continuing security interest (as defined in the UCC) in each of the Accounts in favor of Lender, which security interest is prior to all other Liens and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold or otherwise conveyed the Accounts. Neither Borrower nor Mortgage Borrower is a party to any outstanding contract or agreement requiring it to convey its interest in the Property or the Collateral to any Person, other than the conveying by Mortgage Borrower of the leasehold interest granted pursuant to the Master Lease.

(b) Compliance. Borrower, Mortgage Borrower, the Collateral and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including building and zoning ordinances and codes and Prescribed Laws. Pursuant to all Legal Requirements, Mortgage Borrower has sufficient development rights to construct the Project and there are no remaining zoning or discretionary approvals required in order to complete the Required Improvements. There has not been committed by Borrower or to Borrower's knowledge, any other Person in occupancy of or involved with the operation or use of the Property or the Collateral any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or the Collateral or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the knowledge of Borrower, threatened in writing with respect to the zoning of the Property. Neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property (except for any easements or rights-of-way which are Permitted Encumbrances). The use being made of the Property is (or with respect to the Project, will be upon Completion) in conformity with the certificate of occupancy issued for the Property and all other restrictions, covenants and conditions affecting the Property. The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

(c) Condemnation. No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of any roadway providing access to the Property.

(d) Utilities and Public Access. The Property is located on or adjacent to a public road and has direct legal access to such road (or has access to it via an irrevocable easement or irrevocable right of way permitting ingress and egress to and from such public road), and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All easements, cross easements, licenses, air rights and rights-of-way or other similar property interests, if any, necessary for the full utilization of the Improvements for their intended purposes have been obtained, are described in the Title Insurance Policy and are in full force and effect without default thereunder. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

(e) Separate Lots. The Property is comprised of one (1) or more parcels that constitute one (1) or more separate tax lots and do not constitute a portion of any other tax lot that is not a part of the Property.

(f) Assessments. There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(g) Insurance. Borrower has obtained and has delivered (or has caused Mortgage Borrower to obtain and deliver) to Lender certificates for all Policies required hereunder, with all premiums currently payable thereunder having been paid, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made under any such Policies, and no Person has done, by act or omission, anything that would impair the coverage of any such Policies.

(h) Use of Property; Licenses. The Property is used exclusively as a life sciences research related manufacturing and office facility and other appurtenant and related uses. All certifications, permits, licenses and approvals (including certificates of completion and occupancy permits (or its equivalent)) required for the legal use, occupancy and operation of the Property as described in the foregoing sentence (collectively, the "Licenses"), have been obtained and are in full force and effect. As of the Closing Date, Borrower has delivered to Lender copies of all other material Licenses which are required for the legal use, occupancy and operation of the Property.

(i) Flood Zone. Except as may be shown on the Survey, none of the Improvements on the Property are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards (or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) of the Mortgage Loan Agreement is in full force and effect with respect to the Property).

(j) Physical Condition. Except for the matter set forth on Schedule VII hereto (the costs of which are covered by insurance), subject to Completion of the Project, the Property (including all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components) is in good condition, order and repair in all material respects. Except for the matter set forth on Schedule VII hereto (the costs of which are covered by insurance), to Borrower's knowledge, and subject to Completion of the Project, there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond. Except for the matter set forth on Schedule VII hereto (the costs of which are covered by insurance), the Improvements have suffered no material casualty or damage which has not been fully repaired and the cost thereof fully paid.

(k) Boundaries; Survey. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy. The Survey does not fail to reflect any material matter affecting the Property or the title thereto.

(l) Leases.

(i) The Property is not subject to any Leases other than the Master Lease, and the demised premises under the Master Lease constitute the entirety of the Land and the Improvements. The initial term of the Master Lease does not expire prior to the date that is the later to occur of the date that is (A) fifteen (15) years following the Must-Take Space

Commencement Date (as defined in the Master Lease and (B) fifteen (15) years following the Closing Date. Master Tenant is required to commence payment of base rental payments under the Master Lease, with respect to Building A, not later than the Closing Date, and, with respect to the Required Improvements, on the date (such date, the "Master Lease Payment Outside Date") that is the earlier to occur of (x) the date on which the Project is Substantially Complete and (y) the Substantial Completion Due Date.

(ii) With respect to each Lease (including, without limitation, the Master Lease, (A) Mortgage Borrower is the owner of landlord's interest in such Lease, (B) other than with respect to Permitted Encumbrances, no Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of such Lease, (C) such Lease is in full force and effect, the tenants thereunder have accepted possession of and are in occupancy of all of their respective demised premises (except, prior to the Substantial Completion Due Date, Building B), are open for business, and are paying (except, prior to the Master Lease Payment Outside Date, the Master Lease Payments in respect of Building B) full, unabated rent, and no tenant under such Lease has given Borrower or Mortgage Borrower any notice of its intent to terminate such Lease or vacate the leased premises (and Borrower has no knowledge that any such tenant intends to so terminate or vacate), (D) neither Borrower or Mortgage Borrower has received written notice from any tenant under such Lease claiming that Mortgage Borrower (or any prior landlord) is in default thereunder, and to the knowledge of Borrower there are no defaults under such Lease by any party thereto, (E) no Revenue has been paid more than one (1) month in advance of its due date, (F) all work to be performed by Mortgage Borrower (or any prior landlord) under such Lease (other than, with respect to the Master Lease, the Required Improvements) has been performed as required and has been accepted by the applicable tenant, (G) any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower to any tenant has already been received by such tenant, (H) all security deposits are held by Mortgage Borrower in accordance with the terms of such Lease and applicable Legal Requirements, (I) no tenant under such Lease is a debtor in state or federal bankruptcy, insolvency, or similar proceeding, (J) other than Master Tenant under the Master Lease, no tenant under such Lease (or any sublease) is an Affiliate of Borrower or Mortgage Borrower, (K) except, in each case, in accordance with the express provisions of this Agreement, no tenant has assigned any interest in such Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises, (L) there are no brokerage fees or commissions due and payable in connection with such Lease, and no such fees or commissions will become due and payable in the future in connection with such Lease, including by reason of any extension of such Lease or expansion of the space leased thereunder, in each case except as has previously been disclosed to Lender in writing, (M) no tenant under such Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part, (N) no tenant under such Lease has any right or option for additional space in the Improvements, (O) other than as expressly permitted under the Master Lease, no hazardous wastes or toxic substances, as defined by applicable federal, state or local statutes, rules and regulations, have been disposed, stored or treated by any tenant under such Lease on or about the leased premises nor does Borrower have any knowledge of any tenant's intention to use its leased premises for any activity which, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any toxic or hazardous chemical, material, substance or waste, and (P) such Lease (including any renewal or expansion options)

provides that it is subordinate to the Security Instrument and that the lessee agrees to attorn to Lender or any purchaser at a sale of the Collateral by foreclosure or power of sale.

(m) Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Mortgage Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement and the other Loan Documents have been validly executed and delivered and are enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

(n) Management Agreement. As of the Closing Date, Mortgage Borrower self-manages the Property and no agent, affiliated or unaffiliated with Borrower, receives a fee or other compensation for managing the Property. If Mortgage Borrower is required to engage a Qualified Manager in accordance with Section 5.1.2(f)(ii), then the Management Agreement is in full force and effect and there is no default thereunder by Mortgage Borrower or, to Borrower knowledge, by the Manager and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

(o) REA. Each REA is in full force and effect and neither Mortgage Borrower nor, to Borrower's knowledge, any other party to any REA, is in default thereunder, and to Borrower's knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No REA has been modified, amended or supplemented, except as set forth on Schedule VI hereto.

(p) Material Agreements. There are no Material Agreements in place with respect to Borrower or the Collateral. As of the Closing Date, there are no Material Agreements in place with respect to Mortgage Borrower or the Property other than as set forth in Schedule III attached hereto. With respect to each Material Agreement, Borrower hereby represents that (i) each Material Agreement has not been amended, restated, replaced or otherwise modified (except, in each case, in accordance with this Agreement) and, to Borrower's knowledge, is in full force and effect, (ii) there are no material defaults (following applicable notice and cure periods) under any Material Agreement by Mortgage Borrower or to Borrower's knowledge, any other Person under the applicable Material Agreement, (iii) no party to any Material Agreement has commenced any action or given or received any written notice for the purpose of terminating any Material Agreement, and (iv) to Borrower's knowledge, the representations made in any estoppel certificate (if any) delivered with respect to any Material Agreement in connection with the Loan are true, complete and correct.

4.1.3 Construction Matters.

(a) Labor. No organized work stoppage or labor strike is pending or, to Borrower's knowledge, threatened by employees and other laborers at the Property. None of Borrower, Mortgage Borrower or, to Borrower's knowledge, General Contractor (i) is involved in or threatened with any labor dispute, grievance or litigation relating to labor matters involving any employees and other laborers at the Property, including violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints; (ii) has engaged in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act at the Property; or (iii) is a party to, or bound by, any collective bargaining agreement or union contract with

respect to employees and other laborers at the Property except as disclosed by Borrower to Lender in advance and in writing and as approved in advance in writing by Lender (collectively, the "Labor Agreements").

(b) Construction Documents.

(i) Mortgage Borrower has all necessary power and authority to enter into and perform its respective obligations under the Construction Documents to which Mortgage Borrower is a party, and all other agreements and instruments to be executed by Mortgage Borrower in connection with the construction and the development of the Project.

(ii) The Existing Construction Documents to which Mortgage Borrower is a party have been, and any Future Construction Documents to which Mortgage Borrower will be a party will be, duly executed and delivered by Mortgage Borrower.

(iii) The Existing Construction Documents to which Mortgage Borrower is a party constitute, and any Future Construction Documents to which Mortgage Borrower will be a party will constitute, when executed and delivered, a legal, valid and binding obligation of Mortgage Borrower, enforceable against Mortgage Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws generally affecting rights of creditors and the enforcement of debtors' obligations, and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(iv) General Contractor has engaged subcontractors under subcontracts representing one hundred percent (100%) of all subcontract amounts under the Construction Budget (which shall include all of the Major Trade Contracts and the related Major Trade Contractors under such Major Trade Contracts).

(v) Mortgage Borrower has obtained all Construction Permits (A) required for Mortgage Borrower and/or General Contractor to commence construction work constituting the applicable Required Improvements, and (B) otherwise then-required under Legal Requirements for the actual stage of construction on the Property, and, in each case, a true, complete and correct list of such Construction Permits is attached as Schedule V hereto.

(vi) Borrower shall have delivered (or caused Mortgage Borrower to deliver) evidence reasonably satisfactory to Lender that each of the Design Drawings and the Construction Drawings with respect to the Required Improvements on such Parcel are 100% complete.

(c) No Violation. The construction of the Project and the execution, delivery and performance by Mortgage Borrower of its obligations under, and the consummation of the transactions contemplated by each of the Construction Documents to which Mortgage Borrower is, or will be, a party, and all other agreements and instruments to be executed by Borrower or Mortgage Borrower in connection therewith do not and will not (i) violate any Legal Requirement applicable to Borrower or Mortgage Borrower in any material respect, (ii) result in a breach of any of the terms, conditions or provisions of, or constitute a default under the organizational documents of Borrower or Mortgage Borrower, or result in a material breach of the terms, conditions or provisions of any mortgage, indenture, agreement, permit, franchise, license, note or instrument to which Borrower or Mortgage Borrower is a party or by which it or any of its properties is bound, or (iii) result in the creation or imposition of any mortgage, lien, charge or

encumbrance of any nature whatsoever upon any of the assets of Borrower (except as contemplated by this Agreement and the Permitted Encumbrances) or Mortgage Borrower (except as contemplated by the Mortgage Loan Agreement and the Permitted Encumbrances (as defined in the Mortgage Loan Agreement)).

(d) Consents. All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, or other actions in respect of or by, any Governmental Authorities that are required in connection with the execution, delivery and performance by Mortgage Borrower of the Construction Documents and all other agreements and instruments to be executed by Borrower or Mortgage Borrower in connection therewith and the construction and operation of the Project have been obtained or will be obtained when required for the then applicable stage of construction of the Project and are or will be in full force and effect.

(e) Plans and Specifications. The Plans and Specifications applicable up to and including the current stage construction as set forth in the Construction Schedule have been approved, to the extent required by applicable Legal Requirements and by all applicable Governmental Authorities. The anticipated use of the Project complies in all material respects with all REAs and all Material Agreements affecting the Property and all Legal Requirements, including all applicable zoning ordinances and regulations and Environmental Laws.

(f) Compliance with Building Codes and Zoning Laws. The current land use, zoning law, regulations and declarations covering the Property permit on an as-of-right basis the construction of the Project to be completed substantially in accordance with the Plans and Specifications, the current zoning law and declarations covering the Property permit the Project to be operated and used as contemplated by this Agreement and the other Loan Documents, and no additional variance, conditional use permit, special use permit or other similar approval is required for such construction, use and occupancy of the Project that has not been or will not, if and when required, be obtained. The Property currently and, upon completion of construction of the Project substantially in accordance with the Plans and Specifications, the use thereof will be in all material respects in compliance with all current Construction Permits then required and Operating Permits then required, as the case may be, and all other applicable Legal Requirements, and such compliance is not dependent on any land, improvements or facilities that are not a part of the Property, other than easement, encroachment and similar rights granted to the Property pursuant to REAs. There are no pending or, to Borrower's knowledge, threatened actions, suits or proceedings to revoke, attach, invalidate, rescind or modify the zoning applicable to the Property or any part thereof or any of the Current Construction Permits, as currently existing.

(g) Certain Agreements. The Existing Construction Documents heretofore executed by, or assigned to and assumed by, Mortgage Borrower are in full force and effect, have not been amended, modified, terminated, assigned or otherwise changed (except as set forth on Schedule I), or the provisions thereof waived.

(h) Construction Budget. As of the Closing Date and as of each date on which this representation is deemed remade, the Construction Budget (as the same may be amended from time to time in accordance with this Agreement) accurately reflects Borrower's and Mortgage Borrower's best good faith estimate of all anticipated Hard Costs, Soft Costs, Interest and Carry Costs and any other costs and expenses reasonably anticipated to be incurred in connection with the construction, development and operation of the Project.

(i) Loan Proceeds and Adequacy. The sum of (i) the Loan Amount to be advanced by Lender pursuant to this Agreement, (ii) the Mortgage Loan Amount to be advanced by Lender pursuant to the Mortgage Loan Agreement, (iii) amounts that are guaranteed pursuant to the Equity Funding

Guaranty (provided that no claim is then being pursued by Lender in respect of any of the Guarantees and Guarantor is not then in default or in breach of any of its obligations in respect of any of the Guarantees), and (iv) any amounts in the Deficiency Account, are sufficient to pay (A) all Costs necessary for Completion of the Project substantially in accordance with the Construction Budget and the Plans and Specifications and (B) all Interest and Carry Costs.

4.1.4 Financial Information; Disclosure. All information submitted to Lender (including all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof, and all statements of fact made in this Agreement or in any other Loan Document) (a) are accurate, complete and correct in all material respects as of the date given, (b) accurately represent the financial condition of Borrower, Mortgage Borrower, Guarantor, the Collateral and/or Property as of the date of such reports (as applicable), (c) to the extent prepared, audited or reviewed by an Independent Accountant, have been prepared, audited or reviewed in accordance with the Approved Accounting Method throughout the periods covered (except as disclosed therein), and (d) do not omit to state any material fact necessary to make statements contained herein or therein not misleading. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Material Adverse Effect, except as referred to or reflected in such financial statements. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that would be reasonably likely to have a Material Adverse Effect. Borrower has disclosed to Lender all material facts that could cause any information provided to Lender or any representation or warranty made in any of the Loan Documents concerning Borrower, any SPE Component Entity, Mortgage Borrower, any Mortgage Borrower SPE Component Entity, Guarantor, Manager, the Collateral or the Property, to be materially misleading. No statement of fact made by Borrower or Guarantor in any of the Loan Documents to which such Person is a party contains any untrue statement of a material fact or omits to state any material fact presently known to such Person and necessary to make statements contained herein or therein not misleading.

4.1.5 Mortgage Loan Matters.

(a) True, correct and complete copies of each Mortgage Loan Document have been delivered to Lender, and such Mortgage Loan Documents have not been amended or modified except as disclosed in writing to Lender.

(b) The Mortgage Loan Documents are in full force and effect, (ii) no default or event of default has occurred and is continuing thereunder, and (iii) there is no existing condition which, but for the passage of time and/or the giving of notice, could result in a default or event of default under the terms of the Mortgage Loan Documents. Neither Mortgage Borrower nor Mortgage Lender has commenced any action or given or received any written notice of default or termination under any of the Mortgage Loan Documents.

4.1.6 Interests in Mortgage Borrower Certificated. The limited liability company interests in Mortgage Borrower are and shall at all times during the term of the Loan be evidenced by a "certificated security" governed by Article 8 of the UCC. Mortgage Borrower has "opted in" to Article 8 of the UCC, has not opted out and Borrower shall not permit Mortgage Borrower to opt out of such Article 8 of the UCC, and Borrower shall cause a registry of the holders of limited liability company interests in Mortgage Borrower to be maintained at all times.

4.1.7 Mortgage Loan Representations and Warranties. All of the representations and warranties contained in the Mortgage Loan Documents are hereby incorporated into this Agreement and

deemed made hereunder as and when made thereunder, which shall remain incorporated herein without regard to any waiver, amendment or other modification thereof by Mortgage Lender or to whether the related Mortgage Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Mortgage Lender, as the same may be updated or modified as provided therein.

4.1.1 No Contractual Obligations. Other than the Loan, the Loan Documents, the organizational documents entered into by Borrower, any Independent Manager service agreement entered into by Borrower that is approved by Lender and the Interest Rate Cap Agreement, as of the date of this Agreement, Borrower is not subject to any Contractual Obligations and has not entered into any agreement, instrument or undertaking by which it or its assets are bound, or has incurred any Indebtedness, in each case, in violation of this Agreement.

4.1.2 Pledged Securities. There are no Liens on the Pledged Company Interests (other than the Liens created by the Loan Documents).

4.1.3 No Default Under Mortgage Loan. No Mortgage Loan Event of Default has occurred and, to Borrower's knowledge, there exists no default with the giving of notice would constitute a Mortgage Loan Event of Default.

4.1.4 UCC Insurance Policy. Borrower has caused Title Company to deliver to Lender a UCC Title Policy with respect to the Collateral dated as of the Closing Date. The UCC Title Policy (i) provides coverage in the amount of the Loan, (ii) insures Lender that the Pledge Agreement insured by the UCC Title Policy creates a valid, perfected lien on the Collateral of the requisite priority and that Borrower is the sole owner of the Collateral, free and clear of all exceptions from coverage other than the standard exceptions and exclusions from coverage, (iii) contains such endorsements and affirmative coverages as Lender has reasonably requested, and (iv) names Lender as the insured. The UCC Title Policy is freely assignable. Borrower has, or will have on the Closing Date, paid all premiums in respect of the UCC Title Policy.

SECTION 4.2. Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

SECTION 5.1. Covenants. From the Closing Date and until payment and performance in full of all Obligations (other than contingent indemnification obligations which expressly survive the repayment of the Debt), in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that it shall comply with the following (and where applicable Borrower shall cause Mortgage Borrower to comply with the following):

5.1.1 Borrower.

(a) Existence; Compliance with Legal Requirements. Borrower shall (and shall cause Mortgage Borrower to) do or cause to be done all things necessary to preserve, renew and keep in

full force and effect its existence, rights, licenses, permits, franchises, and trade names required for the operation of the Property and the Collateral pursuant to Legal Requirements (and other material agreements entered into by Borrower or Mortgage Borrower in accordance with the terms of this Agreement) in the manner presently being conducted. Borrower shall (and shall cause Mortgage Borrower to) comply with all Legal Requirements applicable to it, the Collateral and the Property, including Prescribed Laws (subject to Borrower's right to contest the applicability of any such Legal Requirement in accordance with Section 5.1.2(b) below).

(b) Organization; Compliance with Legal Requirements; Special Purpose Entity.

(i) Borrower shall not (and shall not cause or permit Mortgage Borrower to): (A) change its principal place of business or state of organization without first giving Lender thirty (30) days' prior notice; (B) fail to be a Special Purpose Entity or, in the case of Mortgage Borrower, a Special Purpose Entity (as defined in the Mortgage Loan Agreement), or fail to cause any SPE Component Entity required hereunder or any Mortgage Borrower SPE Component Entity to be a Special Purpose Entity, or fail to cause all assumptions contained in any opinion concerning substantive consolidation delivered to Lender in connection with the Loan to be true and correct in all material respects; (C) remove or replace any Independent Director or Independent Manager except for Cause, and in any event not without providing at least five (5) Business Days' advance written notice thereof to Lender; (D) to the fullest extent permitted by applicable Legal Requirements, engage (nor permit Mortgage Borrower, any SPE Component Entity required hereunder or any Mortgage Borrower SPE Component Entity required under the Mortgage Loan Agreement to engage) in any dissolution, liquidation, or consolidation or merger with or into any other business entity; (E) modify, amend, waive or terminate (nor permit Mortgage Borrower, any SPE Component Entity required hereunder or any Mortgage Borrower SPE Component Entity required under the Mortgage Loan Agreement to modify, amend, waive or terminate) its organizational documents (other than pursuant to amendments that are solely ministerial in nature); (F) fail to maintain qualification to do business in any jurisdiction to the extent the same is required for the ownership of the Collateral or Mortgage Borrower's ownership, maintenance, management and operation of the Property; or (G) cease to operate the Property in the manner in which it is presently being operated (other than temporary cessation in connection with any continuous and diligent renovation or restoration of the Property following a Casualty or Condemnation), or change the trade name or names under which it operates the Property. Notwithstanding anything to the contrary herein, in the event of the death, legal incapacity, or voluntary non-collusive resignation of an Independent Director or Independent Manager, no prior written notice to Lender shall be required, provided that, within two (2) Business Days after Borrower's knowledge of such, Borrower shall provide to Lender, the identity of the proposed replacement Independent Director or Independent Manager, as applicable, together with a certification that such replacement satisfies the requirements set forth with respect to an Independent Director or Independent Manager in this Agreement.

(ii) Borrower shall not (and shall not cause or permit Mortgage Borrower to) (A) violate, and shall not permit any other Person in occupancy of or involved with the operation or use of the Property to violate, any Prescribed Laws or otherwise commit any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents or Mortgage Borrower's obligations under any of the Mortgage Loan Documents, or (B) at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, permit (or

allow to occur) (I) any of the funds or other assets of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity, or Guarantor to constitute property of, or be beneficially owned, directly or indirectly, by any Embargoed Person, (II) an Embargoed Person to own any interest of any nature whatsoever in Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor, as applicable, or (III) any of the funds of Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor, as applicable, to be derived from any unlawful activity, in each case with respect to the foregoing clauses (I) through (III) with the result that the investment in Borrower, SPE Component Entity, Mortgage Borrower, Mortgage Borrower SPE Component Entity or Guarantor, as applicable (whether directly or indirectly), is or would be prohibited by applicable Legal Requirements, or the Loan is or would be in violation of applicable Legal Requirements. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower or Mortgage Borrower (or any of the beneficial owners, affiliates or participants of Borrower or Mortgage Borrower) or any Person that owns a direct or indirect interest in the Collateral or the Property (other than a public shareholder of Guarantor) becomes an Embargoed Person or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall promptly notify Lender. At Lender's option, it shall be an Event of Default hereunder if any of the representations and warranties contained in Section 4.1.1(j) hereof are untrue in any material respect at any time. Borrower acknowledges that the Prescribed Laws require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, Lender may from time-to-time request, and Borrower shall provide to Lender, Borrower's name, address, tax identification number and/or such other identification information as shall be necessary for Lender to comply with federal law (including such information concerning its direct and indirect owners), and re-make the representations and warranties contained in Section 4.1.1(j) hereof. An "account" for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

(iii) Required Equity/Control Requirements. The Required Equity/Control Requirements shall remain satisfied at all times.

(c) ERISA. Assuming that no portion of the Loan is funded (initially or through participation, assignment, transfer or securitization of the Loan) with plan assets of any plan covered by ERISA or §4975 of the Code, unless the Lender (or other applicable party) relied on an available prohibited transaction exemption, all of the conditions of which are and will continue to be satisfied, Borrower shall not (and shall not cause or permit Mortgage Borrower to) engage in any transaction that would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA, or otherwise cause Borrower to be unable to make the representations contained in Section 4.1.1(g) hereof. Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as reasonably requested by Lender, that (i) the representations contained in Section 4.1.1(g) hereof are true and correct as of the date of such certification, and (ii) one or more of the following circumstances is true: (A) Equity Interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R §2510.3-101(b)(2); (B) less than twenty-five percent (25%) of each outstanding class of Equity Interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R §2510.3-101(f)(2); (C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R §2510.3-101(c) or (e); or (D) the assets of

Borrower and Mortgage Borrower are not otherwise "plan assets" (within the meaning of 29 C.F.R. §2510.3-101) of one or more "employee benefit plans" (as defined in §3(3) of ERISA) subject to Title I of ERISA.

(d) Transfers.

(i) Without the prior written consent of Lender, Borrower shall not, and shall not permit to occur, any (y) Transfer (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of the Property or the Collateral, in each case, any part thereof, or any legal or beneficial interest therein, or any direct or indirect Equity Interest in any Restricted Party, or (z) effectuate change of Control of a Restricted Party. Notwithstanding the foregoing provisions of this Section 5.1.1(d), the following Transfers (collectively, the "Permitted Transfers") shall be permitted without Lender's consent (subject to the satisfaction of the applicable terms and conditions set forth below):

(A) Permitted Encumbrances;

(B) Transfers of worn out or obsolete Personal Property that are promptly replaced with property of equivalent value and functionality if reasonably necessary or which is no longer necessary in connection with the operation of any Property;

(C) the Master Lease and any other Leases that have been approved by Lender (or that do not require Lender's approval) in accordance with the this Agreement;

(D) the pledge of any direct or indirect Equity Interest in Mortgage Borrower by Borrower in connection with the Loan and, Transfer of the direct Equity Interests in Mortgage Borrower to Lender (and any change of Control in Mortgage Borrower or Borrower), in each case, pursuant to a foreclosure or voluntary transfer in lieu thereof to the Lender or other exercise of remedies by Lender under the Loan Documents;

(E) the Transfer of publicly traded shares on a nationally or internationally recognized stock exchange in any direct or indirect equity owner of Borrower; and

(F) Transfer of the Property pursuant to a foreclosure or voluntary transfer in lieu thereof to Lender or other exercise of remedies by Lender;

provided, however, in each case with respect to any such Transfer described in clause (E) above, the following conditions are satisfied:

1. to the extent Borrower has knowledge of any Transfer that would cause the transferee to increase its direct or indirect interest in Borrower or Mortgage Borrower to an amount which equals or exceeds 10% of the direct or indirect Equity Interests in Borrower or Mortgage Borrower (and such transferee did not hold at least a 10% interest prior to such Transfer), Borrower shall give Lender written notice of such Transfer, and an Officer's Certificate certifying that the requirements of

this Section 5.1.1(d) have been satisfied, not less than ten (10) Business Days after Borrower obtains knowledge of such Transfer;

2. such Transfer does not result in the Required Equity/Control Requirements failing to be satisfied;

3. such Transfer does not and will not result in the termination or dissolution of Borrower, SPE Component Entity (if any), Mortgage Borrower, Mortgage Borrower SPE Component Entity (if any) or Guarantor, by operation of law or otherwise;

4. no such Transfer shall be to any Person that would cause the representations made in Sections 4.1.1(g), (h) or 4.1.1(j) to be untrue if made immediately following such Transfer;

5. no such Transfer shall cause Borrower or any SPE Component Entity or Mortgage Borrower or any Mortgage Borrower SPE Component Entity to fail to be a Special Purpose Entity after such Transfer;

6. no such Transfer shall consist of a Transfer of the Equity Interests in Borrower or Mortgage Borrower owned by SPE Component Entity (if any) or Mortgage Borrower SPE Component Entity (if any);

7. (I) if such Transfer would cause the transferee to increase its direct or indirect interest in Borrower or Mortgage Borrower to an amount which equals or exceeds 10% of the direct or indirect Equity Interests in Borrower or Mortgage Borrower (and such transferee did not hold at least a 10% interest prior to such Transfer), such proposed transferee complies with, (x) other than with respect to Transfers of direct or indirect ownership interests in Borrower or Mortgage Borrower constituting publicly traded shares on a nationally or internationally recognized stock exchange, all of Lender's "know your customer" requirements, and (y) all Prescribed Laws and all applicable banking rules and regulations, and (II) unless the applicable Transfer is a Transfer of direct or indirect ownership interests in Borrower or Mortgage Borrower constituting publicly traded shares on a nationally or internationally recognized stock exchange, Borrower shall, prior to such Transfer, deliver to Lender (at Borrower's sole cost and expense) customary searches (credit, judgment, lien, etc.) acceptable to Lender with respect to such transferee;

8. if approved by Lender, if any such Transfer results in a Person owning more than forty-nine percent (49%) of the direct or indirect interests in Borrower or Mortgage Borrower that did not own such amount prior to such Transfer or results in a change of Control of Borrower or Mortgage Borrower, then Lender shall have received a substantive consolidation opinion in form and content acceptable to Lender; and

9. Borrower shall have reimbursed Lender for all reasonable and actual out-of-pocket expenses incurred by Lender in connection with such Transfer.

(ii) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer in violation of this Agreement. This Section 5.1.1(d) shall apply to every such Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous such Transfer. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and Guarantor in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on such Persons' ownership of Borrower and the Collateral as a means of maintaining the value of the Collateral as security for repayment of the Debt and the performance of the Obligations contained in the Loan Documents. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Collateral so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Obligations, Lender can recover the Debt by a sale of the Collateral. For all purpose under the Loan Documents, a Transfer of the Property, the Collateral, Mortgage Borrower or Borrower shall include, but not be limited to: (A) an installment sales agreement wherein Borrower agrees to sell the Collateral or Mortgage Borrower agrees to sell the Property, or, in each case, any part thereof, for a price to be paid in installments; (B) an agreement by Mortgage Borrower leasing all or substantially all of the Property for other than actual occupancy by a space tenant thereunder, or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower's right, title and interest in and to any Leases or any Revenues (provided that the foregoing shall not be construed to prohibit Mortgage Borrower from entering into a non-binding term sheets for the sale and/or sale-leaseback of the Property which are not recorded and are expressly subject and subordinate to the Loan Documents); (C) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (D) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the limited liability company interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (E) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the limited liability company interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such limited liability company interest, or the Sale or Pledge of non-managing limited liability company interests or the creation or issuance of new non-managing limited liability company interests; (F) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (G) the removal or the resignation of the Manager other than in accordance with Section 5.1.2(g) hereof.

(iii) Borrower may (and may cause or permit Mortgage Borrower to), without the consent of Lender, grant easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities, provided that no such encumbrance shall materially impair the utility and operation of the Property or have a Material Adverse

Effect. In connection with any encumbrance permitted pursuant to this Section 5.1.1(d)(iii), Borrower shall deliver to Lender no less than fifteen (15) Business Days prior written notice thereof, together with a copy of the applicable instruments, and an Officer's Certificate stating (x) the consideration, if any, being paid for such encumbrance is commercially reasonable and (y) that such encumbrance does not materially impair the utility and operation of the Property, materially reduce the value of the Property or otherwise have a Material Adverse Effect. Borrower shall reimburse all of Lender's costs and expenses in connection with such encumbrance.

(e) Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business. Borrower shall not cause or permit Mortgage Borrower to cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's business.

(f) Reporting.

(i) Borrower will (and will cause Mortgage Borrower to) keep and maintain or cause to be kept and maintained on a fiscal year basis (commencing January 1 of each year), in accordance with the Approved Accounting Method and Regulation AB, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and Mortgage Borrower and all items of income and expense in connection with the operation of the Collateral or the ownership of the Property, as applicable. Lender shall have the right from time to time at all times during normal business hours upon reasonable prior notice (which may be given verbally) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the existence of an Event of Default, Borrower shall pay any reasonable costs and expenses incurred by Lender to examine Borrower's and Mortgage Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest.

(ii) Borrower will furnish (or cause to be furnished) to Lender annually, within ninety (90) days following the end of each fiscal year of Guarantor, a complete copy of Guarantor's consolidated annual financial statements (including consolidated statements of income and expense and cash flow and a consolidated balance sheet for Guarantor and its subsidiaries) prepared in accordance with the Approved Accounting Method and Regulation AB and audited by an Independent Accountant, and, if requested by Lender, Borrower shall deliver to Lender copies of all federal income tax returns to be filed by Borrower, and statements of profit and loss for Borrower, Mortgage Borrower, the Collateral and the Property (as applicable) and a balance sheet for Borrower and Mortgage Borrower. Borrower shall also provide Borrower-prepared and certified statements which set forth the financial condition and the results of operations for the Property for such fiscal year, and shall include, but not be limited to, amounts representing annual Net Operating Income, Operating Income (and any other Revenues not already included therein) and Operating Expenses, which shall be accompanied by (A) a comparison of the budgeted income and expenses and the actual income and expenses for the prior fiscal year (including Cash Expenses and Extraordinary Expenses for which Borrower or Mortgage Borrower has received funds pursuant to Section 3.1(b) hereof or of the Mortgage Loan Agreement,

if applicable) with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, and identifying any payment made to an Affiliate of Borrower or Mortgage Borrower and the reasons therefor; (B) a list of tenants, if any, occupying more than ten percent (10%) of the total floor area of the Improvements; (C) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and cumulative basis (and such other occupancy statistics for the Property as Lender may request); (D) an Officer's Certificate certifying to such officer's knowledge that each annual financial statement fairly presents the financial condition and the results of operations of Borrower, Mortgage Borrower, the Collateral and the Property being reported upon and that such financial statements have been prepared in accordance with the Approved Accounting Method and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same; and (E) a certification to Lender identifying the name and contact information of each Independent Director or Independent Manager required hereunder.

(iii) Not later than forty-five (45) days prior to the commencement of each fiscal year, Borrower shall submit to Lender its proposed annual budget for the Property detailing all anticipated Operating Expenses and Operating Income for the Property for the ensuing fiscal year in form reasonably satisfactory to Lender. Such proposed budget shall be subject to Lender's written approval (when so approved, an "Approved Annual Budget"), not to be unreasonably withheld, conditioned or delayed. Until such time that Lender approves a proposed budget, the most recently Approved Annual Budget shall apply; provided, however, that such Approved Annual Budget shall be deemed adjusted to reflect actual increases in the amount of Property Taxes, Insurance Premiums and Other Charges. The approved Annual Budget for the remainder of calendar year 2022 is attached hereto as Exhibit D.

(i) Borrower will (and will cause Mortgage Borrower to) furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar quarter, (A) Borrower's calculation of the Debt Yield for the twelve (12) month period ending at the end of such calendar quarter (provided that Borrower may make such calculations using its reasonable expectation of the adjustments to be made to such calculations pursuant to the definition of UNOI contained herein) accompanied by an Officer's Certificate with respect thereto, together with Borrower's method of calculation and such detail and background information as Lender shall reasonably require, (B) accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete in all material respects and fairly present in all material respects the financial condition and results of the operations of Borrower, Mortgage Borrower, the Collateral and the Property (subject to normal year-end adjustments): (I) a rent roll for the subject quarter; (II) subject to any appropriate reconciliations, quarterly and year-to-date operating statements prepared for each calendar month, noting Net Operating Income, Operating Income (and any other Revenues not already included therein), and Operating Expenses, and, upon Lender's request, other information necessary and sufficient to fairly represent in all material respects the financial position and results of operation of the Property during such calendar quarter, and containing a comparison of budgeted income and expenses (including Cash Expenses and Extraordinary Expenses for which Borrower or Mortgage Borrower has

received funds pursuant to Section 3.1(b) hereof or of the Mortgage Loan Agreement) and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, and identifying any payment made to an Affiliate of Borrower or Mortgage Borrower and the reasons therefor, all in form reasonably satisfactory to Lender; (III) a reasonably detailed statement of operating expenses paid by Master Tenant in accordance with the Master Lease during the subject calendar quarter; (IV) a copy of the quarterly statements for the Clearing Account prior to such date (if applicable); and (V) upon Lender's request, such other information reasonably necessary and sufficient to fairly represent in all material respects the financial position and results of operation of the Property during such calendar quarter. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.1(h) hereof are true and correct in all material respects as of the date of such certificate to the actual knowledge of Borrower and that there are no undisputed trade payables outstanding for more than sixty (60) days from the later of the date incurred or the date an invoice was issued therefor.

(ii) In the event that Borrower or Mortgage Borrower must incur an extraordinary Operating Expense not set forth in the Approved Annual Budget (each, an "Extraordinary Expense"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval.

(iii) Any reports, statements or other information required to be delivered under this Agreement shall be provided to Lender electronically unless Lender requests in writing for such statements to be delivered in paper form or on a diskette. Borrower agrees that Lender may disclose information regarding the Property, the Collateral, Mortgage Borrower and Borrower that is provided to Lender pursuant to this Section 5.1.1(f) in connection with a Secondary Market Transaction to such parties requesting such information in connection with such Secondary Market Transaction.

(iv) If any report, statement or other information required to be delivered to Lender pursuant to this Section 5.1.1(f) (a "Required Report") is not timely delivered (and without limiting the terms and conditions of Article 8 hereof), Borrower shall promptly pay to Lender, as a late charge, the sum of $200.00 per item per day until such Required Report is delivered.

(v) Borrower shall furnish to Lender, within thirty (30) days after request, such further detailed information with respect to the operation of the Property and the financial affairs of Borrower, Mortgage Borrower, Manager, Guarantor, and their Affiliates as may be reasonably requested by Lender. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower, any SPE Component Entity, Mortgage Borrower, any Mortgage Borrower SPE Component Entity's and Guarantor which would reasonably be expected to have a Material Adverse Effect. Borrower shall promptly advise Lender of any material adverse change in Borrower's, any SPE Component Entity's, Mortgage Borrower's, any Mortgage Borrower SPE Component Entity's or Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default.

(g) Distributions. Borrower shall not make (or cause or permit Mortgage Borrower to make) any distribution, payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any equity or ownership interest of Borrower or Mortgage Borrower, whether now or hereafter outstanding, or make any other distribution

in respect thereof, either directly or indirectly, whether in cash or property or in obligations of Borrower or Mortgage Borrower. Notwithstanding the foregoing Borrower shall have the right to make distributions to repay the Reimbursable Costs. Notwithstanding the foregoing, distributions deemed made pursuant to Section 3.7 shall in no event be deemed restricted by this Section 5.1.2.

(h) Minimum Equity Requirement Satisfaction. The Closing Date Minimum Equity Requirement shall remain satisfied at all times.

(i) No Contractual Obligations. Other than the Loan, the Loan Documents, the organizational documents entered into by Borrower, any Independent Manager service agreement entered into by Borrower that is approved by Lender and the Interest Rate Cap Agreement, Borrower shall not become subject to any Contractual Obligations or enter into any agreement, instrument or undertaking by which it or its assets will become bound.

5.1.2 Property.

(a) Title to the Property. Borrower will (and will cause Mortgage Borrower to) warrant and defend (i) the title to the Property and every part thereof and the Collateral and every part thereof, and (ii) the validity and priority of the Lien of the applicable Loan Documents, in each case against the claims of all Persons (subject only to the Permitted Encumbrances).

(b) Taxes, Other Charges, and Liens; Contests. Borrower shall (or shall cause Mortgage Borrower to) pay all Property Taxes, Other Charges, and Liens (other than Permitted Encumbrances) now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the delinquency thereof; provided, however, Borrower's obligation to directly pay or cause to be paid Property Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 3.2(a) hereof (if in effect pursuant to Section 3.7 hereof). Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Property Taxes and Other Charges have been so paid no later than ten (10) days prior to the date on which the Property Taxes and/or Other Charges would otherwise be delinquent if not paid. Notwithstanding the foregoing, Borrower's obligation to directly pay or cause to be paid Property Taxes for which Lender is reserving funds pursuant to Section 3.2(a) hereof (if in effect pursuant to Section 3.7 hereof) (and to provide evidence of the same) shall be suspended for so long as Borrower complies with the terms and provisions of said Section 3.2(a) (if in effect pursuant to Section 3.7 hereof). Borrower, at its own expense, may contest or permit Mortgage Borrower to contest (in each case, after prior written notice to Lender) by appropriate legal proceeding, promptly initiated and conducted in good faith and with reasonable diligence, the amount or validity or application in whole or in part of any Property Taxes, Other Charges, or any Lien on the Property, and/or the applicability of any Legal Requirement, provided that: (i) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower, Mortgage Borrower, the Property, the Collateral or any collateral for the Loan, as applicable, is subject and shall not constitute a default thereunder, and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (ii) none of the Property or any part thereof or interest therein or the Collateral or any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iii) Borrower shall promptly, upon final non-appealable determination thereof, pay the amount of any such Property Taxes, Other Charges, or Lien (together with all costs, interest and penalties which may be payable in connection therewith) and/or comply with such contested Legal Requirement; and (iv) such proceeding shall suspend the collection of such contested Property Taxes, or Other Charges (unless Borrower shall have paid or caused Mortgage Borrower to have paid all such amounts so demanded under protest), and with respect to Liens, Borrower shall have caused any such Lien to be discharged (by bonding or otherwise) within thirty (30) days (or sooner if required to avoid a forfeiture of the Property) of the filing thereof, or Borrower shall furnish such security as may be requested by Lender (not to exceed one hundred twenty-

five percent (125%) of the amount of such Lien being contested), to insure the payment of any such Property Taxes, Other Charges, or Liens, together with all interest and penalties thereon (and Lender may pay over any such security to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost, or there shall be any danger of the Lien of the Security Instrument or the Pledge Agreement being primed by any related Lien). Borrower shall promptly upon final determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Property Tax, Other Charge, or Lien, together with all costs, interest and penalties which may be payable in connection therewith, and comply with any such contested Legal Requirement.

(c) Access to Property. Borrower shall permit (and cause Mortgage Borrower to permit) agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (and subject to the rights of tenants under Leases). Borrower agrees pay or reimburse Lender within ten (10) Business Days after written demand for all reasonable, out-of-pocket costs and expenses incurred by Lender in connection with the inspections described in this Section 5.1.2(c).

(d) REAs. Borrower shall (and shall cause Mortgage Borrower to), at its sole cost and expense, promptly and timely perform and observe all the material terms, covenants and conditions required to be performed and observed by Mortgage Borrower under the REAs. Borrower shall notify Lender promptly in writing of the occurrence of any material default by any party to the REAs or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party to the REAs, and the receipt by Borrower or Mortgage Borrower of any notice (written or otherwise) from any party under the REAs noting or claiming the occurrence of any default by Mortgage Borrower under the REAs or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a default by Mortgage Borrower under the REAs. Borrower shall promptly deliver to Lender a copy of any such written notice of default. So long as any of the Obligations remains outstanding (other than contingent indemnification obligations which expressly survive the repayment of the Debt), Borrower shall not cause or permit Mortgage Borrower to exercise any purchase right, purchase option or similar rights granted to Borrower with respect to any real property without Lender's approval.

(e) Zoning; REAs. Borrower shall not initiate or consent to (and shall not cause or permit Mortgage Borrower to initiate or consent to) any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, in each case, without the prior consent of Lender. Borrower shall not (and shall not cause or permit Mortgage Borrower), without Lender's written consent, (i) fail to exercise any option or right to renew or extend the term of the REAs (if applicable) in accordance with the terms of the REAs, and shall give immediate written notice to Lender and shall execute, acknowledge, deliver and record any document requested by Lender to evidence the Lien of the Pledge Agreement on such extended or renewed term (and if Borrower or Mortgage Borrower shall fail to exercise any such option or right as aforesaid, Lender may exercise the option or right as Borrower's agent and attorney-in-fact as provided above in Lender's own name or in the name of and on behalf of a nominee of Lender, as Lender may determine in the exercise of its sole and absolute discretion); (ii) waive, excuse, condone or in any way release or discharge any party to the REAs of or from their material obligations, covenant and/or conditions under the REAs; (iii) surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or change, modify or amend in a material or adverse manner, the REAs.

(f) Operation of the Property.

(i) Borrower shall (and shall cause Mortgage Borrower to) cause the Property to be maintained in a good and safe condition and repair in all material respects, and at all times keep the Property in good working order and repair (subject to ordinary wear and tear and casualty damage, and, with respect to Building B only, taking into account, prior to Substantial Completion, the construction of the Required Improvements to the extent effectuated in accordance with the terms and conditions set forth in this Agreement). Lender acknowledges that the Property is managed as of the Closing Date by Mortgage Borrower and does not have professional management as otherwise required by this Section 5.1.2(f). Lender agrees, subject to the terms of Section 5.1.2(f)(ii), that Mortgage Borrower may continue to manage the Property.

(ii) Borrower will not (and will not cause or permit Mortgage Borrower to) engage a Manager, developer or leasing agent without Lender's prior written consent, not to be unreasonable withheld, conditioned or delayed. If Lender reasonably determines that the Property is not being managed in accordance with generally accepted management practices for properties similar to the Property, then Lender may, at its option, deliver written notice to Borrower, which written notice will specify the issues for Lender's determination. If Lender determines that the issues specified in such written notice are not remedied to Lender's reasonable satisfaction by Borrower within thirty (30) days from receipt of such written notice or that Borrower has failed to diligently undertake correcting such issues within such thirty (30) day period, or if an Event of Default has occurred and is continuing, Borrower will, at Lender's direction, engage (or cause Mortgage Borrower to engage) a Qualified Manager reasonably satisfactory to Lender at all times under a property management agreement approved by Lender in writing, which Manager will execute a Manager Consent in a form acceptable to Lender.

(iii) If Borrower is required to engage or cause to be engaged a Qualified Manager in accordance with Section 5.1.2(f)(ii), then Borrower shall cause (and shall cause Mortgage Borrower to cause) the Property to be operated, in all material respects, in accordance with the Management Agreement. If the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter (or cause Mortgage Borrower to enter) into a Management Agreement in form and content reasonably acceptable to Lender with Manager approved by Lender. Borrower shall (and shall cause Mortgage Borrower to): (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by Borrower or Mortgage Borrower under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (IV) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner. If (1) an Event of Default occurs or if Lender or any other Person takes possession of the Property or any portion thereof through foreclosure, conveyance in lieu of foreclosure or other similar transaction, (2) if Manager files or is the subject of a petition in bankruptcy or similar proceeding, or a trustee or receiver is appointed for Manager's assets or Manager makes an assignment for the benefit of creditors or Manager is adjudicated insolvent, (3) a default occurs under the Management Agreement on the part of any of Borrower, Mortgage Borrower or Manager,

beyond any applicable grace and cure periods, (4) a change of Control of Manager occurs, or (5) Manager shall commit gross negligence, fraud, illegal acts, or willful misconduct, Borrower shall (or shall cause Mortgage Borrower), at the request of Lender, terminate the Management Agreement and replace Manager with a Manager reasonably approved by Lender.

(g) Management Agreement. If Borrower is required to engage or cause to be engaged a Qualified Manager in accordance with Section 5.1.2(f)(ii), then Borrower shall not (and shall not permit Mortgage Borrower to), without Lender's prior written consent: (i) surrender, terminate or cancel the Management Agreement; provided, that Borrower may, without Lender's consent, not to be unreasonably withheld, replace (or cause Mortgage Borrower to replace) the Manager so long as the replacement manager is a Qualified Manager engaged pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase the amount of any charges or fees payable to Manager under the Management Agreement in excess of three percent (3.0%) of Operating Income per annum; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. Borrower shall not (and shall not cause or permit Mortgage Borrower to) permit Manager to assign or subcontract Manager's rights, duties or responsibilities under the Management Agreement to any other Person without the express written consent of Lender. Following the occurrence and during the continuance of an Event of Default, Borrower shall not (and shall not cause or permit Mortgage Borrower to) exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

(h) Leasing Matters.

(i) Without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed (except with respect to the Master Lease, in which case Lender's consent shall be in its sole discretion), Borrower shall not (and shall not cause or permit Mortgage Borrower to) (A) enter into any Lease; (B) cancel or terminate (including by exercise of any landlord recapture rights) any Lease; (C) approve any assignment of any Lease that releases the original tenant from its obligations under such Lease, (D) amend, modify or waive the provisions of any Lease in any material respect (including any amendment, modification or waiver reducing the fixed initial term of any Lease, reducing the rent payable under any Lease, changing any renewal provisions of any Lease or materially increasing the obligations of the landlord or materially decreasing the obligations of the tenant under any Lease or pursuant to which any premises covered by such Lease is surrendered); or (E) cancel or modify any guaranty, or release any security deposit, letter of credit, or other item constituting security pertaining to any Lease.

(ii) Any request for approval of a Lease, or assignment, termination, amendment or modification of any Lease requiring approval as set forth above shall be made to Lender in writing and together with such request Borrower shall furnish to Lender: (A) such biographical and financial information about the proposed tenant and any guarantor of such proposed Lease as Lender may reasonably require, (B) a copy of the proposed form of Lease (or amendment or modification), and (C) a summary of the material terms of such proposed Lease (or amendment or modification) including rental terms and the term of the proposed Lease and any options.

(iii) Borrower shall promptly send Lender copies of any notices of default received from the tenant under any Lease, and will enforce (short of terminating a Lease,

unless Lender consents thereto, which consent shall not be unreasonably withheld or unduly delayed) the performance by each tenant of the tenant's obligations under any Lease.

(iv) Except for security deposits, Borrower shall not (and shall not cause or permit Mortgage Borrower to) collect rent more than one (1) month in advance. Borrower, at Lender's request, shall furnish Lender with executed copies of all Leases hereafter made (to the extent not theretofore provided to Lender). All Leases executed after the Closing Date (including any renewal or expansion options) shall provide that they are subordinate to the Security Instrument and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale.

(v) Notwithstanding anything herein to the contrary, Borrower may cause or permit Mortgage Borrower to sublease or license up to 10% of the Improvements to one or more Permitted Users (as defined in the Master Lease).

(vi) For the avoidance of doubt, nothing herein shall prohibit Guarantor from engaging in the business of contract manufacturing for third-parties.

(i) Liens; Indebtedness. Subject to Borrower's contest and similar rights contained in the Loan Documents (including as set forth in Section 5.1.2(b) herein), Borrower shall not (and shall not cause or permit Mortgage Borrower to) create, incur, assume or suffer to exist any Lien on any portion of the Property or the Collateral or permit any such action to be taken, except Permitted Encumbrances. Borrower shall not (and shall not cause or permit Mortgage Borrower to) (directly or indirectly) create, incur, assume, or allow to exist any Indebtedness with respect to Borrower, Mortgage Borrower, SPE Component Entity or Mortgage Borrower SPE Component Entity, other than Permitted Indebtedness.

(a) Alterations. Other than as expressly provided herein with respect to the Required Improvements, Borrower shall not (and shall not cause or permit Mortgage Borrower to) (i) cause or permit any material waste of the Property, (ii) make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or intentionally take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of the Pledge Agreement or otherwise cause a Material Adverse Effect, (iii) permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof, or (iv) in each case, without having first obtained Lender's prior written consent, permit or cause any alterations to any Improvements that (A) would reasonably be likely to have a Material Adverse Effect, (B) result in any decrease of Net Operating Income, (C) violate the terms of any Lease, (D) concern structural component of any Improvements, any utility or HVAC system contained in the Improvements, or the exterior of any building constituting a part of any Improvements, or (E) cost, in the aggregate of all related alterations, Five Hundred Thousand and 00/100 Dollars ($500,000) or more; provided, however, that the foregoing limitations shall not apply to alterations consisting of alterations performed as part of a Restoration required hereunder. Without limiting the foregoing, if the total unpaid amounts due and payable with respect to alterations to the Improvements (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed Five Hundred Thousand and 00/100 Dollars ($500,000), Borrower shall promptly deliver to Lender as security for the payment of such amounts (and as additional security for the Debt) cash, a Letter of Credit, or a completion and performance bond (issued by a surety acceptable to Lender) (or a combination thereof), in an amount equal to the excess of the total unpaid amounts with respect to such alterations (other than such amounts to be paid or reimbursed by tenants under the Leases),

and Lender may apply such security from time to time at the option of Lender to pay for such alterations (or, upon an Event of Default, to the payment of the Debt).

(b) No Joint Assessment. Borrower shall not (and shall not cause or permit Mortgage Borrower to) suffer, permit or initiate the joint assessment of all or any portion of the Property (i) with any other real property constituting a tax lot separate from the Property, or (ii) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

(c) Cooperate in Legal Proceedings. Borrower shall (and shall not cause or permit Mortgage Borrower to) cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority that may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings. Borrower shall (and shall not cause or permit Mortgage Borrower to) cooperate with Lender in obtaining for Lender the benefits of any condemnation proceeds or insurance proceeds lawfully or equitably payable in connection with the Collateral or the Property, and Lender shall be reimbursed by Borrower for any out-of-pocket expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements, and the payment by Borrower of the expense of an Appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) from such condemnation proceeds or insurance proceeds, as applicable.

(d) Intentionally Omitted.

(e) Material Agreements. Borrower shall (and shall not cause or permit Mortgage Borrower to) (i) promptly perform and/or observe all material terms, covenants and agreements required to be performed and observed by it under the Material Agreements; (ii) promptly notify Lender of any material default (following applicable notice and cure periods) under the Material Agreements of which Borrower has knowledge; (iii) not, without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed, (A) enter into any new Material Agreement or execute modifications to any existing Material Agreements, (B) surrender, terminate or cancel any Material Agreement, (C) reduce or consent to the reduction of the term of the Material Agreements, (D) increase or consent to the increase of the amount of any charges under the Material Agreements, (E) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Material Agreements, or (F) following the occurrence and during the continuance of an Event of Default, exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Material Agreements.

(f) Labor Matters. Borrower shall not (and shall not cause or permit Mortgage Borrower to), without Lender's prior consent, enter into any collective bargaining agreement or union contract with respect to employees and other laborers at the Property.

(g) Appraisal. Lender shall have the right to order new Appraisals of the Property from time to time at Borrower's expense; provided, that Borrower's obligation to pay for such expense shall be limited to one (1) Appraisal during any twelve (12) month period, except (x) during the continuance of an Event of Default or (y) in connection with a Secondary Market Transaction in accordance with Section 9.1-Each Appraisal is subject to review and approval by Lender. Borrower shall pay to Lender the reasonable out-of-pocket cost and expense for such Appraisals and a reasonable fee for Lender's review of each Appraisal.

(h) Parking Covenant. Borrower shall use Commercially Reasonable Efforts to cause to be terminated and removed of record, no later than the Substantial Completion Due Date, that certain

Covenant and Agreement Regarding Maintenance of Off-Street Parking Space, dated September 26, 1969 and recorded in the Official Records of Los Angeles County, California on October 6, 1969 as document number 2214.

5.1.3 Construction Matters.

(a) Construction of Project.

(i) Borrower shall cause Mortgage Borrower to cause the Project to be constructed on the Land (A) in a good and workmanlike manner, substantially in accordance with the Plans and Specifications approved by Lender, (B) in a manner in compliance with the terms of all documents of record, (C) free and clear of Liens and claims for materials supplied or for labor or services performed in connection with the construction of the Project or otherwise (other than Permitted Encumbrances), subject to Borrower's or Mortgage Borrower's right to contest any such Liens or claims in accordance with Section 5.1.2(b) hereof or Section 5.1.2(b) of the Mortgage Loan Agreement, respectively, and (D) with diligence and continuity, in a good and workmanlike manner, and in accordance with this Agreement so as to achieve, subject to Excusable Delay, the Major Milestones within the time period applicable to each such Major Milestone.

(ii) Borrower shall cause Mortgage Borrower to use Commercially Reasonable Efforts to cause the Costs of the construction of the Project to be in accordance with the Construction Budget.

(iii) Borrower shall cause Mortgage Borrower to use Commercially Reasonable Efforts to cause the construction of the Project to be diligently and continuously performed throughout the Construction Phase until Completion of the Project.

(b) Construction Schedule. Each month prior to Completion of the Project, Borrower shall deliver to Lender and Construction Consultant (which delivery may be made within seven (7) Business Days prior to the delivery of any Draw Request) a copy of an updated Construction Schedule reflecting, among other things, the anticipated dates of completion of and the timing of disbursements of incremental amount of various subcategories of the Construction Budget, all in such form and containing such details as Lender may require in its reasonable discretion.

(c) Construction Budget Adjustments. No adjustments in the Construction Budget shall be deemed to be approved without the prior written consent of Lender (which consent shall not be unreasonably withheld); provided, however, that Construction Budget adjustments to reflect Change Orders entered into in accordance with Section 5.1.3(g) shall be permitted.

(d) Inspection of Property and Books and Records.

(i) Without limiting Lender's rights pursuant to Section 5.1.2(c) hereof, Borrower agrees to permit (and to cause Mortgage Borrower to permit) Lender and Construction Consultant, or designated representatives of any of them, to enter upon the Property, at any reasonable times during business hours on reasonable notice, with access to inspect or examine or, to the extent not located on the Property, to otherwise make available in Los Angeles, California to Lender and Construction Consultant the following:

(A) all materials and shop drawings pertaining to the construction of the Project, to the extent in the possession or control of Borrower or its Affiliates or available to Borrower or Mortgage Borrower under the General Contractor Agreement or other Construction Contracts;

(B) any contracts, bills of sale, statements, receipts or vouchers pertaining to the construction of the Project, to the extent in the possession or control of Borrower or its Affiliates or available to Borrower under the General Contractor Agreement or other Construction Contracts;

(C) all work done, labor performed or materials furnished in and about the Project, including in connection with the construction of the Project;

(D) all books, contracts and records of Borrower or Mortgage Borrower or General Contractor available to Borrower or Mortgage Borrower under the General Contractor Agreement or other Construction Contracts pertaining to the construction of the Project; and

(E) any other documents which are related to the construction of the Project, to the extent in the possession or control of Borrower or its Affiliates or available to Borrower or Mortgage Borrower under the General Contractor Agreement or other Construction Contracts.

(ii) Borrower may satisfy the delivery or accessibility of any of the foregoing by causing General Contractor to deliver or otherwise make available such materials on a timely basis.

(iii) Borrower will (and will cause Mortgage Borrower to) promptly provide Lender and Construction Consultant with copies of any of the foregoing as Lender or Construction Consultant, as the case may be, may from time to time reasonably request. Borrower will make its representatives available to discuss Borrower's and Mortgage Borrower's affairs, finances and accounts relating to the construction of the Project, and Borrower will case Mortgage Borrower to reasonably cooperate, and take all reasonable steps to cause the General Contractor, the Architect and the Trade Contractors (including Major Trade Contractors) to cooperate with Lender and Construction Consultant, or any of their designated representatives, to enable such Person to perform its functions under this Agreement.

(e) Construction Consultant. Borrower acknowledges that (i) Construction Consultant has been retained by Lender to act as a consultant to review Plans and Specifications, Construction Contracts and Draw Requests, perform inspections and other services as determined by Lender but only as a consultant to Lender in connection with the construction of the Project and Construction Consultant has no duty to Borrower or Mortgage Borrower; (ii) Construction Consultant shall in no event or under any circumstance have any power or authority to make any decision or to give any approval or consent or to do any other act or thing which is binding upon Lender and any such purported decision, approval, consent, act or thing by Construction Consultant on behalf of Lender shall be void and of no force or effect; (iii) Lender reserves the right to make any and all decisions required to be made by Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender, and to accept or not accept any matter or thing required to be accepted by Lender, under and in accordance with the terms of this Agreement, and without being bound or limited in any manner or under any circumstances whatsoever by any opinion expressed or not expressed, or advice given

or not given, or information, certificate or report provided or not provided, by Construction Consultant to Lender with respect thereto; (iv) Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by the Construction Consultant to Lender, and (v) Lender reserves the right in its sole and absolute discretion to replace Construction Consultant with another qualified construction consultant at any time and without approval by or prior (but with subsequent) notice to Borrower. Borrower shall be required to pay all reasonable fees and expenses payable to the Construction Consultant by Lender in connection with the Loan.

(f) Changes to Plans and Specifications. Borrower shall (and shall cause Mortgage Borrower to) provide to Lender and Construction Consultant, concurrently with each Draw Request or at such other times as Lender or Construction Consultant may reasonably request, copies of all orders, documents or revisions to Plans and Specifications reflecting Change Orders, regardless of whether the prior approval by Lender and/or Construction Consultant of any such order, document or revision or Change Order is required pursuant to the terms of this Agreement or the other Loan Documents.

(g) Change Orders. Borrower shall not (and shall not cause or permit Mortgage Borrower to) request, initiate, agree to, approve or accept, cause or suffer directly or indirectly any Change Order which (i) increases the Approved Project Expenditures by more than $1,000,000 for any single Change Order or by more than $5,000,000 for all Change Orders in the aggregate, (ii) would affect the structural integrity of the Property, (iii) constitutes a material downward change in the building material or equipment specifications, (iv) will or is reasonably expected to cause a Milestone Non-Compliance Event, (v) will decrease the aggregate net rentable square feet comprising Building B as compared to the net rentable square feet comprising Building B in the Plans and Specifications approved by Lender as of the Closing Date, (vi) will materially and adversely change the layout of the Required Improvements, (vii) will result in a Deficiency, or (viii) will violate Legal Requirements, in each case, without Lender's prior written consent, not to be unreasonably withheld, conditioned or delayed (and neither Borrower nor Mortgage Borrower shall be permitted to request, initiate, agree to, approve and accept all other Change Orders without Lender's prior consent). Any approval by Lender of any Change Order (x) shall not obligate Lender to increase the amount of the Loan, and (y) shall not obligate Lender to make any Additional Advance to the extent the same would not otherwise be obligated pursuant to this Agreement to make such Additional Advance. Borrower shall (and shall cause Mortgage Borrower to) submit to Lender and Construction Consultant copies of each proposed Change Order prior to entering into it, together with documentation reasonably satisfactory to Lender and Construction Consultant, setting forth all additions and subtractions theretofore made to or from the scope of the Project. Lender shall promptly review all Change Orders so submitted. If any Change Order shall require the consent or approval of any third party, Borrower shall provide Lender with written evidence of such consent or approval. Borrower shall submit (and cause Mortgage Borrower to submit) to Lender and Construction Consultant copies of all Change Orders entered into with respect to the Project within fifteen (15) days after the same are entered into.

(h) Correction of Work. Borrower will, promptly after written notice from Lender, cause Mortgage Borrower to correct any defect in the Project or the Improvements or any material departure without Lender's prior written approval from the Plans and Specifications. Borrower agrees that the making of any Additional Advance shall not constitute a waiver of Lender's right to require compliance with this Section 5.1.3(h) with respect to any such defects or material departures from the Plans and Specifications. Borrower agrees that Lender's failure to deliver such a written notice shall not constitute a waiver by Lender of any of Lender's rights in respect of such defect.

(i) Required Notices.

(i) Without limiting any other notice requirement set forth in this Agreement, Borrower shall (and shall cause Mortgage Borrower to) give notice to Lender promptly upon the occurrence of:

(A) any cessation of construction of the Project for a period in excess of fifteen (15) Business Days more than once in any sixty (60) calendar day period;

(B) any actual litigation or action of, or any litigation or action threatened in writing by, a Governmental Authority of which Borrower or Mortgage Borrower has knowledge concerning the actual or alleged presence, release, threat of release, placement on or in, or the generation, transportation, storage, treatment or disposal at, the Property and/or Project of any Hazardous Material in violation of applicable Environmental Law;

(C) any written notice given pursuant to any Construction Document alleging that there has occurred a default by Borrower, Mortgage Borrower or General Contractor in the performance of their respective obligations thereunder; and

(D) any condition which results in any delay, which would reasonably be expected to result in Completion occurring after the date therefor set forth in the Construction Schedule, or in any further delay beyond any delays of which Lender has been previously notified;

(ii) Each notice pursuant to this Section 5.1.3(i)(ii) shall be accompanied by a statement of Borrower setting forth details of the occurrence referred to therein and stating what action Borrower proposes to take with respect thereto, in each case, in such detail as Lender may reasonably require.

(j) Compliance with Construction Documents and Contracts. Borrower shall cause Mortgage Borrower to abide by, perform and comply with all of Mortgage Borrower's material obligations under the Architect Agreement, the General Contractor Agreement, the Trade Contracts, the other Construction Contracts and the Construction Documents to which Mortgage Borrower is a party, and Borrower, at its sole cost and expense, shall cause Mortgage Borrower to use all Commercially Reasonable Efforts to secure or enforce the performance of each and every material obligation, covenant, condition and agreement to be performed by the other parties thereunder.

(k) Construction Contracts. Except to the extent otherwise permitted herein, Borrower shall not (and shall not cause or permit Mortgage Borrower to) (i) enter into, surrender, terminate, cancel, modify, amend or consent to the assignment of any Construction Document, or (ii) consent to or approve of the entering into, surrender, termination, cancellation, modification, amendment or assignment of any Trade Contract by the General Contractor (but only to the extent that such surrender, termination, cancellation, modification, amendment or assignment by General Contractor requires Borrower's or Mortgage Borrower's approval pursuant to the General Contractor Agreement), without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If and to the extent any amendment, supplement, replacement or other modification is made to any of the foregoing which requires Lender's consent, upon reasonable request by Lender, Borrower shall promptly cause (and cause Mortgage Borrower to promptly cause) the Architect, General Contractor, or Major Trade Contractor, as the case may be, to deliver a certificate or other written statement which confirms, on and as of the date thereof, that the Architect Consent, the Engineer Consent, the General Contractor Agreement Consent or the Major Trade Contractor Consent, as the case may be, previously delivered in connection with the Loan

remains valid, true, correct and complete in all material respects as of the date so amended, supplemented, replaced or otherwise modified. Borrower promptly will (and will cause Mortgage Borrower to) give notice to Lender of the surrender, termination, cancellation, modification, amendment, substitution or assignment of the other Construction Contracts, whether or not Lender consented thereto pursuant to the immediately preceding sentence.

(l) Trade Contracts. Borrower certifies that, on or prior to the Closing Date, Lender has been provided with a true, correct and complete copy of each Existing Construction Document (other than, with respect to Trade Contracts only, Trade Contracts to which none of Borrower or Mortgage Borrower or any Affiliate of Borrower or Mortgage Borrower is a direct party). Borrower shall deliver to Lender an executed copy of any Major Trade Contract which General Contractor, Mortgage Borrower and/or Borrower enters into (together with a Major Trade Contractor Consent) and shall promptly give notice to Lender of the surrender, termination, cancellation, modification, amendment, substitution or assignment of any Major Trade Contract. Upon Lender's reasonable request, Borrower shall deliver to Lender a copy of each subcontract entered into by the General Contractor within ten (10) days of Lender's request.

(m) Cessation of Business. With respect to any work relating to the Required Improvements, Borrower shall not cause or permit Mortgage Borrower for any reason (i) subject to Excusable Delay, to cease for a period in excess of fifteen (15) Business Days more than once in any sixty (60) calendar day period the construction of the Project, or (ii) to enter into or engage in any other business not expressly permitted by the terms of this Agreement.

(n) Construction Permits. Promptly after obtaining any additional material Construction Permits for the construction of the Project after the Closing Date, Borrower shall (or shall cause Mortgage Borrower to) deliver a copy thereof to Lender.

(o) Certificate of Occupancy. Borrower shall, to the extent required by applicable Legal Requirements, obtain (and cause Mortgage Borrower to obtain) certificates of occupancy with respect to the entire Project in accordance with this Agreement and, thereafter, shall continuously maintain in full force and effect valid certificates of occupancy for the entire Property, but excluding temporary certificates of occupancy for portions of the Property that can only be obtained following the build-out of such space for or by a Tenant.

(p) Protection Against Liens. Subject to its right of contest set forth in Section 5.1.2(b), Borrower shall (and shall cause Mortgage Borrower to) pay, discharge or bond all claims for labor, materials and services furnished in connection with construction of the Project and take all actions reasonably required to prevent the assertion of claims of Liens (other than Permitted Encumbrances) against the Property. Borrower irrevocably appoints, designates and authorizes Lender as its agent (such agency being coupled with an interest) with the authority (but no obligation) to file any notice relating to claims of Liens (other than Permitted Encumbrances) that Lender reasonably deems advisable to protect its interests under the Loan Documents. If any stop notice or claim is asserted against Lender by any Person furnishing labor, services, equipment or materials to the Project, upon demand by Lender, Borrower shall take such action (and cause Mortgage Borrower to take such action) as Lender may reasonably require to release Lender from any obligation or liability with respect to such stop notice or claim, including (i) if the claim is being contested in accordance with Section 5.1.2(b) hereof, obtaining a bond or other security, in form, substance and amount reasonably satisfactory to Lender, sufficient to discharge the same of record or (ii) payment of such claim, in each case, except to the extent such stop notice or claim is the result of any action or omission of Lender, Construction Consultant or their respective Affiliates, directors, officers, employees or agents. If Borrower fails to take such action required to be taken by Borrower pursuant to this Section 5.1.3(p), Lender may, in its sole discretion, file an interpleader action requiring all claimants

to interplead and litigate their respective claims, and in any such action Lender shall be released and discharged from all obligations with respect to any funds deposited in court.

(q) **Lender's Review**. Observation, inspection and approvals by Lender of the Plans and Specifications, any other Construction Documents, the construction of the Project and the workmanship and materials used therein shall impose no responsibility or liability of any nature whatsoever on Lender or Construction Consultant, and no Person shall, under any circumstances, be entitled to rely upon such inspections and approvals by Lender or Construction Consultant for any reason. Approvals granted by Lender for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any such approval. Construction Consultant has been or will be retained by Lender solely as a consultant and has no authority to bind or otherwise act for or on behalf of Lender.

(r) Submission of Evidence. Any condition of this Agreement which requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts and Lender shall, at all times, be free to independently establish to its reasonable satisfaction such existence or non-existence.

(s) Contractors. Except as provided by law, no Trade Contractors or any other Person dealing with Borrower or Mortgage Borrower, including the Architect and the General Contractor, shall be, nor shall any of them be deemed to be, third party beneficiaries of this Agreement, but each shall be deemed to have agreed (a) that the Trade Contractor(s) or other Person in question shall look to Borrower or Mortgage Borrower or such Person, as the case may be, as their sole source of recovery if not paid and (b) except as otherwise agreed to in writing between Lender and the Trade Contractor(s) or other Person in question, that they may not claim against Lender under any circumstances.

(t) Completion of the Project. Each of the Approved Project Expenditures that is a subject of an Additional Advance shall be Completed in accordance with the Construction Schedule.

(u) Labor.

(i) Borrower shall not (and shall not cause or permit Mortgage Borrower to) enter into (or consent or approve Manager entering into) any collective bargaining agreements affecting the Property without Lender's prior written consent; provided that, notwithstanding the foregoing, in no event shall Borrower be required to be in violation in any material respect of any applicable Legal Requirements as a result of Lender's exercise of its consent rights.

(ii) Borrower will, in a timely manner, pay (or cause to be paid), or satisfy (or cause to be satisfied) when due all bills, costs, or other obligations incurred by Borrower or Mortgage Borrower or on Borrower's or Mortgage Borrower's behalf in connection with the employees employed by Borrower or Mortgage Borrower in connection the operation of the Property, including but not limited to any obligations under ERISA, the Multiemployer Pension Plan Amendments Act, the Internal Revenue Code, federal or state wage and hour law, the Labor Agreements, or applicable State or Federal plant closing laws (any such bills, costs, or liabilities a "Labor Liability"). Borrower further covenants and agrees to (and to cause Mortgage Borrower to) deliver to Lender promptly, and in any event within ten (10) Business Days after receipt thereof by Borrower or any of its Affiliates, a copy of each notice concerning a claim of Labor Liability.

(iii) Unless Lender consents in writing, Borrower shall not (and shall not cause or permit Mortgage Borrower to) have any employees at the Property. To the extent

Borrower or Mortgage Borrower has the right to provide prior written consent to the same pursuant to the terms of the Management Agreement, Borrower shall not (and shall not cause or permit Mortgage Borrower to) consent to Manager's termination of the Property employees in a way that would give rise to liability under the WARN Act, without the prior written consent of Lender.

(iv) Borrower will (and will cause Mortgage Borrower to) comply in all material respects with all applicable state and federal anti-discrimination laws and all applicable state and federal laws regarding the payment of wages and benefits to its employees in connection with the operation of the Property.

(v) Bonds; Sub-Guard Insurance. Each Trade Contractor shall be, at Lender's election, either (a) bonded pursuant to a Bond issued by a surety satisfactory to Lender or (b) covered by a sub-guard insurance policy in form and substance acceptable to Lender. Borrower will cause Lender to be named as a co-obligee (as each its interest may appear) with Mortgage Borrower on all Bonds obtained by Borrower or Mortgage Borrower.

5.1.4 Mortgage Loan Matters.

(a) Notices. Borrower shall deliver to Lender, promptly after the receipt or delivery, a copy of any notice of default received or sent by Mortgage Borrower with respect to the Mortgage Loan.

(b) Independent Approval Rights. If any action, proposed action or other decision is consented to or approved by Mortgage Lender, such consent or approval shall not be binding or controlling on Lender. Borrower hereby acknowledges and agrees that (i) the risks of Mortgage Lender in making the Mortgage Loan are different from the risks of Lender in making the Loan, (ii) in determining whether to grant, deny, withhold or condition any requested consent or approval, Mortgage Lender and Lender may reasonably reach different conclusions, and (iii) Lender has an absolute independent right to grant, deny, withhold or condition any requested consent or approval based on its own point of view, but subject to the standards of consent set forth herein. Furthermore, the denial by Lender of a requested consent or approval shall not create any liability or other obligation of Lender if the denial of such consent or approval results directly or indirectly in a default under the Mortgage Loan Documents, and Borrower hereby waives any claim of liability against Lender arising from any such denial unless Lender has not complied with any applicable standard for consent. The rights described above may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

(c) Intercreditor Agreement. Borrower hereby acknowledges and agrees that any intercreditor agreement entered into between Lender and Mortgage Lender will be solely for the benefit of Lender and Mortgage Lender, and that neither Borrower nor Mortgage Borrower shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights thereunder, or be entitled to rely on any of the provisions contained therein. Lender and Mortgage Lender have no obligation to disclose to Borrower or Mortgage Borrower the contents of any such intercreditor agreement. Borrower's obligations hereunder are and will be independent of any such intercreditor agreement and shall remain unmodified by the terms and provisions thereof. In the event that (i) a Mortgage Loan Event of Default has occurred and is continuing (or the receipt by Lender of a payment would cause the occurrence of a "Default" under the Mortgage Loan Agreement or a Mortgage Loan Event of Default), (ii) Lender is required pursuant to the terms of any intercreditor agreement between Lender and Mortgage Lender to pay over to Mortgage Lender any payment or distribution of assets, whether in cash, property or securities which is applied to the Debt, including, without limitation, any proceeds of the Property or any other collateral for the Debt previously received by Lender on account of the Loan, (iii) Lender has actually paid over such amounts to Mortgage Lender, and (iv) Lender has not received such amounts in return, then, to

the extent such amounts were actually received by Mortgage Lender and applied in accordance with the Mortgage Loan Agreement, Borrower agrees to indemnify Lender for any amounts so paid, and any amount so paid shall continue to be owing pursuant to the Loan Documents as part of the Debt notwithstanding the prior receipt of such payment by Lender, in each of the foregoing cases, except as set forth in the Guaranties with respect to double counting of obligations.

(d) Refinancing or Voluntary Prepayment of the Mortgage Loan. Except as expressly permitted hereunder, Borrower shall not make or permit to be made any voluntary partial or full prepayment of amounts owing under the Mortgage Loan or any refinancing of the Mortgage Loan without the prior written consent of Lender (other than in connection with (i) the simultaneous repayment in full of both the Mortgage Loan and the Mezzanine Loan pursuant to the same refinancing, or (ii) any other prepayment of the Mortgage Loan expressly permitted pursuant to this Agreement and the Mortgage Loan Agreement).

(e) Compliance with Mortgage Loan Documents. Borrower shall cause Mortgage Borrower to: (i) diligently perform and observe all of the terms, covenants and conditions of the Mortgage Loan Documents on the part of Mortgage Borrower to be performed and observed within any applicable notice and cure periods under the Mortgage Loan Documents; (ii) not enter into or be bound by any new Mortgage Loan Documents after the Closing Date (other than new Mortgage Loan Documents expressly contemplated under the Mortgage Loan Documents as in effect on the Closing Date), agree to any material modifications, consolidation, restatement, or waiver of any existing Mortgage Loan Documents, in each case without the prior written approval of Lender; and (iii) provide Lender with a copy of any amendment or modification of, or waiver or consent granted under, the Mortgage Loan Documents within five (5) Business Days after its receipt thereof.

(f) Mortgage Loan Defaults. If a Mortgage Loan Event of Default occurs and is continuing beyond applicable notice and cure periods, Borrower agrees that Lender shall have the immediate right to (but shall be under no obligation to), without prior notice to Borrower or any other Person: (i) pay all or any part of the Mortgage Loan and any other sums that are then due and payable, and perform any act or take any action on behalf of Borrower or Mortgage Borrower as may be appropriate, to cause all of the terms, covenants and conditions of the Mortgage Loan Documents on the part of Mortgage Borrower to be performed or observed thereunder to be promptly performed or observed; (ii) pay any other amounts and take any other action as Lender, in its sole and absolute discretion, shall deem advisable to protect or preserve the rights and interests of Lender in the Loan and/or the Collateral and (iii) subject to the prior right of Mortgage Lender under the Mortgage Loan Documents, Complete the Project. Borrower shall not impede, interfere with, hinder or delay, and shall not permit Mortgage Borrower to impede, interfere with, hinder or delay, any effort or action on the part of Lender to cure any Mortgage Loan Event of Default under the Mortgage Loan, or to otherwise protect or preserve Lender's interests in the Loan and the Collateral following the occurrence and during the continuance of a Mortgage Loan Event of Default under the Mortgage Loan. Subject to the prior right of Mortgage Lender under the Mortgage Loan Documents, Borrower hereby grant Lender and its designees the right to enter upon the Property at any time while an Event of Default exists, or the assertion by Mortgage Lender that a Mortgage Loan Event of Default has occurred and is continuing, under the Mortgage Loan Documents, for the purpose of taking any such action or to appear in, defend or bring any action or proceeding to protect Lender's interest. Lender may take such action as Lender deems necessary to carry out the intents and purposes of this Section 5.1.6(f) (including communicating with Mortgage Lender with respect to any Mortgage Loan Events of Default), without prior notice to, or consent from, Borrower or Mortgage Borrower. Lender shall have no obligation to complete any cure or attempted cure undertaken or commenced by Lender. All sums so paid and the costs and expenses incurred by Lender in exercising rights under this Section 5.1.6(f) (including its reasonable third-party attorneys' fees and costs) (A) shall be added to the Debt, (B) if not paid within ten (10) Business Days of demand therefor, shall thereafter bear interest at the Default Rate to the date of payment to Lender, and (C) shall be secured by the Pledge Agreement. Borrower hereby indemnifies

Lender from and against all Losses of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Lender as a result of the foregoing actions, excluding such Losses arising from the willful misconduct, gross negligence or illegal acts of Lender. In the event that Lender makes any payment in respect of the Mortgage Loan, Lender shall be subrogated to all of the rights of Mortgage Lender under the Mortgage Loan Documents against the Property, in addition to all other rights it may have under the Loan Documents. If Lender shall receive a copy of any notice of a Mortgage Loan Event of Default under the Mortgage Loan Documents sent by Mortgage Lender, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon prior to the receipt of a Mortgage Loan Event of Default Revocation Notice. As a material inducement to Lender's making the Loan, Borrower hereby absolutely and unconditionally release and waive all claims against Lender arising out of Lender's exercise of its rights and remedies provided in this Section 5.1.6, except for Lender's willful misconduct, gross negligence or illegal acts.

(g) No Amendments to Mortgage Loan Documents. Without obtaining the prior written consent of Lender, Borrower shall not cause or permit Mortgage Borrower to (i) enter into any amendment or modification of any of the Mortgage Loan Documents or (ii) grant to Mortgage Lender any consent or waiver. Borrower shall cause Mortgage Borrower to provide Lender with a copy of any amendment or modification to the Mortgage Loan Documents within five (5) days after the execution thereof or such earlier period required hereunder or in the Mortgage Loan Documents.

(h) Acquisition of the Mortgage Loan. None of Borrower, Mortgage Borrower, Guarantor, or any Affiliate of any of the foregoing shall acquire or agree to acquire the Mortgage Loan, or any portion thereof or any interest therein, or any direct or indirect ownership interest in the holder of the Mortgage Loan, via purchase, transfer, exchange, operation of law, or otherwise (other than as a result of acquisition of shares of any Person whose shares are traded over a nationally-recognized stock exchange, but only to the extent such acquired shares, individually or in the aggregate, do not constitute a Controlling share in such Person). If, solely by operation of applicable subrogation law, Borrower, Mortgage Borrower, Guarantor, or any Affiliate of any of the foregoing shall have failed to comply with the foregoing, then Borrower shall (i) immediately notify Lender of such failure, and (ii) cause any and all such prohibited parties acquiring any interest in the Mortgage Loan to (A) discontinue and terminate any enforcement proceeding(s) under the Mortgage Loan Documents, and (B) without limiting the foregoing, pay over to Lender any and all Revenues or other payments or proceeds received on account of the Mortgage Loan or the exercise of any rights or remedies with respect thereto.

(i) Deed in Lieu of Foreclosure. Without the express prior written consent of Lender, Borrower shall not, and Borrower shall not cause, suffer or permit Mortgage Borrower to, enter into, execute, deliver, or consent to, as the case may be, any deed-in-lieu or other consensual foreclosure with or for the benefit of Mortgage Lender or any other Person.

(j) Distributions. On each date on which amounts are due and payable to Lender pursuant to the Loan Documents and/or are required to be disbursed to Lender pursuant to the terms of the Mortgage Loan Documents, Borrower shall exercise its rights under the organizational documents of Mortgage Borrower to cause Mortgage Borrower to make a distribution of funds to Borrower in an amount sufficient to allow Borrower to make such required payment to Lender, but only to the extent there is sufficient revenue derived from the operation of the Property after the payment of all amounts payable with respect to the Mortgage Loan that is made available to Borrower (and not trapped by Lender or Mortgage Lender) is sufficient to do so (provided that the foregoing is not intended to limit any of Borrower's obligations under this Agreement or the other Loan Documents). During the existence of an Event of Default, Borrower shall not, and shall not cause Mortgage Borrower to, make any distributions of any kind, returns of capital, or repayment of any loans (in each case whether in cash, assets, Equity Interests, or proceeds of any kind) to any Person that owns any direct or indirect Equity Interest in Borrower.

(k) Discussions with Mortgage Lender and Manager. In connection with the exercise of its rights set forth in the Loan Documents, Lender shall have the right at any time to discuss the Property, the Mortgage Loan, the Loan, and any other matter directly with Mortgage Lender and any property manager (including Manager) and their respective consultants, agents or representatives, as applicable, without notice to or permission from Borrower, nor shall Lender have any obligation to disclose such discussions or the contents thereof to Borrower or any other Person.

(l) Title Insurance Policy. Borrower covenants, subject to Mortgage Lender's rights under the Mortgage Loan, to remit (or cause Mortgage Borrower to remit) to Lender all title insurance proceeds paid by the title insurance company under the Owner's Title Policy, provided, in no event shall the sums paid to Lender exceed the amount of the Debt prior to the acquisition by Lender of some or all of the Collateral.

(m) Notices. Borrower shall give notice, or cause notice to be given, to Lender promptly upon the occurrence of:

(i) any Mortgage Loan Default or Mortgage Loan Event of Default;

(ii) any default beyond applicable notice and cure periods under any Contractual Obligation of Borrower that would reasonably be expected to have a material adverse effect on the ability of Borrower to perform under the Loan Documents or the rights and remedies of Lender under the Loan Documents;

(iii) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting Mortgage Borrower; and

(iv) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Mortgage Borrower, which could reasonably be expected to have a material adverse effect on Borrower, the ability of Borrower to perform under the Loan Documents or the rights and remedies of Lender under the Loan Documents.

5.1.5 Further Assurances. Borrower shall, at Borrower's sole cost and expense, (a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith; (b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Obligations under the Loan Documents, and to establish, maintain, and perfect Lender's security interest therein free of all other Liens (other than Permitted Encumbrances); and (c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, in each case as Lender shall reasonably require from time to time. Borrower authorizes Lender, at the expense of Borrower, to file any financing statement or statements (and amendments thereto and continuations thereof) deemed necessary or desirable by Lender to perfect its security interest in any of the collateral for the Loan (including an "all assets" financing statement within the meaning the UCC). Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, coupled with an interest and with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the collateral for the Loan, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower is required to do under the

Loan Documents or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for in the Loan Documents and to accomplish the purposes of this Loan Agreement, including any amendment to the Loan Documents which may be required hereunder, in each case upon Borrower's failure to take any of the foregoing actions or any other applicable action required under the Loan Documents within five (5) Business Days after notice from Lender. The foregoing powers of attorney are irrevocable and coupled with an interest.

5.1.6 Estoppel Statements. After request by Lender, Borrower shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt or the performance of the Obligations, if any, (vi) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations of such party and have not been modified or if modified, giving particulars of such modification and such other things as Lender may reasonably request and (vii) such other matters as Lender may reasonably require. Borrower shall use Commercially Reasonable Efforts to deliver to Lender, promptly after Lender's written request, tenant estoppel certificates from each commercial tenant leasing space at the Property in form and substance reasonably satisfactory to Lender, provided, however, that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

ARTICLE VI

INSURANCE; CASUALTY AND CONDEMNATION

SECTION 6.1. Insurance.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Mortgage Borrower and the Property satisfying the requirements of Article VI of the Mortgage Loan Agreement.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy"), and shall be subject to the approval of Lender, not to be unreasonably withheld, conditioned or delayed, as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A" or better by S&P, or "A2" or better by Moody's, or "AX" or better by AM Best (but in such case only to the extent that such Rating Agency rates the applicable insurer). The Policies described in Section 6.1(a) hereof (other than those strictly limited to liability protection) shall designate Lender as mortgagee and loss payee. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender. Complete copies of the Policies shall be submitted to Lender upon request.

(c) Intentionally omitted.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof shall name Borrower as a named insured and, in the case of liability coverages (except for the Policies referenced in Section 6.1(a)(v) and (viii) hereof), shall name Lender as the additional insured, as its interests may appear, and in the case of property coverages, including but not limited to all risk, boiler and machinery, terrorism, and (if applicable) flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All property Policies provided for in Section 6.1 hereof shall: (i) provide that no act or negligence of Borrower, or foreclosure or similar action, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) provide that the Policies shall not be canceled without at least thirty (30) days' notice to Lender, except ten (10) days' notice for non-payment of premium; (iii) provide that the issuers thereof shall give notice to Lender if the Policies have not been renewed ten (10) days prior to its expiration; and (iv) not contain provisions that would make Lender liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, but subject to the prior right of Mortgage Lender under the Mortgage Loan Agreement, to take such action as Lender reasonably deems necessary to protect its interest in the Property and the Collateral, including the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender within ten (10) Business Days after written demand and, until paid, shall be secured by the Pledge Agreement and shall bear interest at the Default Rate. Borrower shall promptly forward to Lender a copy of each written notice received by Borrower of any cancellation of any of the Policies or of any of the coverages afforded under any of the Policies.

SECTION 6.2. Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that such Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty (so long as applicable zoning laws in effect at the time permit such rebuilding), with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 hereof or as otherwise required by zoning codes, building codes, or other applicable laws. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall have the right to approve any final settlement) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than the Net Proceeds Threshold. Borrower shall execute and deliver to Lender all instruments reasonably required by Lender to permit such participation.

SECTION 6.3. Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of any Condemnation of the Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments reasonably requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Furthermore, Borrower shall cooperate with Lender in obtaining for Lender the benefits of any proceeds lawfully or equitably payable in connection with a Condemnation of the Property. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents, and the Outstanding Principal Balance shall not be reduced until any condemnation proceeds shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Condemnation proceeds by the applicable Governmental Authority but shall be entitled to receive out of the Condemnation proceeds interest at the rate or rates provided herein. If the Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly

commence and diligently prosecute Restoration (to the extent such taking resulted in repairable damage) and otherwise comply with the provisions of Section 6.4 herein.

SECTION 6.4. Restoration. All proceeds or awards payable in connection with any Casualty or Condemnation shall be applied in accordance with the Mortgage Loan Agreement. Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with a restoration of the Property after a Casualty or Condemnation, and Lender shall have the same rights (including, without limitation, all approval rights), but subject to the rights of Mortgage Lender under the Mortgage Loan Agreement.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

SECTION 7.1. Events of Default. Each of the following events shall constitute an event of default hereunder (an "Event of Default"):

(a) if (i) any payment of principal or interest due with respect to the Loan is not paid on the Payment Date when due, or (ii) the entire Debt is not paid in full on the Maturity Date, or (iii) any payment required to be made to a Reserve Account under this Agreement is not paid on the Payment Date when due, (iv) the Prepayment Premium is not paid in full when due, or (v) any other monetary sum required to be paid hereunder or under any other Loan Document is not paid within five (5) Business Days after written demand from Lender; provided, that, solely with respect to subclause (i) of this clause (a), no Event of Default shall result from a failure to pay the amounts described in such subclause (i) if (x) sums sufficient to pay such amount are available from funds held by Lender and specifically allocated to the payment of Debt Service, and such failure to pay arises solely from Lender's failure to apply such funds to pay the amount described in subclause (i) if and when required pursuant to the terms of this Agreement (unless Lender's access to such funds is restricted in any manner), or (y) such failure is solely as a result of any Lender's failure to make an Advance (which Advance is required to be made for the payment of the amount described in subclause (i) pursuant to the terms of this Agreement) if and when required to do so hereunder;

(b) if any of the Property Taxes or Other Charges are not paid prior to delinquency (unless same are being contested by Borrower in accordance with the terms and conditions of this Agreement) ; provided, that, no Event of Default shall result from a failure to pay the amounts described in this clause (b) if (x) sums sufficient to pay such amount are available from funds held by Lender and specifically allocated to the payment of Property Taxes and Other Charges, and such failure to pay arises solely from Lender's failure to apply such funds to pay the amount described in this clause (b) if and when required pursuant to the terms of this Agreement (unless Lender's access to such funds is restricted in any manner), or (y) such failure is solely as a result of any Lender's failure to make an Advance (which Advance is required to be made for the payment of the amount described in this clause (b) pursuant to the terms of this Agreement) if and when required to do so hereunder;

(c) if the Policies are not kept in full force and effect pursuant to the terms hereof, or if certified copies of the Policies are not delivered to Lender within thirty (30) days after Lender's request therefor;

(d) the occurrence of a Transfer (other than a Permitted Transfer in accordance with this Agreement); provided, however, (i) the existence of inchoate mechanics liens imposed by operation of law relating to labor or materials provided to the Property in compliance with the terms and conditions of the Loan Documents and as to which no enforcement, collection, execution, levy or foreclosure proceeding

shall have been commenced shall not constitute an Event of Default hereunder, and (ii) the existence of an actual Lien relating to labor or materials provided to the Property in compliance with the terms and conditions of the Loan Documents shall not constitute an Event of Default hereunder so long as the same is being contested and/or has been bonded over as provided in Section 5.1.2(b) hereof within thirty (30) days after Borrower acquires actual knowledge of the filing or recording of such Lien (but in any event not later than five (5) Business Days after the commencement of an action to foreclose on such Lien);

(e) if (i) any representation or warranty made by Borrower herein or by Borrower or Guarantor in any other Loan Document as of the date such representation or warranty was made or is deemed to have been remade is, or (ii) any financial statement, report, certificate or other instrument, agreement or document furnished to Lender by or on behalf of Borrower or Guarantor after the Closing Date shall have been (or contained statements or information that is), false or misleading in any material respect as of the date the same was delivered, unless with respect to the foregoing misrepresentations or false or misleading information (each, a "Misrepresentation") (A) such Misrepresentation was not knowingly or intentionally made, (B) Lender has suffered no material Loss on account thereof (or Borrower shall have reimbursed Lender for the amount of such Loss so demanded by Lender) nor has the same resulted in a Material Adverse Effect, (C) such Misrepresentation can be cured (meaning that the facts and circumstances underlying the applicable Misrepresentation can be changed such that the applicable representation or information as made or delivered will be true and correct), and (D) such Misrepresentation has been so cured within thirty (30) days after the earlier of (1) the date on which Borrower first has actual knowledge that such Misrepresentation exists, and (2) the date on which Lender first notifies Borrower that such Misrepresentation exists);

(f) if a Bankruptcy Action occurs with respect to Borrower, any SPE Component Entity, or Guarantor; provided, however, if Bankruptcy Action was involuntary and not consented to by such Person, the same shall constitute an Event of Default hereunder only upon the same not being discharged, stayed or dismissed within sixty (60) days;

(g) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(h) if Borrower breaches any of the covenants set forth in Section 5.1.1(b), (d), (e), (g), (h) or (i), Section 5.1.2(f), (g), (h), (i), (j), (n), (o), (u) or (v), Section 5.1.3 or Section 5.1.4;

(i) if Borrower breaches any of its covenants contained in Section 5.1.1(f) hereof and such breach continues for a period of ten (10) days following Lender's notice to Borrower of the same;

(j) if one or more judgments or decrees shall be entered against (i) Borrower, or (ii) Guarantor (individually or collectively) involving, in the case of clause (ii) only, in the aggregate a liability in excess of $2,500,000 and, in either case, the same shall not have been vacated, bonded, satisfied or stayed pending appeal within thirty (30) days from the date of entry of such judgment (or within thirty (30) days after the termination of any stay thereon obtained within such aforementioned thirty (30) day period);

(k) if Guarantor breaches the Financial Covenant Requirements or fails to pay any amounts due and payable under the Environmental Indemnity or any of the Guarantees and such failure remains uncured for ten (10) Business Days;

(l) if (A) Borrower shall be in default under any REA, any Construction Document or any Material Agreement beyond the expiration of applicable notice and grace periods, if any, thereunder, (B) any of the REAs, Construction Documents or Material Agreements are amended, supplemented, replaced, restated or otherwise modified without Lender's prior written consent or (C) any REA or the

estate created thereunder is canceled, rejected, terminated, surrendered or expires pursuant to its terms, unless in such case Borrower enters into a replacement thereof in accordance with the applicable terms and provisions hereof;

(m) Borrower fails to terminate any applicable Management Agreement if requested by Lender (when Lender has the right to so require a termination of the Management Agreement pursuant to this Agreement) and replace such Manager with a Qualified Manager pursuant to a Replacement Management Agreement within thirty (30) days after Lender's request therefor;

(n) if the General Contractor Agreement is terminated and a new General Contractor is not appointed as a replacement General Contractor pursuant to the provisions hereof within thirty (30) days after such termination;

(o) the occurrence of any Milestone Non-Compliance Event;

(p) if Borrower shall fail to obtain and/or maintain the Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement as required pursuant to Section 2.2.7 hereof (after giving effect to applicable notice and grace periods set forth in Section 2.2.7);

(q) if there shall exist an "Event of Default" under and as defined in any other Loan Document, or with respect to any term, covenant or provision set forth in the Loan Documents which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(r) a breach of the covenants set forth in Section 5.1.3(m);

(s) if Borrower or SPE Component Entity incurs any Indebtedness other than Permitted Indebtedness;

(t) the occurrence of any Mortgage Loan Event of Default; or

(u) if a Default not specified in the clauses enumerated above continues to exist for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower or Guarantor (as applicable) shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

SECTION 7.2. Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 7.1(f) above), in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property and the Collateral, including declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower, the Collateral and the Property, including all rights or remedies available at law or in equity and all rights and remedies of a secured party under the UCC; and upon the occurrence and

during the continuance of any Event of Default described in Section 7.1(f) above, the Debt shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

(b) During the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing, to the extent allowed by applicable laws, (i) Lender shall not be subject to any "one action" or "election of remedies" law or rule, (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Collateral and the Lien created by the Pledge Agreement has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full, and (iii) Lender may, in its sole discretion, without impairing or otherwise affecting any other rights and remedies of Lender hereunder, at law or in equity, apply, ex parte, for the appointment of a custodian, trustee, receiver, keeper, liquidator or conservator of the Property or any part thereof or the Collateral or any part thereof, irrespective of the adequacy of the security for the Debt and without regard to the solvency of Borrower or of any Person liable for the payment of the Debt, to which appointment Borrower does hereby consent and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Revenues with respect to the Property or the Collateral pursuant to this Agreement or any other Loan Document.

(c) During the continuance of an Event of Default, Lender shall have the right from time to time to sever the Notes and the other Loan Documents into one or more separate notes, mortgages and other security documents in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. The costs or expenses incurred in connection with the preparation, execution, recording or filing of the foregoing Loan Documents (and amendments thereto) shall be paid by Borrower.

(d) With respect to Borrower, Mortgage Borrower, the Collateral and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property and/or the Collateral for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property or any part thereof or the Collateral or any part thereof, in its absolute discretion in respect of the Debt. Except as limited by applicable law, Lender shall have the

right from time to time to partially foreclose the Pledge Agreement in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Pledge Agreement to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Debt, Lender may foreclose the Pledge Agreement to recover so much of the Debt as Lender may accelerate and such other sums secured by the Pledge Agreement as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement to secure payment of sums secured by the Pledge Agreement and not previously recovered.

(e) In addition to all remedies conferred it by law and by the terms of this Agreement and the other Loan Documents, during the continuance of an Event of Default Lender may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other, and with full rights to reimbursement from Borrower and any Guarantor: (i) take possession of the Collateral and complete any construction work at the Property, including the right to avail itself of and procure performance of existing contracts or let any contracts with the same contractors or others and to employ watchmen to protect the Property from injury. Without restricting the generality of the foregoing and for the purposes aforesaid to be exercised during the existence and continuance of an Event of Default, Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution to complete any construction work at the Property in the name of Borrower; (ii) use Reserve Funds to complete any construction work at the Property; (iii) make changes to the plans and specifications which shall be necessary or desirable to complete any construction work at the Property in substantially the manner contemplated by such plans and specifications; (iv) retain or employ new general contractors, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which may be liens or security interests, or to avoid such bills and claims becoming liens against the Property or the Collateral, or as may be necessary or desirable for the completion of any construction work at the Property or for the clearance of title to the Property or the Collateral; (v) execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) prosecute and defend all actions or proceedings in connection with any construction work at the Property; and (vii) take any action and require such performance as it deems necessary to be furnished hereunder and to make settlements and compromises with the surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction.

(f) Any amounts recovered from the Property, the Collateral or any other collateral for the Loan after an Event of Default may be applied by Lender toward the payment of the Debt in such order, priority and proportions as Lender determines.

(g) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower or Guarantor pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion.

(h) During the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or under the other Loan Documents or being deemed to have cured any Event of Default, make, do or perform any obligation of Borrower hereunder or under the other Loan Documents in such manner and to such extent as Lender may deem necessary (including, without limitation, curing any default under or breach of the Management Agreement, regardless of whether a Default or Event of Default exists hereunder. Lender is authorized to enter upon the Property for such purposes, or appear in, defend,

or bring any action or proceeding to protect its interest in the Property and the Collateral for such purposes. All out-of-pocket costs and expenses incurred by Lender in remedying or attempting to remedy such Event of Default or such other breach or default by Borrower or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate from the date such costs and expenses were incurred to the date reimbursement payment is received by Lender. All such costs and expenses incurred by Lender, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Obligations, shall be secured by the liens and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

(i) Upon the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; provided, however, that such Event of Default shall cease to continue only if Lender shall accept payment or performance of the defaulted obligation or shall execute and deliver a written confirmation that such Event of Default has ceased to continue. Lender shall not be obligated under any circumstances whatsoever to accept such payment or performance or execute and deliver any such writing. Without limitation, this Section shall govern in any case where reference is made in this Loan Agreement or elsewhere in the Loan Documents to (i) any "cure" (whether by use of such word or otherwise) of any Event of Default, (ii) "during an Event of Default," "the continuance of an Event of Default" or "after an Event of Default has ceased" (in each case, whether by use of such words or otherwise), or (iii) any condition or event which continues beyond the time when the same becomes an Event of Default.

ARTICLE VIII

LIMITATION ON RECOURSE

SECTION 8.1. Exculpation. Subject to the qualifications set forth in this Article VIII, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Notes, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, or its direct or indirect owners (other than pursuant to any separate agreement, indemnity or guaranty, including pursuant to the Guarantees and the Environmental Indemnity), except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Property, the Revenues, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment awarded in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Revenues and in any other collateral given to Lender, and Lender, by accepting the Notes, this Agreement, the Pledge Agreement and the other Loan Documents, and without limitation of the foregoing and in addition thereto, agrees for itself and its successors and assigns that it and its successors and assigns shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Notes, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section 8.1 shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of any separate agreement, indemnity or guaranty (including the Guarantees and the Environmental Indemnity), or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; or (f) constitute a prohibition against Lender seeking a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or commencing any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property.

SECTION 8.2. Recourse for Losses. Nothing contained in this Agreement or any of the other Loan Documents shall in any manner or way release, affect or impair the right of Lender to recover, and Borrower shall be fully and personally liable for and subject to legal action to the extent of, any Losses actually suffered or incurred by Lender to the extent arising out of or in connection with the following (all such liability and obligation for any or all of the following being referred to herein as the "Recourse Liabilities"):

(i) fraud, intentional misrepresentation, or intentional failure to disclose a material fact concerning the Property, the Collateral, Borrower, Mortgage Borrower, Guarantor, or the Loan by any of the Borrower Parties;

(ii) the gross negligence, willful misconduct, or illegal acts of any of the Borrower Parties;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Loan Documents concerning environmental laws or hazardous substances, or any indemnification of Lender and other applicable indemnified parties with respect thereto, in any of the Loan Documents;

(iv) intentional physical waste of the Property by any Borrower Party or any Person at the direction of any of the foregoing;

(v) the removal or disposal of any portion of the Property after an Event of Default;

(vi) the misappropriation, conversion, or application in a manner prohibited by the Loan Documents by or on behalf of any Borrower Party of (A) any Net Proceeds, (B) any funds disbursed from the Reserves, (C) the Initial Advance or any Additional Advances, or (D) any Revenues received after an Event of Default, or (E) any Revenues paid more than one (1) month in advance;

(vii) failure to pay charges for labor or materials or other charges that create a Lien on any portion of the Property or the Collateral;

(viii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Mortgage Lender upon a foreclosure of the Property or action in lieu thereof or to Lender upon a foreclosure of the Collateral or action in lieu thereof (subject to the prior right of Mortgage Lender under the Mortgage Loan Documents), except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof and permitted hereunder;

(ix) failure of Borrower to purchase and maintain any Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement as required pursuant to this Agreement (including amounts payable by Borrower pursuant to Section 2.2.7, it being agreed that Lender shall have no obligation to purchase an Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement on behalf of Borrower, and that Lender's Losses on account of Borrower's failure to purchase an Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement are not limited to

the cost of such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Substitute Interest Rate Cap Agreement at the time the same was required to be purchased);

(x) Borrower's or Mortgage Borrower's failure to obtain and maintain the fully paid for Policies in accordance with Section 6.1 hereof and Section 6.1 of the Mortgage Loan Agreement attributable to the time that Mortgage Borrower owns the Property;

(xi) Borrower's or Mortgage Borrower's failure to pay all Property Taxes attributable to the time that Mortgage Borrower owns the Property prior to the same becoming delinquent;

(xii) the failure of Borrower, Mortgage Borrower, any SPE Component Entity or any Mortgage Borrower SPE Component Entity to be a Special Purpose Entity;

(xiii) any liability under the WARN Act or any other applicable similar law that arises as a result of the termination of any of the employees at the Property, provided that Borrower shall in no event be liable under this clause 8.2(xiii) to the extent the termination of employees was made by or at the direction of Lender;

(xiv) the forfeiture by any Borrower Party of the Property or any material portion thereof, caused by or resulting from criminal conduct or activity by Borrower or any Borrower Party in connection therewith;

(xv) any transfer, mortgage, mortgage recording, stamp, intangible or other similar Taxes for which Lender becomes obligated, directly or indirectly, following a foreclosure of the Property or the Collateral or action in lieu thereof;

(xvi) any Withdrawal Liability or similar amounts incurred by Borrower or Mortgage Borrower or any Affiliate of Borrower or Mortgage Borrower for which Lender becomes obligated, directly or indirectly, upon the conclusion of a foreclosure of the Property or the Collateral or action in lieu thereof;

(xvii) any distributions made by any Borrower Party in violation of the terms of the Loan Documents;

(xviii) intentionally omitted;

(xix) the failure of Borrower to comply with any provisions of Section 5.1.1(f) hereof or the failure of Mortgage Borrower to comply with any provisions of Section 5.1.1(f) of the Mortgage Loan Agreement;

(xx) the failure of Borrower to comply with any provisions of Section 5.1.2(j) the failure of Mortgage Borrower to comply with any provisions of Section 5.1.2(j) of the Mortgage Loan Agreement;

(xxi) incurrence by Borrower, Mortgage Borrower, SPE Component Entity or Mortgage Borrower SPE Component Entity of any Indebtedness in violation of this Agreement;

(xxii) the failure of the Property at any time to be in compliance with Legal Requirements as a result of any deficiency in parking available to the Property;

(xxiii) the failure of Borrower or Mortgage Borrower at any time to have renewed, extended or replaced the PLL Policy in order to cause the PLL Policy at all times to satisfy the requirements of Section 6.1(a)(ix) of the Mortgage Loan Agreement; and/or

(xxiv) (A) any obligation of Mortgage Borrower to indemnify any Person that, immediately prior to any acquisition of title to the Collateral pursuant to a UCC foreclosure sale, a UCC strict foreclosure, an assignment in lieu of foreclosure or other enforcement action under the Loan Documents (collectively, an "Equity Collateral Enforcement Action"; and the date on which an Equity Collateral Enforcement Action is consummated, an "Equity Collateral Transfer Date"), was an Affiliate of Mortgage Borrower, to the extent such obligation continues to be the obligation of the transferee at or after such Equity Collateral Enforcement Action and (B) any obligation of Mortgage Borrower accruing prior to, on or after the Equity Collateral Transfer Date to pay (1) legal fees to counsel engaged by of Mortgage Borrower prior to the Equity Collateral Transfer Date, (2) amounts due under any contract between Mortgage Borrower, on the one hand, and any of Mortgage Borrower, Guarantor or any affiliate of any of them, on the other hand (unless such contract is assumed in writing by the Person acquiring the Collateral on or after the Equity Collateral Transfer Date), or (3) amounts due under any contract between any of Mortgage Borrower, Guarantor or any affiliate of any of them, on the one hand, and any Person not affiliated with any of Mortgage Borrower, Guarantor or any affiliate of any of them, on the other hand, that has been entered into without the prior written approval of Lender to the extent such prior written approval was required under the Loan Documents (unless such contract is assumed in writing by the Person acquiring the Collateral on or after the Equity Collateral Transfer Date).

SECTION 8.3. Full Recourse. Notwithstanding anything to the contrary in this Agreement, the Notes or any of the Loan Documents, (a) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by the Pledge Agreement or to require that all collateral shall continue to secure all of the Obligations in accordance with the Loan Documents; and (b) the Debt shall be fully recourse to Borrower in the event of any of the following (each, a "Springing Recourse Event"):

(i) Borrower, Mortgage Borrower, Guarantor, SPE Component Entity or Mortgage Borrower SPE Component Entity filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(ii) the filing of an involuntary petition against Borrower, Mortgage Borrower, Guarantor, SPE Component Entity or Mortgage Borrower SPE Component Entity under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by a Borrower Party or any other Person in which any of the Borrower Parties colludes with or otherwise assists such Person;

(iii) any Borrower Party soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Mortgage Borrower, Guarantor, SPE Component Entity or Mortgage Borrower SPE Component Entity from any Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(iv) Borrower, Mortgage Borrower, Guarantor, SPE Component Entity, Mortgage Borrower SPE Component Entity, or any of the other Borrower Parties consenting to, acquiescing in, or joining in any involuntary petition filed against Borrower, Guarantor or SPE Component Entity, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(v) Borrower, Mortgage Borrower, Guarantor, SPE Component Entity, Mortgage Borrower SPE Component Entity or any of the other Borrower Parties consenting to, acquiescing in, or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Guarantor, SPE Component Entity, Mortgage Borrower SPE Component Entity or all or any portion of the Property (other than an application by Lender, or in the case of Mortgage Borrower or Mortgage Borrower SPE Component Entity, Mortgage Lender, in connection with the enforcement of Lender's or Mortgage Lender's, as the case may be, remedies under the Loan Documents or the Mortgage Loan Documents, respectively);

(vi) Borrower, Mortgage Borrower, Guarantor, SPE Component Entity or Mortgage Borrower SPE Component Entity making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(vii) the failure of Borrower, Mortgage Borrower, Guarantor, SPE Component Entity or Mortgage Borrower SPE Component Entity to be a Special Purpose Entity, and such failure is cited as a factor in any order for substantive consolidation of Borrower, Mortgage Borrower, Guarantor, SPE Component Entity or Mortgage Borrower SPE Component Entity with any other Person;

(viii) the occurrence of a Transfer of the Property or Equity Interest in any Restricted Party made in violation of this Agreement;

(ix) if any Borrower Party, in any judicial or quasi-judicial case, action or proceeding contests (or any Borrower Party colludes with or otherwise assists any other Person, or solicits or causes to be solicited any other Person to contest) the validity or enforceability of the Loan Documents or contests or intentionally hinders, delays or obstructs (or any Borrower Party colludes with or otherwise assists any other Person, or solicits or causes to be solicited any other Person to contest, hinder, delay or obstruct) the pursuit of any rights or remedies by Lender (including the commencement and/or prosecution of a foreclosure action, judicial or non-judicial, the appointment of a receiver for the Property or any portion thereof or the Collateral or any portion thereof or any enforcement of the terms of the assignment of Leases pursuant to the Security Instrument), unless a court of competent jurisdiction finds that such actions by any such Borrower Party were undertaken in good faith, and were not based on a frivolous or meritless position;

(x) if any Borrower Party shall make a counterclaim against Lender, Servicer or their Affiliates in violation of Section 10.15 hereof;

(xi) Borrower entering into any amendment or termination of the Master Lease in violation of this Agreement;

(xii) the failure of Borrower to comply with any provisions of Section 5.1.4(i) hereof;

(xiii) Borrower or any Affiliate thereof acquires all or any portion of any interest in the Mortgage Loan; and/or

(xiv) any of Borrower or Guarantor or any Affiliate of Borrower or Guarantor causes Borrower or Mortgage Borrower to amend or otherwise modify their respective organizational documents in order to amend or repeal the applicable election to be governed by Article 8 of the UCC, or any termination or cancellation of the limited liability company membership certificate evidencing Borrower's one hundred percent (100%) ownership interest in Mortgage Borrower, as delivered to Lender on the Closing Date in connection with the Loan Documents.

ARTICLE IX

SECONDARY MARKET TRANSACTIONS; SERVICING

SECTION 9.1. Secondary Market Transactions. Borrower acknowledges and agrees that Lender may (a) sell all or any portion of the Loan and the Loan Documents, including, in each case, via a CUSIP, and/or (b) grant or issue one or more participations therein (any such sales, transfers, and/or participations described in the foregoing clauses, collectively, a "Secondary Market Transaction"). If Lender determines at any time to participate in a Secondary Market Transaction, Lender may forward to each actual or potential purchaser, transferee, assignee, servicer, participant or investor in the Loan, counsel, and accountants, all documents and information which Lender now has or may hereafter acquire relating to the Loan, Borrower, Mortgage Borrower, Guarantor, and any direct or indirect equity owner of Borrower, which shall have been furnished to Lender in connection with the Loan, as Lender in its discretion determines necessary or desirable.

SECTION 9.2. Borrower Cooperation.

(a) In connection with any Secondary Market Transaction, Borrower shall execute and deliver to Lender such documents, instruments, certificates, financial statements, assignments and other writings, do such other acts and provide such information, and participate in such meetings and discussions, in each case that are reasonably necessary to facilitate the consummation of each Secondary Market Transaction, including executing and delivering such documents and agreements (and deliver such opinions of counsel with respect thereto as Lender may require) necessary to (i) restructure the Loan into multiple notes (which may include component notes and/or senior and junior notes) and/or reduce the number of notes, and/or (ii) restructure the Loan into a mortgage loan and one or more mezzanine loans (to be made to one or more Special Purpose Entities that will be the direct and/or indirect owners of the Equity Interests in Borrower, and secured by a pledge of such Equity Interests, in each case including that such notes and/or mezzanine loans, and/or (iii) establish different interest rates with respect to, and reallocate the amortization and principal balances applicable to, each note or tranche of the Loan, and/or (iv) assign to each such note or tranche or of each of the restructured Loan (collectively, "Tranches") such order of priority as may be designated by Lender, and/or (v) modify any operative dates within the Loan Documents (including the Payment Date, the Determination Date, and the Interest Accrual Period); provided, however, that (A) the aggregate principal amount of all such Tranches as of their date of creation shall equal the Outstanding Principal Balance immediately prior to their creation, (B) the weighted average interest rate of all such Tranches shall on the date created equal the interest rate that was applicable to the Loan immediately prior to the creation of such Tranches, (C) the debt service payments on all such Tranches shall on the date they are created equal the debt service payment that was due under the Loan immediately prior to the creation of such Tranches, (D) no such amendment to the Loan Documents shall decrease in any material manner the rights of Borrower or Guarantor under the Loan Documents, or result in any additional material liability or material obligation to Borrower or Guarantor under the Loan Documents (except to the extent related to

having different interest rates apply to the Tranches upon partial paydown thereof following the occurrence of an Event of Default, or the extent related to having separate mortgage and mezzanine loans), and (E) no such amendment described in clause (v) above shall be effective sooner than thirty (30) days after notice thereof from Lender, nor shall it cause the Maturity Date to be an earlier date). In connection with the creation of any mezzanine loan as described above, Borrower shall cause the formation of one or more Special Purpose Entities as required by Lender in order to serve as the borrower under any such mezzanine loan (and the applicable organizational documents of Borrower and such new entity shall be acceptable to Lender in form and content), and Borrower shall deliver to Lender a "UCC-9" insurance policy and a mezzanine endorsement to the owner's policy of title insurance held by Borrower, and such opinions of legal counsel as lender may reasonably require. If Borrower fails to cooperate with Lender within ten (10) Business Days of written request by Lender, Lender is hereby appointed as Borrower's attorney in fact, coupled with an interest, to execute any and all documents necessary to accomplish such modifications (but in any event the Loan Documents shall be deemed to have been modified to incorporate any such modifications as Lender may so notify Borrower of in writing) and at Lender's option, declare such failure to be an Event of Default.

(b) At the request of Lender, Borrower shall provide information regarding Borrower, Mortgage Borrower, Guarantor, the Collateral or the Property which is not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors or required by applicable Legal Requirements in connection with any such Secondary Market Transaction, including to: (i) provide additional and/or updated information concerning Borrower, any SPE Component Entity, Mortgage Borrower, any Mortgage Borrower SPE Entity, Guarantor, Manager, the Collateral, or the Property, together with appropriate verification and/or consents related to such information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender; (ii) assist in preparing descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, any SPE Component Entity, Mortgage Borrower and any Mortgage Borrower SPE Entity and their respective Affiliates to obtain, collect, and deliver information requested or required by Lender; (iii) deliver (1) new or updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Property, the Collateral, Borrower, any SPE Component Entity, Mortgage Borrower, any Mortgage Borrower SPE Entity, Guarantor and their respective Affiliates, and the Loan Documents (including a so-called "10b-5" opinion), and (2) revised organizational documents for Borrower, any SPE Component Entity, Mortgage Borrower and any Mortgage Borrower SPE Entity and certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower, any SPE Component Entity, Mortgage Borrower and any Mortgage Borrower SPE Entity as of the date of the Secondary Market Transaction, which counsel opinions and revisions to organizational documents shall be reasonably satisfactory to Lender; (iv) use Commercially Reasonable Efforts to deliver such additional tenant estoppel letters and subordination, non-disturbance and attornment agreements or, if applicable, estoppels from parties to agreements that affect the Property and who are required to provide the same, which estoppel letters and subordination non-disturbance and attornment agreements shall be reasonably satisfactory to Lender; (v) make such representations and warranties as of the closing date of the Secondary Market Transaction with respect to the Property, the Collateral, Borrower, any SPE Component Entity, Mortgage Borrower, any Mortgage Borrower SPE Entity, Guarantor and the Loan Documents as may be reasonably requested by Lender and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents; (vi) if requested by Lender, review and certify as to the accuracy of any information regarding the Property, the Collateral, Borrower, any SPE Component Entity, Mortgage Borrower, any Mortgage Borrower SPE Entity, Guarantor, Manager, and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any Affiliate thereof; and (vii) supply to

Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws and other Legal Requirements.

SECTION 9.3. Disclosure Indemnification. Borrower and Guarantor agree to provide, in connection with any sale or participation of any direct or indirect interest in the Loan, an indemnification agreement (a) certifying that (i) Borrower and Guarantor have carefully examined all written materials provided to Borrower by Lender (to the extent such information relates to, or is based on, or includes any information regarding the Property, the Collateral, Borrower, Mortgage Borrower, Master Tenant, Guarantor, Manager and/or the Loan) and (ii) such written materials do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (b) jointly and severally indemnifying Lender, and each of its officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Indemnified Persons"), for any losses, claims, damages, liabilities, costs or expenses (including without limitation legal fees and expenses for enforcement of these obligations (collectively, the "Liabilities") to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the written materials provided to Borrower by Lender or arise out of or are based upon the omission or alleged omission to state in such written materials a material fact required to be stated therein or necessary in order to make the statements in such written materials, in light of the circumstances under which they were made, not misleading and (c) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (b) and (c) above shall be effective, valid and binding obligations of the indemnifying Persons, whether or not an indemnification agreement described in clause (a) above is provided.

SECTION 9.4. Costs and Expenses. Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, Borrower shall not be required to pay for any costs and expenses of Lender pursuant to this Article IX following the Closing Date in excess of $75,000 in the aggregate; provided, that, (a) such cap shall not apply to any legal fees or other costs or expenses (i) of Borrower or (ii) that are incurred in connection with any opinion of counsel that Lender requires to be delivered in connection with a Secondary Market Transaction, and (b) such cap shall be reduced by the amount of any costs and expenses that Mortgage Borrower actually pays to Mortgage Lender pursuant to Article IX of the Mortgage Loan Agreement.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations (other than contingent indemnification obligations which expressly survive the repayment of the Debt) are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

SECTION 10.2. **Lender's Discretion**. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or to make any election, waiver, or request, or to make any determination, or find that any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove, or to make such election, waiver, request, or determination, decision, or finding shall (except as is otherwise specifically herein provided) be in the sole and absolute discretion of Lender and shall be final and conclusive. Whenever pursuant to this Agreement, Lender exercises any right given to it to reasonably approve or disapprove, or to make any election, waiver, or request, or to make any determination reasonably, or find that any arrangement or term is to be reasonably satisfactory to Lender, during the continuance of an Event of Default, the decision of Lender to approve or disapprove, or to make such election, waiver, request, or determination, decision, or finding shall (except as is otherwise specifically herein provided) be in the sole and absolute discretion of Lender and shall be final and conclusive.

SECTION 10.3. Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW)) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER **LOAN DOCUMENTS MAY AT LENDER'S OPTION** BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

DELANEY CORPORATE SERVICES, LTD.
99 WASHINGTON AVENUE, SUITE 805A
ALBANY, NEW YORK, 12210

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SECTION 10.4. Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by each of the parties hereto, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

SECTION 10.5. Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or under any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount. A waiver of one Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power consequent thereon.

SECTION 10.6. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery (with a copy of any notice delivered by the methods described in clause (a) or clause (b) to be sent by electronic mail), addressed as follows (or at such other address and Person as shall

be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender:	OPG Hermes Investments (DE) LLC c/o Oxford Properties Group 450 Park Avenue 10th Floor New York, New York 10022 Attention: Legal Counsel
with a copy to:	Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004 Attention: Michael Vines, Esq.
If to Borrower:	Complex Therapeutics Mezzanine LLC c/o Instil Bio, Inc. 3963 Maple Avenue, Suite 350 Dallas, Texas 75219 Attention: Sandeep Laumas
With a copy to:	Cooley LLP 4401 Eastgate Mall San Diego, California 92121-1909 Attention: David Crawford, Esq.

A notice shall be deemed to have been given: (i) in the case of hand delivery or delivery by a reputable overnight courier, at the time of delivery; (ii) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (iii) or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept notice, shall be deemed to have been given when the delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its counsel and any notice required or permitted to be given by Lender hereunder or under any other Loan Document may also be given by a Servicer.

SECTION 10.7. Trial by Jury. BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER AND BORROWER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.

SECTION 10.8. Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

SECTION 10.9. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

SECTION 10.10. Preferences. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the Debt. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

SECTION 10.11. Waiver of Notice. Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

SECTION 10.12. Remedies of Borrower. In the event that a claim or adjudication is made (except any claim or adjudication arising out of any exercise of remedies by Lender) that Lender or any of its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

SECTION 10.13. Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender, within ten (10) Business Days following receipt of written notice from Lender for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property or the Collateral); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents

on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement and the other Loan Documents; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Guarantor, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any Obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or the Collateral or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the illegal acts, gross negligence, bad faith or willful misconduct of Lender.

(b) Borrower shall indemnify, defend and hold harmless Lender, each Servicer, their respective Affiliates, and their respective directors, managers, officers, partners, members, shareholders, participants, employees, professionals and agents of any of the foregoing, and the successors and assigns of the foregoing (each, an "Indemnified Party"), from and against any and all Losses that may be imposed on, incurred by, or asserted against an Indemnified Party in any manner relating to or arising out of (i) any Defaults or Events of Default under the Loan and/or in connection with the enforcement of the Loan Documents, (ii) any breach by Borrower of its Obligations under, or any misrepresentation by any Borrower Party contained in the Loan Documents, (iii) the use or intended use of the proceeds of the Loan, (iv) costs incurred by Lender in connection with any amendment to, or restructuring of, the Debt or the Loan Documents, (v) any accident, injury to, or death of, Persons or loss of or damage to the Property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or rights of way, (vi) any use, non-use or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or rights of way, (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (viii) any failure of the Property to be in compliance with any Legal Requirements, (ix) any and all claims and demands whatsoever which may be asserted against an Indemnified Party by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease or other agreement relating to the Property, (x) any and all Losses that Lender may incur, directly or indirectly, as a result of a breach of Sections 4.1.1(g) or 5.1.1(c) hereof by Borrower, and (xi) all Recourse Liabilities; provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that the applicable indemnified liabilities arise from the illegal acts, gross negligence, bad faith or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all such indemnified liabilities incurred by Lender.

(c) Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or in addition to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such

legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld or delayed. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(d) The indemnifications made pursuant to this Section 10.13 shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: (i) any satisfaction, release or other termination of this Agreement, the Pledge Agreement or any other Loan Document, (ii) any assignment or other transfer of all or any portion of this Agreement, the Pledge Agreement or any other Loan Document or Lender's interest in the Collateral (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (iii) any exercise of Lender's rights and remedies pursuant hereto, under the Pledge Agreement or under any other Loan Document, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, (iv) any exercise of any rights and remedies pursuant to this Agreement, the Note or any of the other Loan Documents, (v) any transfer of all or any portion of the Collateral (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (vi) any amendment to this Agreement, the Pledge Agreement, the Note or any other Loan Documents, and/or (vii) any act or omission that might otherwise be construed as a release or discharge of Borrower from the Obligations or any portion thereof.

SECTION 10.14. Schedules Incorporated. The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

SECTION 10.15. Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower. Borrower hereby waives the right to assert (and agrees not to assert) a counterclaim of any nature, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents or otherwise to offset any Obligations. No failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Loan Documents.

SECTION 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries. Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Collateral other than that of secured party or lender. This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan (or any disbursement of Reserve Funds) in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of

which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

SECTION 10.17. Publicity. All news releases, publicity or advertising by Borrower or their Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or to any of its Affiliates shall be subject to the prior approval of Lender, not to be unreasonably withheld, conditioned or delayed. The foregoing shall not be deemed to prohibit Guarantor from making disclosures of the Loan Documents and terms thereof as required by applicable public company disclosure laws.

SECTION 10.18. Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Collateral, or to a sale in inverse order of alienation in the event of foreclosure of the Pledge Agreement, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Collateral for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Collateral in preference to every other claimant whatsoever.

SECTION 10.19. Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments that may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

SECTION 10.20. Brokers and Financial Advisors. Borrower hereby represents that , except for CBRE, the fees of which shall be paid solely by Borrower, it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower shall indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted directly or indirectly, by or on behalf of Guarantor, Borrower or any Affiliate thereof or was retained directly or indirectly, by or on behalf of Guarantor, Borrower or any Affiliate thereof in connection with the transactions contemplated herein. The provisions of this Section 10.20 shall survive the expiration and termination of this Agreement and the payment of the Debt.

SECTION 10.21. Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including that

certain Construction Loan Term Sheet, dated March 20, 2022, executed by Instil Bio, Inc., are superseded by the terms of this Agreement and the other Loan Documents.

SECTION 10.22. Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

SECTION 10.23. Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, Lender shall have: (a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower and Mortgage Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice; (b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower and Mortgage Borrower at any reasonable times upon reasonable notice; (c) the right, in accordance with the terms of this Agreement, including Section 5.1.1(f) hereof, to receive monthly, quarterly and year-end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding Indebtedness; and (d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower and/or Mortgage Borrower of any other significant property (other than personal property required for the day to day operation of the Property). The rights described above in this Section 10.22 may be exercised by any entity which owns and Controls, directly or indirectly, substantially all of the interests in Lender.

SECTION 10.24. Duplicate Originals, Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original and all of which together shall constitute a single agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall relieve the other signatories from their obligations hereunder.

SECTION 10.25. Prepayment Charges. Borrower acknowledges that (a) Lender is making the Loan in consideration of the receipt by Lender of all interest and other benefits intended to be conferred by the Loan Documents that is not prepayable except as provided in Section 2.4, and (b) if payments of principal are made to Lender prior to the regularly scheduled due date for such payment, for any reason whatsoever, whether voluntary, as a result of Lender's acceleration of the Loan after an Event of Default, by operation of law or otherwise, Lender will not receive all such interest and other benefits and may, in addition, incur costs and expenses. For these reasons, and to induce Lender to make the Loan, Borrower expressly waives any right or privilege to prepay the Loan except as otherwise may be specifically permitted herein and agrees that, except for any prepayment that is expressly permitted to be made pursuant to this Agreement without the payment of the Prepayment Premium (as applicable), all prepayments, if any, whether voluntary or involuntary, will be accompanied by the Prepayment Premium (as applicable), which shall constitute additional interest. Such Prepayment Premium (as applicable) shall be required whether payment is made by Borrower, by a Person on behalf of Borrower, or by the purchaser at any foreclosure sale, and may be included in any bid by Lender at such sale. Borrower further acknowledges that (i) it is a knowledgeable real estate developer or investor, (ii) it fully understands the effect of the provisions of this Section 10.24, as well as the other provisions of this Agreement and the other Loan Documents, (iii) the making of the Loan by Lender at the Interest Rate and other terms set forth in the Loan Documents are sufficient consideration for Borrower's obligation to pay the Prepayment Premium (as applicable), and (iv) Lender would not make the Loan on the terms set forth herein without the inclusion of such provisions. Borrower also acknowledges that the provisions of this Agreement limiting the right of prepayment and providing for the payment of the Prepayment Premium (as applicable) and other charges specified herein

were independently negotiated and bargained for and constitute a specific material part of the consideration given by Borrower to Lender for the making of the Loan except as expressly permitted hereunder.

SECTION 10.26. Registrar. Borrower (or its duly authorized agent; Borrower hereby appointing Lender as its agent for such purpose; provided that if Lender uses a Servicer, such Servicer shall act for this purpose as an agent of Borrower) (the "Registrar") shall maintain or cause to be maintained a registry of the ownership of the Note(s) at its principal office. The Registrar shall act solely as an agent of Borrower and shall maintain, subject to such reasonable regulations as it shall provide, such books and records (the "Register") as are necessary for the registration and transfer of the Note in a manner that shall cause the Note(s) to be considered to be in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any other relevant or successor provisions of the Code or such regulations). In connection with the foregoing: (i) the Register shall reflect Lender as the original owner of the Note(s), (ii) the Register shall reflect such subsequent transferees as the Registrar shall receive notice of, by delivery to it of a notice of an assignment of such Note, duly executed by the then current owner thereof, (iii) the Registrar shall record the name and address of each Lender and the amount of principal (and stated interest) owing to each Lender under this Agreement, (iv) Borrower and Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as Lender hereunder for all purposes of this Loan Agreement, notwithstanding notice to the contrary. Failure to make any such recordation, or any error in such recordation, shall not affect Borrower's or Lender's obligations in respect of such Loan. Any Lender that sells a participation under Section 9.1 shall, acting solely for this purpose as an agent of Borrower, maintain or cause to be maintained a registry including the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Failure to make any such recordation, or any error in such recordation, shall not affect Borrower's or Lender's obligations in respect of such Loan. Such Lender shall treat the person in whose name any participation is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes.

SECTION 10.27. Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

(a) Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the respective parties thereto, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(i) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(ii) the effects of any Bail-in Action on any such liability, including, if applicable:

(iii) a reduction in full or in part or cancellation of any such liability;

(A) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent

undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(B) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 10.28. Servicer. At the option of Lender, the Loan may be serviced by a servicer/trustee (the "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement between Lender and Servicer. Borrower shall be responsible for set up fees and other regularly scheduled servicing fees and any other reasonable costs and expenses of the Servicer in connection with the Loan, including (without limitation) any fees and expenses of the Servicer in connection with any requests of Borrower, any prepayment, amendment or modification of the Loan, any special servicing or work-out of the Loan or enforcement of the Loan Documents.

SECTION 10.29. Lead Lender and Co-Lender Provisions.

(a) Lead Lender. Notwithstanding anything to the contrary contained in this Agreement or any of the other Loan Documents, if at any time there is more than one Lender hereunder, each such Lender shall deliver a written notice to Borrower designating one lender or an affiliate thereof as the "Lead Lender" (such Lender, at all times thereafter and until resignation or replacement of such Lender by written notice to Borrower, the "Lead Lender"). Each Lender hereby appoints Lead Lender to serve as non-fiduciary administrative agent and collateral agent for each Lender and hereby agrees that Lead Lender shall be the sole party authorized to grant or withhold consents or approvals hereunder on behalf of the other Lenders (subject, in each case, to appointment of a servicer to receive such notices, requests and other communications and/or to grant or withhold consents or approvals, as the case may be). No Lender shall have any liabilities or responsibilities to Borrower on account of the failure of any other Lender to perform its obligations hereunder or to any Lender on account of the failure of Borrower to perform its obligations hereunder or under any other Loan Document.

(b) Co-Lender Agreement. Borrower hereby acknowledges and agrees that if at any time there is more than one Lender hereunder, such Lenders may enter into one or more agreements (any such agreement as the same may be modified, amended, restated supplemented or replaced from time to time, a "Co-Lender Agreement") governing the relationship between such parties, including, without limitation, the rights of such Lenders and the manner in which such Lenders shall administer the Loan. Any Co-Lender Agreement is intended and will be solely for the benefit of the Lender, and Borrower acknowledges and agrees that neither any Borrower Party nor any other Person shall be a third-party beneficiary (intended or otherwise) of any of the provisions therein, or have any rights thereunder or be entitled to rely on any of the provisions contained therein. Lender shall not have any obligation to provide a copy of any Co-Lender Agreement to any Borrower Party or any Affiliate of any Borrower Party or to disclose to any Borrower Party or any Affiliate of any Borrower Party the contents of any Co-Lender Agreement. Each Borrower Party's obligations under the Loan Documents are and will be independent of any Co-Lender Agreement and shall remain unmodified by the provisions thereof (although Borrower acknowledges that with respect to certain approvals, calculations and other decisions hereunder, any Co-Lender Agreement may require Lead Lender to consult with or receive the approval of one or more other Lenders prior to providing its own approval or determination regarding the same). Borrower shall be entitled to rely on waivers, consents and/or approvals granted by Lead Lender.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

BORROWER:

COMPLEX THERAPEUTICS MEZZANINE LLC, a Delaware limited liability company

By: _____

Name: Sandeep Laumas
Title: Authorized Signatory

LENDER:

OPG HERMES INVESTMENTS (DE) LLC,
a Delaware limited liability company

By: _____
Name: Varuth Suwankosai
Title: Head of Investments & Credit – US Region

By: _____
Name: Kristen Binck
Title: Vice President, Legal

LENDER:

OPG HERMES INVESTMENTS (DE) LLC,
a Delaware limited liability company

By: _____
Name: Varuth Suwankosai
Title: Head of Investments & Credit – US Region

By: _____
Name: Kristen Binck
Title: Vice President, Legal

EXHIBIT A

Property Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 150 OF TRACT NO. 5692, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 60, PAGES 72 AND 73 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

LOTS 151 AND 152 OF TRACT NO. 5692, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 60, PAGES 72 AND 73 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOT 153 OF TRACT NO. 5692, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 60 PAGES 72 AND 73 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4:

LOT 154 OF TRACT NO. 5692, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 60, PAGES 72 AND 73 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL MINERALS, COALS, OILS, PETROLEUM AND KINDRED SUBSTANCES AND NATURAL GAS UNDER AND IN THAT PORTION OF SAID LAND LYING WITHIN THE BOUNDARIES OF TRACT NO. 1875, AS PER MAP RECORDED IN BOOK 19, PAGE 38 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS RESERVED OF RECORD.

APN: 2157-001-158

EXHIBIT B

FORM OF MAJOR TRADE CONTRACTOR CONSENT

[ATTACHED]

FORM MAJOR TRADE CONTRACTOR CONSENT AND AGREEMENT

OPG Hermes Investments (DE) LLC
c/o Oxford Properties Group
450 Park Avenue 10th Floor
New York, NY 10022

Property:	18408-18412 Oxnard Street, Los Angeles, CA 91356
Mortgage Borrower:	COMPLEX THERAPEUTICS LLC
Mezzanine Borrower:	COMPLEX THERAPEUTICS MEZZANINE LLC

Ladies and Gentlemen:

The undersigned, a contractor ("Trade Contractor") on the captioned Property, understands that (i) OPG Hermes Investments (DE) LLC, a Delaware limited liability company, having an address at c/o Oxford Properties Group, 450 Park Avenue, 10th Floor, New York, New York 10022 (together with its successors and assigns, "Lender") has made a loan to Mezzanine Borrower in the maximum principal amount of up to $30,000,000.00 (the "Loan") pursuant to that certain Mezzanine Loan Agreement, dated as of the date hereof, between Mezzanine Borrower and Lender (as the same may be amended, restated, supplemented, extended, replaced or otherwise modified from time to time, the "Loan Agreement"), and (ii) OPG Hermes Investments (DE) LLC, a Delaware limited liability company, having an address at c/o Oxford Properties Group, 450 Park Avenue, 10th Floor, New York, New York 10022 (together with its successors and assigns, "Mortgage Lender") has made a loan to Mortgage Borrower in the maximum principal amount of up to $55,000,000.00 (the "Mortgage Loan") pursuant to that certain Loan Agreement, dated as of the date hereof, between Mortgage Borrower and Mortgage Lender (as the same may be amended, restated, supplemented, extended, replaced or otherwise modified from time to time, the "Mortgage Loan Agreement"). The Loan shall be used in part to fund, among other things, a portion of the costs of constructing the proposed improvements at the Property (the "Required Improvements"). Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement.

Trade Contractor hereby agrees with Lender as follows:

1. Attached hereto as Schedule I is a true and complete copy of our agreement with [____] ("Agent"), as agent for Borrower, dated [_____], 20[_], to construct and/or renovate a portion of the Required Improvements (the "Trade Contract") in accordance with the plans and specifications set forth with respect to such portion of the Required Improvements as more particularly described in the Trade Contract. All provisions in this letter are subject to the rights of Mortgage Lender under the Mortgage Loan. In the event of any conflict between the rights of any party under this letter and the rights of Mortgage Lender under the Mortgage Loan Agreement, the rights of Mortgage Lender under the Mortgage Loan Documents shall control.

2. Trade Contractor hereby acknowledges and consents to a subordination of the Trade Contract to Lender. In the event Lender, its nominee, subsidiary, successor(s) or assign(s) (the "Successor"), shall acquire ownership of any direct or indirect interest in Mortgage Borrower (such direct or indirect interest, the "Collateral") through foreclosure, assignment in lieu of foreclosure, or receivership, then, at the request of the Successor, and upon Successor's written agreement to accept Trade Contractor's attornment, Trade Contractor shall attorn to Successor (in its capacity as owner of the Mortgage Borrower) and shall promptly execute and deliver any instrument the Successor may require to evidence such attornment. Upon such attornment, the Trade Contract shall continue in full force and effect.

3. At the request of the Mezzanine Borrower and in order to induce Lender to make advances of the Loan, Trade Contractor hereby acknowledges and agrees that (i) no amendment, modification, or supplement of the Trade Contract, in any material respect, shall be permitted without Lender's prior written consent, and (ii) Lender may enforce the obligations of the Trade Contract with the same force and effect as if enforced by the Mortgage Borrower. Except as permitted pursuant to the terms of paragraph 5 below, Trade Contractor shall not terminate or surrender the Trade Contract without Lender's prior written consent and will promptly notify Lender in writing of any attempted termination or surrender of the Trade Contract by Mortgage Borrower. Notwithstanding anything to the contrary contained in the Trade Contract, if Lender or its designee shall become the owner of the Collateral by reason of foreclosure, acceptance of an assignment-in-lieu of foreclosure, or otherwise, the Trade Contract shall not terminate solely by reason of such sale, transfer or conveyance of the Collateral unless Lender elects to terminate the Trade Contract in accordance with the terms of this Consent.

4. Trade Contractor represents and warrants that (i) except for any assignment to Mortgage Lender, it has no notice of any prior assignment of the Trade Contract, (ii) the Trade Contract is a valid, enforceable agreement, (iii) neither Trade Contractor nor, to the knowledge of Trade Contractor, the Mortgage Borrower is in default thereunder, (iv) all covenants, conditions and agreements required to have been performed by Trade Contractor have been performed as required therein, except those not due to be performed until after the date hereof, (v) Trade Contractor is duly licensed to conduct its business in the jurisdiction where the construction is to be performed and will maintain said license in full force and effect throughout the life of the Trade Contract, and (vi) as of the date hereof, the subcontractors employed by Trade Contractor (if any) with respect to the Property have been paid all amounts due and payable in accordance with their subcontracts. Trade Contractor further agrees that if it at any time gives a notice of default to the Mortgage Borrower under the Trade Contract, Trade Contractor shall provide a copy of such notice simultaneously to Lender at the following address:

If to Lender:	OPG Hermes Investments (DE) LLC c/o Oxford Properties Group 450 Park Avenue 10th Floor New York, NY 10022 Attention: Legal Counsel
with a copy to:	Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza

New York, New York 10004
Attention: Michael Vines, Esq.

5. Trade Contractor further agrees that if it at any time gives a notice of default to Mortgage Borrower under the Trade Contract, Trade Contractor shall not exercise any remedy, including, but not limited to, any right to terminate the Trade Contract, unless and until Trade Contractor gives notice to Lender of its intent to exercise such remedy and provides Lender the opportunity to remedy or cure such breach within the greater of (i) the period set forth in the Trade Contract or (ii) ninety (90) days thereafter, or if such breach cannot by its nature be cured within ninety (90) days, such longer period as is required so long as Lender shall have commenced curing such breach during such period and thereafter shall diligently and continuously prosecute the same to completion; provided that Lender shall have no obligation to cure or cause the cure of such default.

6. Additionally, and in consideration of the Lender's making of the Loan, Trade Contractor agrees that in the event of (x) a default under the Trade Contract by Mortgage Borrower beyond any applicable notice and cure periods or (y) a default by Borrower beyond applicable notice and cure periods under any of the documents now or hereafter executed and delivered in connection with the Loan, as the same may be from time to time amended and supplemented, Trade Contractor shall, at Lender's request, (i) continue performance under the Trade Contract in accordance with the terms thereof, provided that Trade Contractor is paid in accordance with the Trade Contract, without regard to any modifications thereto not approved in writing by Lender (to the extent approval was required pursuant to Section 3 above), for all services rendered after Lender's election to have Trade Contractor continue performing, further provided that the time periods set forth in the Trade Contract for performance by Mortgage Borrower shall be deemed extended by the period of time necessary to allow Lender to obtain ownership of the Collateral in accordance with the terms of the Loan Agreement, or (ii) terminate the Trade Contract without payment of any penalty or termination fees and, at Lender's election, immediately assign all of its rights under any subcontracts to Lender.

7. If any proceeds of the Loan made by the Lender are disbursed directly to Trade Contractor, then Trade Contractor shall receive the same in trust for the purpose of paying the costs of constructing the Required Improvements due and payable to contractors, subcontractors, suppliers, laborers and materialmen and will apply the same to such payment.

8. The person executing this letter on behalf of Trade Contractor hereby certifies that he or she has the authority to do so and that Trade Contractor has full authority under all state and local laws and regulations to perform all of its obligations under the Trade Contract in accordance with the terms thereof.

9. The provisions set forth in this letter shall be binding upon Trade Contractor and Trade Contractor's successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

10. Trade Contractor agrees that any termination of Agent's role as agent for Mortgage Borrower under the Trade Contract or any other termination, cancellation or expiration of that

certain [_____], dated as of [_____, 20__], between Agent and Borrower shall not in and of itself affect, impair, limit or otherwise alter the rights of Mortgage Borrower or Mezzanine Borrower or obligations of Trade Contractor under the Trade Contract.

Dated: [_____], 2022

[CONTRACTOR]

By: _____
Name:
Title:

Schedule I

Trade Contract

EXHIBIT C

FORM OF OFFICER'S CERTIFICATE

Borrower Name: COMPLEX THERAPEUTICS MEZZANINE LLC, a Delaware limited liability company

Property Address: 18408-18412 Oxnard Street, Los Angeles, California 91356

This Officer's Certificate is being delivered in accordance with that certain Mezzanine Loan Agreement dated June 10, 2022 (the "Loan Agreement") among Borrower, Complex Therapeutics LLC, a Delaware limited liability company, and OPG Hermes Investments (DE) LLC, a Delaware limited liability company ("Lender"). Capitalized terms used in this Officer's Certificate and not specifically defined herein have the meaning provided in the Loan Agreement. The undersigned officer of Borrower, having personal knowledge of the matters set forth herein, hereby certifies on behalf of Borrower, and not in his/her individual capacity, the following:

[___] Pursuant to Section 2.1.5(a) (Requests for Additional Advances): Borrower requests an Additional Advance pursuant to Section 2.1.5(a) and hereby represents, warrants, and certifies that: (i) all Advance Items to be funded by the requested disbursement involving construction or alteration work have been completed in a good and workmanlike manner and in accordance in substantial accordance with all applicable Legal Requirements and Plans and Specifications; (ii) all Additional Advance (or a portion thereof) to be funded are to be used for the payment of Approved Project Expenditures, Cash Expenses or Approved Extraordinary Expenses, as applicable; (iii) Borrower has previously provided to Lender, or attached to this Officer's Certificate is, a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete such Advance Item; (iv) each Person that supplied materials or labor in connection with the Advance Item to be funded by the requested disbursement is identified on a schedule included with this Officer's Certificate; (v) each such Person has been paid in full or will be paid in full upon such disbursement for all amounts due and payable to such Person through the date hereof; (vi) included with this Officer's Certificate is a full or partial lien waiver (as applicable) or other evidence of payment reasonably satisfactory to Lender with respect to such Person(s); (vii) included with this Officer's Certificate are copies of all bills, invoices, receipts and other documentation requested by Lender to be reimbursed or paid by the Additional Advance (or a portion thereof); (viii) all prior Additional Advances requested for the payment of Costs have been spent on Cash Expenses and/or Approved Extraordinary Expenses for which such Additional Advances were made; and (ix) the Closing Date Minimum Equity Requirement is satisfied and Borrower has made no distributions.

[___] Pursuant to Section 5.1.1(d) (Transfers): Borrower certifies that (i) all the requirements of Section 5.1.1(d) are satisfied and (ii) with respect to Section 5.1.1(d)(iii), (x) the consideration, if any, being paid for any such encumbrance is commercially reasonable and (y) any such encumbrance does not materially impair the utility and operation of the Property, materially reduce the value of the Property or otherwise have a Material Adverse Effect.

[___] Pursuant to Section 5.1.1(f) (Delivery of Reports): To the knowledge of the undersigned:

[___] – Annual/Quarterly Reports: Each financial statement, or other report included with this Officer's Certificate (as applicable) are true, correct, and complete in all material respects, and fairly presents in all material respects the financial condition and the results of operations of Borrower and the Property (subject to normal year-end adjustments) being reported upon as of the date set forth in such

documents and such financial statements have been prepared in accordance with the Approved Accounting Method.

[___] – Annual/Quarterly Reports: As of the date hereof there exists no event or circumstance which constitutes a Default or Event of Default under by Borrower under the Loan Documents other than [PLEASE DESCRIBED IF APPLICABLE, INCLUDING THE PERIOD OF TIME IT HAS EXISTED AND THE ACTION THEN BEING TAKEN TO REMEDY THE SAME: _____].

[___] – Quarterly Reports: Subject to any appropriate reconciliations, the quarterly and year-to-date operating statements included with this Officer's Certificate, noting Net Operating Income, Operating Income and Operating Expenses, are true, correct, accurate, and complete in all material respects and fairly present in all material respects the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments).

[___] – Quarterly Reports: Borrower's calculation of the Debt Yield for the twelve (12) month period ending at the end of the most recently-completed calendar quarter (based on Borrower's reasonable expectation of the adjustments to be made to such calculations pursuant to the definition of UNOI contained in the Loan Agreement), is as follows:

Debt Yield: [___]%

BY SIGNING BELOW, the undersigned certifies on behalf of Borrower, and not in his/her individual capacity, that (a) all information provided in this Officer's Certificate is true, complete, and correct in all material respects and does not omit any material fact that would make any such information false or misleading, and (b) the undersigned representative is duly authorized to sign this Officer's Certificate on Borrower's behalf.

Date: [_____]

_____
Name:
Title:

EXHIBIT D

INITIAL APPROVED ANNUAL BUDGET

[***]

EXHIBIT E

FORM OF REQUISITION LETTER

BORROWER AND MEZZANINE BORROWER'S REQUISITION LETTER
Requisition No.

MORTGAGE LENDER:	OPG Hermes Investments (DE) LLC, a Delaware limited liability company
MEZZANINE LENDER:	OPG Hermes Investments (DE) LLC, a Delaware limited liability company
MORTGAGE BORROWER:	Complex Therapeutics LLC, a Delaware limited liability company
MEZZANINE BORROWER:	Complex Therapeutics Mezzanine LLC, a Delaware limited liability company
DATE:	[_____]
PREMISES:	18408-18412 Oxnard Street, Los Angeles, California 91356
PERIOD COVERED:	[_____] to [_____]

Pursuant to the Loan Agreement (the "Agreement") and Mezzanine Loan Agreement ("Mezzanine Loan Agreement") for the subject Loan, Borrower and Mezzanine Borrower hereby authorize and request an advance in the amount of $[_____] (the "Requested Amount"), which is comprised of the items provided for in the attached requisition, Section 2.1.5(a) of the Loan Agreement and Mezzanine Loan Agreement which sets forth and specifies the Hard Costs, Soft Costs and Interest and Carry Costs to be paid from the proceeds of the requested Advance and which has become payable by Borrower.

Borrower requests that the funds be wired on [_____], 20[__] in accordance with the following wire instructions:

Amount:	$[_____]
Bank:	[_____]
ABA #:	[_____]
Account Name:	[_____]
Account #:	[_____]
Attention:	[_____]

The Hard Costs, Soft Costs and Interest and Carry Costs to be paid by the Requested Amount are more particularly set forth on Schedule I attached hereto. The Requested Amount is comprised of:

Mortgage Funding Share: $[_____]

Mezzanine Funding Share: $[_____]

In connection with and in order to induce Lender and Mezzanine Lender to advance the amount requested above, Borrower hereby represents, warrants and stipulates, as of the date hereof, as follows:

1. To Borrower's knowledge, the amounts requested herein are true and correct.

2. No Default or Event of Default exists at the time the Additional Advance is requested or as of the Advance Date.

3. Borrower submitted this Draw Request to Lender in accordance with the requirements of Section 2.1.5(a) of the Loan Agreement, together with all applicable documents required to be delivered with such Draw Request pursuant to Section 2.1.5(b) Loan Agreement.

4. Borrower submitted evidence reasonably satisfactory to Lender that Borrower has paid (or will pay concurrently with the funding of the Additional Advance), from its own funds, at least the greater of (A) (i) with respect to Additional Advances for Approved Project Expenditures, the Required Borrower Equity Advance with respect to the cost of the applicable Approved Project Expenditure and (ii) with respect to Additional Advances for Interest and Carry Costs, the Required Borrower Equity Advance with respect to the applicable Interest and Carry Costs Shortfall, and (B) the actual cost of the applicable Advance Item less the amount to be advanced by Lender hereunder and by Mortgage Lender under the Mortgage Loan Agreement for such Advance Item.

5. Intentionally Omitted.

6. A list of amendments, replacements, supplements or other modifications made to the Plans and Specifications not previously delivered to Construction Consultant, and a true and complete copy of each such amendments, replacements, supplements or other modification have been delivered to Construction Consultant. Borrower submitted to Lender a list identifying the Plans and Specifications as in effect as of such Advance Date.

7. Borrower has obtained (or has caused to be obtained) from the Title Company (or Borrower will cause to be obtained a commitment from the Title Company to issue) an ALTA 33 Disbursement Endorsement to the Title Policy, to be dated and effective on the date of disbursement of the Additional Advance which evidences (i) no new exceptions to the Title Policy other than Permitted Encumbrances (other than Permitted Encumbrances set forth in clause (vi) of the definition thereof unless actually bonded or discharged) since the date of the last Additional Advance (with affirmative insurance that no Taxes or Other Charges (other than Taxes and Other Charges being contested in accordance with the Loan Agreement) are delinquent, and (ii) increases the Title Policy liability amount by the amount of the Additional Advance as of the new Date of Coverage (as defined in the ALTA 33 Disbursement Endorsement).

8. Each of the representations and warranties of Borrower and Guarantor contained in each of the Loan Documents will be true, complete and correct in all material respects as if made on (and with respect to facts and circumstances existing as of) the Advance Date, except for any changes in facts or circumstances occurring since the Closing Date that do not constitute a Default or Event of Default or were not caused by the occurrence of a Default or Event of Default and, in any event, do not result in a Material Adverse Effect.

9. Borrower has obtained (or has caused to be obtained) all Construction Permits required under Legal Requirements for the actual stage of construction on the Property and delivered to Lender a copy of each of the Construction Permits.

10. Borrower has paid or reimbursed all of Lender's outstanding fees and expenses (including fees and expenses of the Construction Consultant, and all other fees, costs and expenses of (including fees and expenses of outside legal counsel) relating to the Loan to the extent then due and payable, pursuant to the applicable provisions of this Agreement and the other Loan Documents.

11. Except as otherwise permitted under the Loan Documents, all material and fixtures incorporated in the construction of the Project have been purchased so that their absolute ownership has vested in Borrower immediately upon delivery to the Property and Borrower has produced and furnished, if required by Lender, the contracts, bills of sale or other agreements under which title to such materials and fixtures is claim.

12. The Loan is in balance as provided in Section 2.1.11 of the Loan Agreement.

13. There is no pending or threatened litigation known to Borrower or its counsel against Borrower, Mortgage Borrower, Master Tenant, Guarantor, Manager, General Contractor or the Property which, if decided unfavorably, could reasonably be expected to result in (i) a change in Control of Borrower, Master Tenant or Manager, (ii) a Material Adverse Effect, or (iii) the failure of Guarantor to satisfy the Financial Covenant Requirement.

14. Borrower has delivered (or has caused to be delivered) to Lender all documents, reports, certificates, affidavits and other information, in form and substance reasonably satisfactory to Lender or Construction Consultant, as each may reasonably require, to evidence compliance by Borrower with the terms and conditions to be complied with by Borrower in connection with the disbursement of the applicable Additional Advance.

15. Borrower has delivered (or has caused to be delivered) to Lender evidence of compliance with all recommendations set forth in the Environmental Report or any future environmental report or assessment requested by Lender under the terms of the Environmental Indemnity; provided, that, by undertaking the measures identified in and pursuant to Section 2.1.6(j) of the Loan Agreement, Lender shall not be deemed to be exercising any control over operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor.

16. No Interest and Carry Cost Shortfall exists.

17. Other than matters fully disclosed to Lender which are curable and are being cured as part of the work comprising the Required Improvements, and subject to Borrower's right to contest in accordance with Section 5.1.2(b) of the Loan Agreement, the Property complies in all material respects with all Legal Requirements.

18. (i) Other than matters being cured as part of the work comprising the Required Improvements, the Property complies in all material respects with all Legal Requirements, (ii) if

any Restoration is continuing, Borrower is diligently pursuing such Restoration and Lender has determined that the non-completion of such Restoration prior to the making of the Additional Advance is not reasonably likely to have a Material Adverse Effect, and (iii) no Casualty or Condemnation has occurred that permits any tenant party to a Lease a termination right (or such right shall have been waived or lapsed).

19. On the Advance Date, no event has occurred that would reasonably be expected to result in Borrower being unable to achieve any Major Milestone within the time period applicable to such Major Milestone, as determined by Lender.

20. Borrower has caused, at Lender's election, either (i) payment and performance Bonds, in form and substance reasonably satisfactory to Lender and issued by sureties satisfactory to Lender have been maintained with respect to the obligations of each Trade Contractor; and/or (ii) a sub-guard insurance policy in form and substance reasonably acceptable to Lender has been maintained with respect to the obligations of each Trade Contractor, provided, that the Bonds are in an amount not less than the full contract price for each such Trade Contract required to be bonded pursuant to Section 2.1.6(v) of the Loan Agreement.

21. Borrower has provided satisfactory evidence that the Closing Date Minimum Equity Requirement is satisfied and no distributions have been made.

22. The Master Lease is in full force and effect and no default has occurred under the Master Lease that remains uncured.

[The below items should be included for Additional Advances for the Payment of Approved Project Expenditures.]

23. Borrower has delivered to Lender an Officer's Certificate with respect to any construction work constituting the applicable Approved Project Expenditures to be funded by such Additional Advance certifying that whatever portion of such work has been Completed to date has been Completed in good and workmanlike manner substantially in accordance with all applicable Legal Requirements and the Plans and Specifications.

24. Borrower has delivered (or has caused to be delivered) to Lender (i) an updated Construction Budget for the Project, in form and substance reasonably satisfactory to Lender, which indicates the Costs (other than Interest and Carry Costs) anticipated to complete the Required Improvements, after giving effect to Costs (other than Interest and Carry Costs) incurred during the period since the Closing Date, or the date of the last preceding Draw Request, as the case may be, and (ii) an anticipated costs report in form and substance reasonably acceptable to Lender, which indicates the Costs (other than Interest and Carry Costs) anticipated to complete the Required Improvements, after giving effect to Costs incurred during the previous calendar month (or the date of the last preceding Draw Request, as the case may be), and projected Costs; provided, that, no Line Item in the Construction Budget with respect to Approved Project Expenditures shall be eligible for funding from the proceeds of an Additional Advance until 100% of such Line Item has been bought out and Lender and Construction Consultant have reviewed the related sub contract(s) and, if applicable, Major Trade Contractor Consent(s).

25. Borrower has delivered to Lender a reconciliation by Borrower and/or Mortgage Borrower of the progress and cost of the construction of the Project through the date of the Draw Request with the Construction Schedule and the Construction Budget, together with a projection of such progress and costs through to Completion of the Project.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

MORTGAGE BORROWER:

COMPLEX THERAPEUTICS LLC,
a Delaware limited liability company

By: _____
Name:
Title:

MEZZANINE BORROWER:

COMPLEX THERAPEUTICS MEZZANINE LLC,
a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT F

INTENTIONALLY OMITTED

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

INTENTIONALLY OMITTED

EXHIBIT I

INTENTIONALLY OMITTED

EXHIBIT J

INTENTIONALLY OMITTED

EXHIBIT K-1

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)]

Reference is hereby made to the Mezzanine Loan Agreement dated as of [ ], 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between [_____], a [_____] (together with its successors and assigns, "Lender"), and Complex Therapeutics Mezzanine LLC, a Delaware limited liability company ("Borrower"), and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.2.3 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform Borrower, and (2) the undersigned shall have at all times furnished Borrower with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By:_____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT K-2

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)]

Reference is hereby made to the Mezzanine Loan Agreement dated as of [ ], 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between [_____], a [_____] (together with its successors and assigns, "Lender"), and Complex Therapeutics Mezzanine LLC, a Delaware limited liability company ("Borrower")and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.2.3 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF PARTICIPANT]

By:_____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT K-3

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)]

Reference is hereby made to the Mezzanine Loan Agreement dated as of [ ], 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between [_____], a [_____] (together with its successors and assigns, "Lender"), and Complex Therapeutics Mezzanine LLC, a Delaware limited liability company ("Borrower"), and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.2.3 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF PARTICIPANT]

By:_____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT K-4

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)]

Reference is hereby made to the Mezzanine Loan Agreement dated as of [ ], 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and between [_____], a [_____] (together with its successors and assigns, "Lender"), and Complex Therapeutics Mezzanine LLC, a Delaware limited liability company ("Borrower"), and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.2.3 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Loan Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Lender and Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform Borrower, and (2) the undersigned shall have at all times furnished Borrower with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By:_____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT L

INITIAL CONSTRUCTION BUDGET

[***]

EXHIBIT M

INITIAL CONSTRUCTION SCHEDULE

[***]

SCHEDULE I

EXISTING CONSTRUCTION DOCUMENTS

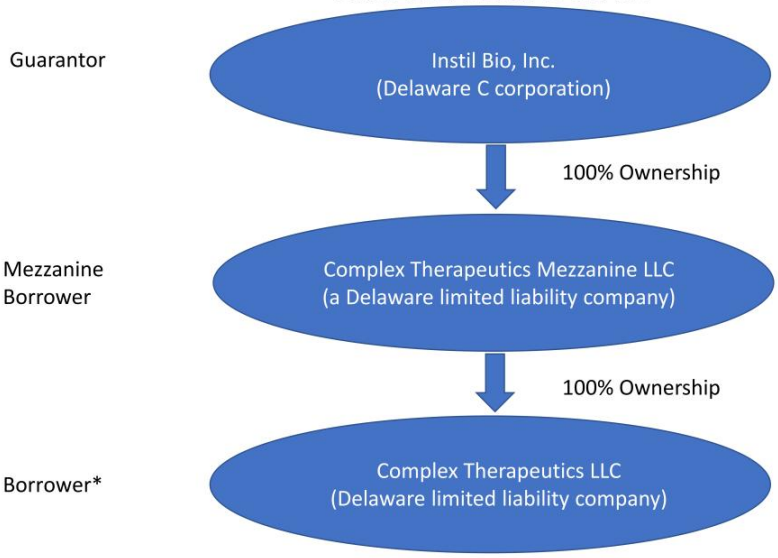
[***]

SCHEDULE II

ORGANIZATIONAL STRUCTURE

[ATTACHED]

ORGANIZATIONAL CHART



18408-18412 Oxnard Street, Los Angeles, California 91356

*To Borrower's knowledge based on the public reporting made as of March 31, 2022, no individual or entity owns, directly or indirectly, more than 10% of the Borrower other than FMR LLC and Curative Ventures V LLC.

SCHEDULE III

LIST OF MATERIAL AGREEMENTS

[ATTACHED]

Schedule III - List of Material Agreements

None, service contracts will stay with Instil Bio, Inc. per matrix.

SCHEDULE IV

LIST OF DESIGN PROFESSIONALS

[***]

SCHEDULE V

CONSTRUCTION PERMITS

[ATTACHED]

Schedule V - Construction Permits

Clinical Building Permits

Permit #	Brief Description	Address	Date Issued on	Amount	Licensed Contractor	Description
21016 - 10000 - 06831	Bldg-Alter/Repair	18412 W Oxnard St	4/21/2021	$1,222.31	TURNER CONSTRUCTION COMPANY	eplan Modify the existing slab.
20042 - 10000 - 21651	Plumbing	18412 W Oxnard St	5/6/2021	$1,524.31	MUIR-CHASE PLUMBING CO INC	PLUMBING TI. INCLUDES POTABLE WATER AND WASTE/VENT. 3" WATER METER WITH BACKFLOW DEVICE AND PRV
20016 - 10000 - 28026	Bldg-Alter/Repair	18412 - 18424 W Oxnard St	5/7/2021	$9,995.41	TURNER CONSTRUCTION COMPANY	T.I. TO EXISTING OFFICE AND MANUFACTURING FACILITY. REMOVE EXISTING RATED CORRIDOR TO CONNECT TO ADJACENT BUILDING. CHANGE THE EXISTING BUILDING CONSTRUCTION TYPE FROM V-B TO III-B. REWORK EXTERIOR STAIRS, NEW STAIR TO ROOF AND NEW
20020 - 10001 - 02289	Nonbldg-New	18412 W Oxnard St	5/7/2021	$1,392.96	TURNER CONSTRUCTION COMPANY	EARLY START SITE PREPARATION WORK FOR " RESTRIPE PARKING LOT, NEW ACCESSIBLE RAMP AND NEW EQUIPMENT CONCRETE PAD"
20030 - 10000 - 06263	Grading	18412 W Oxnard St	5/7/2021	$769.16	TURNER CONSTRUCTION COMPANY	GRADING FOR PARKING LOT. 75 CU YD CUT 250 CU YD FILL 175 NET CU YD IMPORT
20041 - 10000 - 39638	Electrical	18412 W Oxnard St B2	5/12/2021	$5,060.87	ROSENDIN ELECTRIC INC	FULL PC TO A TI FULL PC TO A TI TO COMMERCIAL PROPERTY BUILDINGS 1 AND 2.
21041 - 10000 - 05696	Electrical	18424 W Oxnard St B1	5/12/2021	$2,097.16	ROSENDIN ELECTRIC INC	FULL PC TO A TI TO COMMERCIAL PROPERTY BUILDINGS 1 AND 2.
20044 - 10000 - 11181	HVAC	18412 W Oxnard St	6/9/2021	$3,006.88	CONTROL AIR ENTERPRISES LLC	HVAC TENANT IMPROVEMENT.
21042 - 20000 - 16025	Plumbing	18412 W Oxnard St BLDG 1, 2	9/1/2021	$357.52	MUIR-CHASE PLUMBING CO INC	Installation of low-pressure gas system.

Commercial Building Permits

Permit #	Brief Description	Address	Date Issued on	Amount	Licensed Contractor	Description
21042 - 20000 - 05846	Plumbing	18408 W Oxnard St	3/24/2021	$59.95	TURNER CONSTRUCTION COMPANY	SEWER CAP PERMIT FOR DEMOLITION OF BUILDING NO. 2 21307 SQFT OPEN OFFICES/STAGE/PRODUCTION UNDER PERMIT 21019-10000-00275
21042 - 20000 - 05847	Plumbing	18360 - 18364 W Oxnard St	3/24/2021	$59.95	TURNER CONSTRUCTION COMPANY	SEWER CAP PERMIT FOR DEMOLITION OF BUILDING NO. 2 21307 SQFT OPEN OFFICES/STAGE/PRODUCTION UNDER PERMIT 21019-10000-00270
21019 - 10000 - 00270	Bldg-Demolition	18360 - 18364 W Oxnard St	4/13/2021	$1,791.74	TURNER CONSTRUCTION COMPANY	DEMOLITION OF OFFICE BUILDING, CLEAR LOT, FENCE AND CANOPY REQUIRED
21019 - 10000 - 00275	Bldg-Demolition	18408 W Oxnard St	4/13/2021	$1,791.74	TURNER CONSTRUCTION COMPANY	DEMO (E) OFFICE BUILDING, CLEAR LOT, FENCE AND CANOPY REQUIRED
21030 - 10000 - 02055	Grading	18412 W Oxnard St	8/17/2021	$3,465.66	TURNER CONSTRUCTION COMPANY	ROUGH GRADING FOR A NEW COMERCIAL MANUFACTURING BUILDING FOR CELL-THERAPY PRODUCTS-
21041 - 10000 - 21468	Electrical	18412 W Oxnard St	9/1/2021	$19,779.14	TURNER CONSTRUCTION COMPANY	(EPLAN) FULL PLAN CHECK FOR ELECTRICAL SYSTEM FOR NEW CONSTRUCTION UNDER BUILDING PERMIT 21010-10000-00719.
21044 - 20000 - 06428	HVAC	18412 W Oxnard St	9/13/2021	$6,233.71	CONTROL AIR ENTERPRISES LLC	MECHANICAL SYSTEM FOR NEW COMMERCIAL MANUFACTURING BUILDING FOR CELL-THERAPY PRODUCTS.
21010 - 10000 - 00719	Bldg-Alter/Repair	18412 - 18424 W Oxnard St	10/6/2021	$105,273.73	TURNER CONSTRUCTION COMPANY	FOUNDATION ONLY PERMIT FOR A NEW COMERCIAL MANUFACTURING BUILDING
21020 - 10000 - 01633	Nonbldg-New	18412 - 18424 W Oxnard St	11/2/2021	$2,100.07	TURNER CONSTRUCTION COMPANY	SITE RETAINING WALLS , SLOPED S.O.G., AND RAISED PLANTER WALLS.
21010 - 10000 - 00719	Bldg-New	18408 W Oxnard St	12/1/2021	$540,342.54	TURNER CONSTRUCTION COMPANY	NEW COMMERCIAL MANUFACTURING BUILDING
21042 - 20000 - 10871	Plumbing	18412 W Oxnard St	12/14/2021	$5,752.48	CONTROL AIR ENTERPRISES LLC	PLUMBING SYSTEM PLAN CHECK FOR POTABLE WATER, WASTE & VENT , STORM DRAIN. 4'' water meter, 4'' RPBP, two PRV.
21010 - 10000 - 00719	Bldg-Alter/Repair	18412 - 18424 W Oxnard St	2/7/2022	$310.41	WALTERS & WOLF GLASS COMPANY	SUPPLEMENTAL TO PERMIT # 21010-10000-00719 DEFERRED SUBMITTAL FOR GLASS CURTAIN WALLS.
21010 - 10003 - 00719	Bldg-Alter/Repair	18408 W Oxnard St	2/7/2022	$310.41	WALTERS & WOLF GLASS COMPANY	SUPPLEMENTAL TO PERMIT # 21010-10000-00719 DEFERRED SUBMITTAL FOR GLASS CURTAIN WALLS.

Permit #	Brief Description	Address	Date Issued on	Amount	Licensed Contractor	Description
21042 - 20001 - 10871	Plumbing	18412 W Oxnard St	2/16/2022	$148.24	CONTROL AIR ENTERPRISES LLC	medium pressure gas system 5 psi. Partial permit fees paid under original plan check.
21044 - 20002 - 06428	HVAC	18412 W Oxnard St	3/31/2022	$227.81	CONTROL AIR ENTERPRISES LLC	SUPPLEMENTAL TO PERMIT 21044-20000-06428. Revision to approved plans.
22041 - 90000 - 16334	Electrical, Special Equipment	18408 W Oxnard St	4/13/2022	$274.46	TAFT ELECTRIC COMPANY	Grounding for Temporary Generator - Anning Johnson
22041 - 90000 - 16335	Electrical, Special Equipment	18408 W Oxnard St	4/13/2022	$274.46	TAFT ELECTRIC COMPANY	Grounding for temporary generator #3 used by the flooring contractor
22041 - 90000 - 16336	Electrical, Public Safety Only	18408 W Oxnard St	4/13/2022	$575.41	TAFT ELECTRIC COMPANY	Install fire alarm and security devices in walls and ceiling. primary permit to follow

SCHEDULE VI

LIST OF REAs

None.

SCHEDULE VII

EXCEPTION TO PHYSICAL CONDITION REPRESENTATION

[ATTACHED]

SCHEDULE 4.1.2(j)

On June 1, 2022, the General Contractor informed Borrower that the General Contractor observed some surface settlement at the manhole cover (see below picture) directly above the landscape irrigation cisterns, which are located underneath the outer portion of the north-west parking lot of the Building B (see below site plan). As of the date hereof, the General Contractor is investigating the cause of the settlement, and has notified its insurance company of a potential claim. As of the date hereof, the General Contractor estimates repairs will cost between approximately $50,000 and $200,000, and take three to four weeks to complete, depending on the cause of the surface settlement.

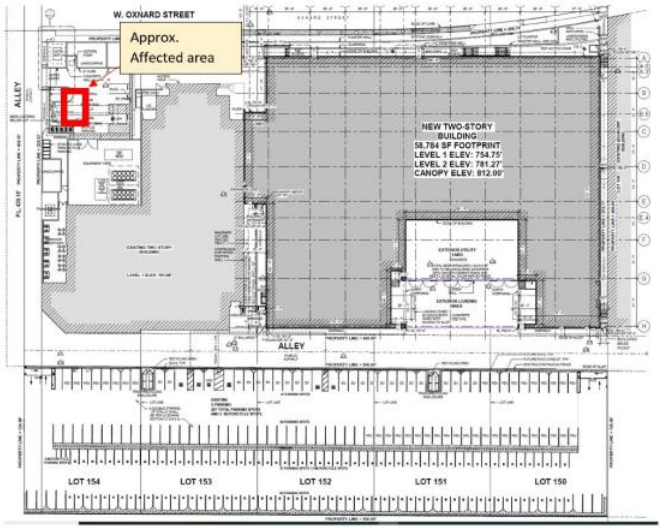


EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Bronson Crouch, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Instil Bio, 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)) 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) 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

   (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 12, 2022

/s/ Bronson Crouch

Bronson Crouch

Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Sandeep Laumas, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Instil Bio, 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)) 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) 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

   (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 12, 2022

/s/ Sandeep Laumas

Sandeep Laumas

Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

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 quarterly report of Instil Bio, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bronson Crouch, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as amended (the "Exchange Act"); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Bronson Crouch

Name: Bronson Crouch

Title: Chief Executive Officer
(Principal Executive Officer)

Date: August 12, 2022

This certification shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of Section 18 of the Exchange Act. Such certification shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

Exhibit 32.2

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 quarterly report of Instil Bio, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Sandeep Laumas, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as amended (the "Exchange Act"); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Sandeep Laumas

Name: Sandeep Laumas

Title: Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Date: August 12, 2022

This certification shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of Section 18 of the Exchange Act. Such certification shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.