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Nasdaq, under the symbol “FBIO.” On September 25, 2024, the last reported sale price of our Common Stock was \$1.41 per share. You are urged to obtain current market quotations for our Common Stock. Investing in our securities involves risks. You should review carefully the risks and uncertainties described under the heading “Risk Factors” contained in this prospectus and under similar headings in the other documents that are incorporated by reference into this prospectus as described on page 4 of this prospectus. Neither the Securities and Exchange Commission (the “SEC”) nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense. The date of this Prospectus is September 25, 2024. TABLE OF CONTENTS Prospectus Page ABOUT THIS PROSPECTUS FORWARD-LOOKING STATEMENTS SUMMARY THE OFFERING RISK FACTORS USE OF PROCEEDS THE SELLING STOCKHOLDERS DESCRIPTION OF SECURITIES BEING REGISTERED CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS PLAN OF DISTRIBUTION LEGAL MATTERS EXPERTS WHERE YOU CAN FIND MORE INFORMATION INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE ABOUT THIS PROSPECTUS

This prospectus provides you with a general description of the shares of Common Stock that may be resold by the Selling Stockholders. In certain circumstances, we may provide a prospectus supplement that will contain specific information about the terms of a particular offering by the Selling Stockholders. We also may provide a prospectus supplement to add information to, or update or change information contained in, this prospectus. To the extent there is a conflict between the information contained in this prospectus and any prospectus supplement, you should rely on the information in the prospectus supplement, provided that if any statement in one of these documents is inconsistent with a statement in another document having a later date—for example, a document incorporated by reference in this prospectus or any prospectus supplement—the statement in the later-dated document modifies or supersedes the earlier statement. You should read both this prospectus and any applicable prospectus supplement together with the additional information about our company to which we refer you in the sections of this prospectus titled “Where You Can Find More Information” and “Incorporation of Certain Documents by Reference.” You should rely only on the information contained in or incorporated by reference into this prospectus and any prospectus supplement. Neither we nor the Selling Stockholders have authorized any dealer, salesperson or other person to provide you with different information. You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of those documents or that any document incorporated by reference is accurate as of any date other than its filing date. You should not consider this prospectus to be an offer or solicitation relating to the Resale Shares in any jurisdiction in which such an offer or solicitation relating to the Resale Shares is not authorized. Furthermore, you should not consider this prospectus to be an offer or solicitation relating to the Resale Shares if the person making the offer or solicitation is not qualified to do so, or if it is unlawful for you to receive such an offer or solicitation. Unless the context indicates otherwise, when we refer to “Fortress,” “we,” “our,” “us” and the “Company” in this prospectus, we mean Fortress Biotech, Inc., unless otherwise specified. When we refer to “you,” we mean the potential purchasers of the Resale Shares.

ii FORWARD-LOOKING STATEMENTS

This prospectus, including the documents that we incorporate by reference, contains predictive or “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of current or historical fact contained in this prospectus, including statements that express our intentions, plans, objectives, beliefs, expectations, strategies, predictions or any other statements relating to our future activities or other future events or conditions are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “will,” “should,” “would” and similar expressions, as they relate to us, are intended to identify forward-looking statements. These statements are based on current expectations, estimates and projections made by management about our business, our industry and other conditions affecting our financial condition, results of operations or business prospects. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in, or implied by, the forward-looking statements due to numerous risks and uncertainties. Factors that could cause such outcomes and results to differ include, but are not limited to, risks and uncertainties arising from: •our growth strategy; •financing and strategic agreements and relationships; •the ongoing UTRF litigation and our indemnification of Caelum in connection therewith; •our need for substantial additional funds and uncertainties relating to financings; •our ability to identify, acquire, close and integrate product candidates successfully and on a timely basis; •our ability to attract, integrate and retain key personnel; •the early stage of products under development; •the results of research and development activities; •uncertainties relating to preclinical and clinical testing; •the ability to secure and maintain third-party manufacturing, marketing and distribution of our and our partner companies’ products and product candidates; •government regulation; •patent and intellectual property matters; and •competition. You should read this prospectus and the documents that we reference herein completely and with the understanding that our actual future results may be materially different from what we currently expect. You should assume that the information appearing in this prospectus and any document incorporated by reference is accurate as of its date only. Because the risk factors referred to above could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us or on our behalf, you should not place undue reliance on any forward-looking statements. Further, any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. We qualify all of the information presented in this prospectus, any accompanying prospectus supplement and any document incorporated herein by reference, and particularly our forward-looking statements, by these cautionary statements.

iii SUMMARY

This summary highlights selected information from this prospectus and does not contain all of the information that may be important to you in making an investment decision. This summary is qualified in its entirety by the more detailed information included elsewhere in this prospectus and/or incorporated by reference herein. Before making your investment decision with respect to our securities, you should carefully read this entire prospectus, including the information in our filings with the Securities and Exchange Commission (“SEC”) incorporated by reference into this prospectus. Our Business Overview Fortress Biotech, Inc. (“Fortress”

or the “Company”) is a biopharmaceutical company focused on acquiring and advancing assets to enhance long-term value for shareholders through product revenue, equity holding and dividend and royalty revenue streams. Fortress works in concert with its extensive network of key opinion leaders to identify and evaluate promising products and product candidates for potential acquisition. We have executed arrangements in partnership with some of the world’s foremost universities, research institutes and pharmaceutical companies, including City of Hope National Medical Center, Fred Hutchinson Cancer Center, Dana-Farber Cancer Institute, Nationwide Children’s Hospital, Cincinnati Children’s Hospital Medical Center, Columbia University, the University of Pennsylvania, AstraZeneca plc., and Dr. Reddy’s Laboratories, Ltd. Business Strategy Following the exclusive license or other acquisition of the intellectual property underpinning a product or product candidate, Fortress leverages its business, scientific, regulatory, legal and financial expertise to help the partners achieve their goals. Partner companies then assess a broad range of strategic arrangements to accelerate and provide additional funding to support research and development, including joint ventures, partnerships, out-licensings, and public and private financings. To date, four partner companies are publicly-traded, and three have consummated strategic partnerships with industry leaders, including AstraZeneca plc, as successor-in-interest to Alexion Pharmaceuticals, Inc. (“AstraZeneca”), and Sentyln Therapeutics, Inc. (“Sentyln”). Our subsidiary and partner companies that are pursuing development and/or commercialization of biopharmaceutical products and product candidates are: Avenue Therapeutics (Nasdaq: ATXI, “Avenue”), Baergic Bio, Inc. (“Baergic”, a subsidiary of Avenue), Cellvation, Inc. (“Cellvation”), Checkpoint Therapeutics, Inc. (Nasdaq: CKPT, “Checkpoint”), Cyprium Therapeutics, Inc. (“Cyprium”), Helocyte, Inc. (“Helocyte”), Journey Medical Corporation (Nasdaq: DERM, “Journey” or “JMC”), Mustang Bio, Inc. (Nasdaq: MBIO, “Mustang”) and Oncogenuity, Inc. (“Oncogenuity”). Grant of 2024 Warrant On July 25, 2024, we entered into the 2024 Credit Agreement, in connection with which we granted to the 2024 Selling Stockholders warrants to purchase 506,390 shares of Common Stock at an exercise price per share of \$1.65 (as adjusted from \$2.0735) (the “2024 Warrants”). The 2024 Warrants contain customary anti-dilution adjustments to the exercise price, including for share splits, share dividends, rights offerings and pro rata distributions. The exercise price of the 2024 Warrants will also be adjusted if, while the 2024 Warrants are outstanding, the Company engages in any transaction involving the issuance or sale of shares of common stock or equivalent securities at an effective price per share less than the exercise price of the 2024 Warrants then in effect (such lower price, the “Base Share Price”). In such case, the exercise price of the 2024 Warrants will be reduced to equal the Base Share Price. The 2024 Warrants became immediately exercisable upon issuance, will expire on July 25, 2031 and may be net exercised for no cash payment at the holder’s election. In addition, in connection with the 2024 Credit Agreement, we entered into a registration rights agreement with the 2024 Selling Stockholders (the “2024 Registration Rights Agreement”), in which we agreed to prepare and file with the SEC a registration statement with respect to resales of the 2024 Warrant Shares purchased by the selling stockholders in connection with the 2024 Credit Agreement. Accordingly, the registration statement of which this prospectus is a part relates to the offer and resale of the 2024 Warrant Shares. 1 Additional 2020 Warrant Shares On August 27, 2020, we entered into the 2020 Credit Agreement, in connection with which we granted to the 2020 Selling Stockholders warrants to purchase 1,749,450 shares of Common Stock at an exercise price of \$3.20 per share. Additionally, on June 13, 2023, the Company entered into a Letter Agreement (the “2023 Letter Agreement”) by and among the Company, Oaktree and certain of its affiliates, pursuant to which the Company agreed to lower the exercise price of the existing warrants to \$0.5424 per share and issue amended and restated warrants reflecting the new exercise price (the “2020 Warrants”), as consideration for the warrant holders’ agreement to permit the Company and/or certain of its subsidiaries to take certain actions. The 2020 Warrants became exercisable on June 13, 2023 and expire August 27, 2030. The Company effected a reverse stock split on October 9, 2023, pursuant to which the number of shares issuable upon the exercise of the 2020 Warrants decreased to 116,637 and the exercise price increased to \$8.136 per share. Pursuant to the anti-dilution adjustment mechanism of the 2020 Warrants, the number of shares issuable upon the exercise of the 2020 Warrants increased from 116,637 shares to 131,087 shares. Accordingly, as required by the 2020 Registration Rights Agreement, the registration statement of which this prospectus is a part relates to the offer and resale of the 14,450 additional shares of Common Stock now issuable as a result of the anti-dilution mechanism of the 2020 Warrants. Grant of Harley Warrants On December 27, 2022, in connection with the offer and sale by Urica of Urica’s 8% Cumulative Convertible Class B Preferred Stock (the “Urica Preferred Stock”), we entered into a Letter Agreement dated December 8, 2022, by and between Harley, Urica and the Company (the “Harley Letter Agreement”). Under the Harley Letter Agreement, Urica engaged Harley as placement agent in connection with the private placement of the Urica Preferred Stock. As partial consideration for acting as placement agent, Urica granted Harley a warrant to purchase Urica securities and we agreed to issue replacement warrants to the Harley Selling Stockholders following the previously disclosed exchange of the Urica Preferred Stock for shares of Company common stock. Pursuant to the Harley Letter Agreement, we issued such replacement warrants granting the Harley Selling Stockholders warrants to purchase 10% of the Common Stock for which the Urica Preferred Stock was exchanged (the “Harley Warrants”). Accordingly, the registration statement of which this prospectus is a part relates to the offer and resale of the shares of Common Stock issuable upon the exercise of the Harley Warrants. Sale of PIPE Warrants and Chairman Shares On September 19, 2024, in connection with a registered direct offering and private placement by the Company, we entered into the PIPE Purchase Agreements. Pursuant to the PIPE Purchase Agreements, we issued warrants to purchase 4,702,753 shares of Common Stock at an exercise price per share of \$1.84 (the “PIPE Warrants,” and collectively with the 2024 Warrants, the 2020 Warrants and the Harley Warrants, the “Warrants”). The PIPE Warrants contain customary anti-dilution adjustments to the exercise price, including for share splits, share dividends, rights offerings and pro rata distributions. The PIPE Warrants become exercisable on March 23, 2025, will expire on March 23, 2030 and may be net exercised for no cash payment at the holder’s election. Additionally, pursuant to the PIPE Purchase Agreement with our Chairman, we issued 763,359 shares of Common Stock at a price per share of \$1.84. Accordingly, the registration statement of which this prospectus is a part relates to the offer and resale of the shares of Common Stock issuable upon the exercise of the PIPE Warrants and the Common Stock issued to our Chairman. Corporate Information Our principal executive offices are located at 1111 Kane Concourse Suite 301 Bay Harbor Islands, FL 33154, and our telephone number is 781-652-4500. We maintain a website on the Internet at [www.fortressbiotech.com](http://www.fortressbiotech.com) and our e-mail address is [info@fortressbiotech.com](mailto:info@fortressbiotech.com). Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Exchange Act are available, free of charge, under the Investor Relations tab of our website as soon as reasonably practicable after we electronically file such material with, or

furnish it to, the SEC. The SEC also maintains an Internet website located at [www.sec.gov](http://www.sec.gov) that contains the information we file or furnish electronically with the SEC. Information found on, or accessible through, our website is not a part of, and is not incorporated into, this prospectus, and you should not consider it part of this prospectus.

**2 THE OFFERING**

**Issuer** Fortress Biotech, Inc.

**Securities Offered by Selling Stockholders**

(i) 506,390 shares of Common Stock issuable upon exercise of the 2024 Warrants; (ii) 14,450 shares of Common Stock issuable as a result of the anti-dilution adjustment mechanism of the 2020 Warrants; (iii) 202,834 shares of Common Stock issuable upon the exercise of the Harley Warrants; (iv) 4,702,753 shares of Common Stock issuable upon the exercise of the PIPE Warrants and (v) 763,359 shares of Common Stock issued to our Chairman.

**Shares of Common Stock Outstanding Prior to this Offering**(1): 27,563,494 shares of Common Stock

**Shares of Common Stock Outstanding Assuming the Exercise of All Warrants**(1): 33,753,280 shares of Common Stock

**Terms of the Offering**

The Selling Stockholders will each determine when and how they will sell the Resale Shares offered in this prospectus, as described in the "Plan of Distribution."

**Use of Proceeds**

We will not receive any proceeds from the sale of the Resale Shares by the Selling Stockholders in this offering. See "Use of Proceeds."

**Risk Factors**

See "Risk Factors" incorporated by reference into this prospectus from our most current Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, for a discussion of certain factors you should carefully consider before deciding to invest in shares of our Common Stock.

**Nasdaq Capital Market Symbol** FBIO

(1) The number of shares of Common Stock is based on 27,563,494 shares of our Common Stock outstanding as of September 25, 2024, and excludes as of that date:

- 175,416 shares of Common Stock underlying unvested Restricted Stock Units;
- 80,999 shares of Common Stock underlying unvested deferred Restricted Stock Units;
- 132,439 shares of Common Stock underlying deferred Restricted Stock Awards;
- 558,896 shares of Common Stock issuable upon the exercise of stock options with a weighted average exercise price of \$2.32 per share; and
- 9,073,108 shares of Common Stock issuable upon exercise of outstanding warrants with a weighted average exercise price of \$2.36 per share.

Unless otherwise indicated, all information in this prospectus supplement assumes no exercise of the outstanding options or warrants or settlement of outstanding restricted stock units, described above.

**3 RISK FACTORS**

Investing in our Common Stock involves a high degree of risk. Our business is influenced by many factors that are difficult to predict, involve uncertainties that may materially affect actual results and are often beyond our control. You should consider carefully the risks and uncertainties under the heading "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 and our Quarterly Reports for the fiscal periods ended March 31, 2024 and June 30, 2024, which are each incorporated by reference in this prospectus, and the risks, uncertainties and other information set forth in the reports and other materials filed or furnished by our partners and affiliates Journey, Checkpoint, Mustang, and Avenue with the SEC, as well as any amendment or update to our risk factors in subsequent filings with the SEC, and other information in our consolidated financial statements, all of which are incorporated by reference into this prospectus, before deciding to invest in our Common Stock. If any of the described risks incorporated by reference hereto or the risks included in the public filings of Journey, Checkpoint, Mustang or Avenue were to materialize, our business, financial condition, results of operations, and future growth prospects could be materially and adversely affected. In that event, the market price of our Common Stock could decline, and you could lose part of or all of your investment in our Common Stock. See the section of this prospectus titled "Where You Can Find More Information."

**USE OF PROCEEDS**

We will not receive any proceeds from the sale of the Resale Shares covered by this prospectus and any accompanying prospectus supplement. All proceeds from the sale of the Resale Shares will be for the respective accounts of the Selling Stockholders named herein. We will bear all other costs, fees and expenses incurred in effecting the registration of the offer and sale of the Resale Shares covered by this prospectus and any accompanying prospectus supplement, including, without limitation, all registration and filing fees, Nasdaq listing fees and fees and expenses of our counsel and our accountants. Each Selling Stockholder will pay any discounts, commissions, and fees of underwriters, selling brokers, dealer managers or similar securities industry professionals incurred by such Selling Stockholder in disposing of the Resale Shares covered by this prospectus.

**Determination of Offering Price**

We cannot currently determine the price or prices at which the shares of Common Stock may be sold by the Selling Stockholders under this prospectus.

**4 THE SELLING STOCKHOLDERS**

The shares of Common Stock being offered by the Selling Stockholders are those previously issued to the Selling Stockholder, and those issuable to the Selling Stockholders, in each case, upon exercise of the Warrants. For additional information regarding the issuances of those shares of Common Stock and Warrants, see "Summary" above. We are registering the resale of the shares of Common Stock in order to permit the Selling Stockholders to offer the shares for resale from time to time. Except for the ownership of the shares of Common Stock and the Warrants as well as their purchase of other securities from us in the past, the Selling Stockholders, other than our Chairman, have not had any material relationship with us within the past three years. The shares offered by this prospectus may be sold from time to time on Nasdaq, in privately negotiated transactions or otherwise. We have agreed to prepare and file amendments and supplements to the registration statement to the extent necessary to keep the registration statement effective for the period of time required under our agreement with the Selling Stockholders. All information with respect to the Selling Stockholders' ownership of the Resale Shares has been furnished by or on behalf of the Selling Stockholders and is as of September 25, 2024. The percentage ownership data is based on 27,563,494 shares of Common Stock issued and outstanding as of September 25, 2024. We believe, based on information supplied by the Selling Stockholders, that except as may otherwise be indicated in the table below, the Selling Stockholders and their affiliates listed in any footnote to the table below have sole voting and dispositive power with respect to the shares of Common Stock reported as beneficially owned by them. The aggregate number of shares of Common Stock that the Selling Stockholders may offer and sell pursuant to this prospectus is based upon

- (i) the number of shares of Common Stock that may be issued to the 2024 Selling Stockholders upon the exercise of the 2024 Warrants;
- (ii) the additional shares of Common Stock now issuable under the 2020 Warrants to the 2020 Selling Stockholders as a result of the anti-dilution mechanism of the 2020 Warrants;
- (iii) the number of shares of Common Stock that may be issued to the Harley Selling Stockholders upon the exercise of the Harley Warrants;
- (iv) the number of shares of Common Stock that may be issued to the PIPE Selling Stockholders upon the exercise of the PIPE Warrants; and
- (v) the number of shares issued to our Chairman pursuant to a PIPE Purchase Agreement. If needed, we will file a post-effective amendment to the registration statement or additional registration statements, to add such aggregate number of Common Stock each Selling Stockholder may offer and sell as a result of any anti-dilution provisions in the Warrants that would cause the number of shares issuable upon exercise thereof to be increased. The Selling Stockholders may sell some, all or none of the Resale Shares. We do not know how long the Selling Stockholders will hold the Resale Shares before selling them, and we currently have no agreements,

arrangements or understandings with any Selling Stockholders regarding the sale or other disposition of any of the Resale Shares or any other shares of Common Stock. The Resale Shares may be offered and sold from time to time by the Selling Stockholders pursuant to this prospectus. Â Because the Selling Stockholders may sell some or all of the Resale Shares included in this prospectus, and because there are currently no agreements, arrangements or understandings with respect to the sale of any of the Resale Shares, no estimate can be given as to the number of shares of Common Stock available for resale hereby that will be held by the Selling Stockholders in the future. In addition, the Selling Stockholders may have sold, transferred or otherwise disposed of, or may sell, transfer or otherwise dispose of, at any time and from time to time, Resale Shares they hold in transactions exempt from the registration requirements of the Securities Act after the date on which they provided the information set forth in the table below. We have, therefore, assumed for the purposes of the following table, that the Selling Stockholders will sell all of the Resale Shares owned beneficially by them and their affiliates listed in any footnote to the table below that are covered by this prospectus, but not any other shares of Common Stock they may beneficially own. Â 5 Â Â Â Â Selling Stockholder Information: Selling Stockholders(1)Â Shares Owned Immediately Prior to the Offering(2)Â Â Shares Being Offered for Resale Under this Prospectus(3)Â Â Number of Shares Beneficially Owned After Sale of Shares(4)Â Â Percentage of Outstanding Shares of Common Stock Beneficially Owned Immediately Following the Sale of Shares(5) Â Â 2024 Selling StockholdersÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Oaktree AZ Strategic Lending Fund, L.P.Â Â 150,762Â Â Â 150,762Â Â Â Â Â Â Â \* %Â Â Oaktree Loan Acquisition Fund, L.P.Â Â 302,092Â Â Â 302,092Â Â Â Â Â Â Â \* %Â Â Oaktree LSL Fund Delaware Holdings EURRC, L.P. Â Â 53,536Â Â Â 53,536Â Â Â Â Â Â Â \* %Â Â 2020 Selling StockholdersÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Oaktree-TCDRS Strategic Credit, LLCÂ Â 6,226Â Â Â 686Â Â Â 5,540Â Â Â \* %Â Â Exelon Strategic Credit Holdings, LLCÂ Â 3,730Â Â Â 411Â Â Â 3,319Â Â Â \* %Â Â Oaktree-NGP Strategic Credit, LLCÂ Â 6,251Â Â Â 689Â Â Â 5,562Â Â Â \* %Â Â Oaktree-Minn Strategic Credit LLCÂ Â 3,020Â Â Â 333Â Â Â 2,687Â Â Â \* %Â Â Oaktree-Forrest Multi-Strategy LLCÂ Â 5,089Â Â Â 561Â Â Â 4,528Â Â Â \* %Â Â Oaktree-TBMR Strategic Credit Fund C, LLCÂ Â 2,948Â Â Â 325Â Â Â 2,623Â Â Â \* %Â Â Oaktree-TBMR Strategic Credit Fund F, LLCÂ Â 4,599Â Â Â 507Â Â Â 4,092Â Â Â \* %Â Â Oaktree-TBMR Strategic Credit Fund G, LLCÂ Â 7,531Â Â Â 830Â Â Â 6,701Â Â Â \* %Â Â Oaktree-TSE 16 Strategic Credit, LLCÂ Â 5,746Â Â Â 633Â Â Â 5,113Â Â Â \* %Â Â INPRS Strategic Credit Holdings, LLCÂ Â 2,518Â Â Â 278Â Â Â 2,240Â Â Â \* %Â Â Oaktree Gilead Investment Fund AIF (Delaware), L.P.Â Â 22,526Â Â Â 2,483Â Â Â 20,043Â Â Â \* %Â Â Oaktree Huntington-GCF Investment Fund (Direct Lending AIF) GP, L.P.Â Â 2,196Â Â Â 242Â Â Â 1,954Â Â Â \* %Â Â Oaktree Specialty Lending CorporationÂ Â 31,246Â Â Â 3,445Â Â Â 27,801Â Â Â \* %Â Â Oaktree PRE Life Sciences Fund, L.P. Â Â 27,461Â Â Â 3,027Â Â Â 24,434Â Â Â \* %Â Â Harley Selling StockholdersÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Craig BonnÂ Â 187,000Â Â Â 187,000Â Â Â Â Â Â Â \* %Â Â Michael EganÂ Â 5,000Â Â Â 5,000Â Â Â Â Â Â Â \* %Â Â Amanda Hirsch Tarasoff Â Â 10,834Â Â Â 10,834Â Â Â Â Â Â Â \* %Â Â PIPE Selling StockholdersÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Bigger Capital Fund, LPÂ Â 424,240Â Â Â 212,120Â Â Â 212,120Â Â Â \* %Â Â CVI Investments,Â Inc.(6)Â Â 1,473,395Â Â Â 500,000Â Â Â 973,395Â Â Â 2.9 %Â Â District 2 Capital Fund LPÂ Â 484,840Â Â Â 242,420Â Â Â 242,420Â Â Â \* %Â Â Highbridge Tactical Credit Institutional Fund,Â Ltd.(7)Â Â 530,007Â Â Â 409,215Â Â Â 120,792Â Â Â \* %Â Â Highbridge Tactical Credit Master Fund, L.P.(8)Â Â 3,012,123Â Â Â 2,325,639Â Â Â 686,484Â Â Â 2.0 %Â Â Lindsay A. RosenwaldÂ Â 6,751,497Â Â Â 1,526,718Â Â Â 5,224,779Â Â Â 15.5 %Â Â Richard MolinskyÂ Â 200,000Â Â Â 100,000Â Â Â 100,000Â Â Â \* %Â Â Robert ForsterÂ Â 300,000Â Â Â 150,000Â Â Â 150,000Â Â Â \* %Â Â TotalÂ Â 14,016,413Â Â Â 6,189,786Â Â Â 7,826,627Â Â Â 23.2 %Â Â \* Less than 1%. Â (1)The principal business address and address for notice to the Selling Stockholders will be the address set forth in our books and records. (2)This includes, for each Selling Stockholder, any shares of Common Stock beneficially owned by such holder acquired in one or more transactions separate and unrelated from the holderâ€™s ownership of any of the 2024 Warrant Shares, the 2020 Warrant Shares, the Harley Warrant Shares, the PIPE Warrant Shares and the Chairman Shares. (3)This includes, for each Selling Stockholder, (i)Â the 2024 Warrant Shares being sold hereunder; (ii)Â the 2020 Warrant Shares being sold hereunder; (iii)Â the Harley Shares being sold hereunder; (iv)Â the PIPE Warrant Shares being sold hereunder; and (v)Â the Chairman Shares being sold hereunder. (4)Assumes the Selling Stockholders sell all of the shares of Common Stock being offered by this prospectus. (5)Percentage calculated based upon the assumption that the Selling Stockholders sell all of the shares of Common Stock offered by this prospectus. (6)Heights Capital Management,Â Inc., the authorized agent of CVI Investments,Â Inc. ("CVI"), has discretionary authority to vote and dispose of the shares held by CVI and may be deemed to be the beneficial owner of these shares. Martin Kobinger, in his capacity as Investment Manager of Heights Capital Management,Â Inc., may also be deemed to have investment discretion and voting power over the shares held by CVI. Mr.Â Kobinger disclaims any such beneficial ownership of the shares. CVI Investments,Â Inc.is affiliated with one or more FINRA members, none of whom are currently expected to participate in the sale pursuant to the prospectus contained in the Registration Statement of Resale Shares purchased by the investor in this private placement of the PIPE Warrants. (7)Highbridge Capital Management, LLC is the trading manager of Highbridge Tactical Credit Institutional Fund,Â Ltd. Highbridge Tactical Credit Institutional Fund,Â Ltd. disclaims beneficial ownership over these shares. The address of Highbridge Capital Management, LLC is 277 Park Avenue, 23rd Floor, New York, NY 10172, and the address of Highbridge Tactical Credit Institutional Fund,Â Ltd. is c/o Maples Corporate Services Limited #309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands. (8)Highbridge Capital Management, LLC is the trading manager of Highbridge Tactical Credit Master Fund, L.P. Highbridge Tactical Credit Master Fund, L.P. disclaims beneficial ownership over these shares. The address of Highbridge Capital Management, LLC is 277 Park Avenue, 23rd Floor, New York, NY 10172, and the address of Highbridge Tactical Credit Master Fund, L.P. is c/o Maples Corporate Services Limited #309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands. Â 6 Â Â Relationship with the Selling Stockholders Â 2024 Credit Agreement Â As discussed above under the section titled â€œSummaryâ€‰%â€‰â€œSale of 2024 Warrants,â€‰ on JulyÂ 25, 2024, we entered into the 2024 Credit Agreement with Oaktree and the lenders from time to time party thereto, in connection with which we granted to certain of the selling stockholders warrants exercisable for an aggregate of 506,390 shares of Common Stock at an exercise price per share of \$1.65 (as adjusted from \$2.0735). Â 2020 Credit Agreement and Letter Agreement Â As discussed above under the section titled â€œSummaryâ€‰%â€‰â€œAdditional 2020 Warrant Shares,â€‰ on AugustÂ 27, 2020, we entered into the 2020 Credit Agreement, in connection with which we granted to the 2020 Selling Stockholders warrants to purchase 1,749,450 shares of Common Stock at an exercise price per share of \$3.20. Â On JuneÂ 13, 2023, we entered into the 2023 Letter Agreement with Oaktree and certain of its affiliates, pursuant to which we agreed to lower the exercise price of the existing warrants to \$8.136 per share (adjusted for the reverse stock split, which reduced the number of shares issuable upon the exercise of the 2020 Warrants to 116,637) and issue amended

and restated warrants reflecting the new exercise price. Pursuant to the anti-dilution adjustment mechanism of the 2020 Warrants, the number of shares issuable upon the exercise of the 2020 Warrants increased from 116,637 shares to 131,087 shares and the exercise price decreased to \$7.2392 per share. Â The 2020 Warrants are exercisable on or after JuneÂ 13, 2023 and expire AugustÂ 27, 2030. Â Registration Rights Agreement Â Pursuant to the 2020 Registration Rights Agreement and the 2024 Registration Rights Agreement with the 2020 Selling Stockholders and the 2024 Selling Stockholders, respectively, we agreed to prepare and file with the SEC the registration statement, of which this prospectus forms a part, that permits the resale of the 2020 Shares and the 2024 Shares and, subject to certain exceptions, to use reasonable best efforts to keep such registration statement effective under the Securities Act until (i)Â all shares of Common Stock the offer and resale of which was registered by the registration statement have been sold, transferred or otherwise disposed of by the Selling Stockholders, (ii)Â the 2020 Shares and the 2024 Shares are sold, transferred or otherwise disposed of pursuant to RuleÂ 144 of the Securities Act, or (iii)Â the 2020 Shares and the 2024 Shares have become eligible for sale by the Selling Stockholders pursuant to RuleÂ 144 without any restriction on the volume or manner of such sale and all restrictive legends and stop transfer instructions have been removed with respect to all book entries representing the 2020 Shares and the 2024 Shares. Â 7 Â Â We have also agreed, among other things, to indemnify the Selling Stockholders and their officers, directors, members, employees and agents, successors and assigns, and any person who controls any of the Selling Stockholders (within the meaning of the Securities Act or the Exchange Act) from all losses and liabilities arising out of or relating to any untrue statement or alleged untrue statement or omission or alleged omission of material fact in this prospectus or the registration statement of which this prospectus forms a part. Â Harley Letter Agreement Â As discussed above under the section titled â€œSummaryâ€â€â€Grant of Harley Warrants,â€ on DecemberÂ 27, 2022, in connection with the offer and sale by Urica of Urica Preferred Stock, we entered into the Harley Letter Agreement. Under the Harley Letter Agreement, Urica engaged Harley as placement agent in connection with the private placement of the Urica Preferred Stock. As partial consideration for acting as placement agent, Urica granted Harley a warrant to purchase Urica securities and we agreed to issue replacement warrants to the Harley Selling Stockholders following the previously disclosed exchange of the Urica Preferred stock for shares of Company common stock. Pursuant to the Harley Letter Agreement, we issued such replacement warrants granting the Harley Selling Stockholders warrants to purchase 10% of the Common Stock for which the Urica Preferred Stock was exchanged. Â PIPE Purchase Agreements Â As discussed above under the section titled â€œSummaryâ€â€â€Sale of PIPE Warrants and Chairman Shares,â€ on SeptemberÂ 23, 2024, we entered into the PIPE Purchase Agreements with the PIPE Selling Stockholders, in connection with which we issued to certain of the selling stockholders warrants exercisable for an aggregate of 4,702,753 shares of Common Stock at an exercise price per share of \$1.84. Additionally, pursuant to the PIPE Purchase Agreement with our Chairman, we issued 763,359 shares of Common Stock at a price per share of \$1.84. In connection with our SeptemberÂ registered direct offering of Common Stock and our SeptemberÂ private placements of warrants and Common Stock, and pursuant to the anti-dilution adjustment mechanism of the 2024 Warrants and the 2020 Warrants, the exercise price of the 2024 Warrants decreased to \$1.65 per share and the number of shares issuable upon the exercise of the 2020 Warrants increased from 129,096 shares to 131,087 shares and the exercise price decreased to \$7.2392 per share. Â Warrants Â The 2024 Warrants became exercisable upon issuance and will expire on JulyÂ 25, 2031. The 2020 Warrants became exercisable on JuneÂ 13, 2023 and will expire AugustÂ 27, 2030. The Harley Warrants became exercisable upon issuance and will expire on JuneÂ 27, 2030. The PIPE Warrants will become exercisable on MarchÂ 23, 2025 and will expire on MarchÂ 23, 2030. Â Except as described above, neither the selling stockholders nor any persons having control over such selling stockholders have held any position or office with us or our affiliates within the last three years or has had a material relationship with us or any of our predecessors or affiliates within the past three years, other than as a result of the ownership of shares of our common stock or other securities. Â 8 Â Â DESCRIPTION OF SECURITIES BEING REGISTERED Â We are registering the public offer and resale of 6,189,786 shares of our Common Stock issuable in connection with the 2024 Warrants, the 2020 Warrants, the Harley Warrants and the PIPE Warrants (together the â€œWarrantsâ€). Â Common Stock Â The Companyâ€™s Certificate of Incorporation, as amended, authorizes the Company to issue up to 200,000,000 shares of Common Stock. Our Common Stock is traded on The Nasdaq Capital Market under the symbol â€œFBIO.â€ Â The terms, rights, preference and privileges of the Common Stock are as follows: Â Voting Rights Â Each holder of Common Stock is entitled to one vote per share of Common Stock held on all matters submitted to a vote of the stockholders, including the election of directors. The Companyâ€™s certificate of incorporation and bylaws do not provide for cumulative voting rights. Â Dividends Â Subject to preferences that may be applicable to any then-outstanding preferred stock, the holders of the Companyâ€™s outstanding shares of Common Stock are entitled to receive dividends, if any, as may be declared from time to time by the Companyâ€™s Board of Directors out of legally available funds. Â Liquidation Â In the event of the Companyâ€™s liquidation, dissolution or winding up, holders of Common Stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of the Companyâ€™s debts and other liabilities, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of preferred stock. Â Rights and Preference Â Holders of the Companyâ€™s Common Stock have no preemptive, conversion or subscription rights, and there is no redemption or sinking fund provisions applicable to our Common Stock. The rights, preferences and privileges of the holders of Common Stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of the Companyâ€™s preferred stock that are or may be issued. Â Fully Paid and Nonassessable Â All of the Companyâ€™s outstanding shares of Common Stock are fully paid and nonassessable. Â Warrants Held by the Selling Stockholders Â Exercisability Â The 2024 Warrants became exercisable upon issuance and will expire on JulyÂ 25, 2031. The 2020 Warrants became exercisable on JuneÂ 13, 2023 and will expire AugustÂ 27, 2030. The Harley Warrants became exercisable upon issuance and will expire on JuneÂ 27, 2030. The PIPE Warrants will become exercisable on MarchÂ 23, 2025 and will expire on MarchÂ 23, 2030. Â 9 Â Â Exercise Limitation Â A holder will not have the right to exercise any portion of the Warrants if the holder (together with its affiliates and certain related parties) would beneficially own in excess of 4.99% of the number of shares of our Common Stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Warrants. However, any holder may increase or decrease such percentage to any other percentage not in excess of 9.99%, provided that any increase in such percentage shall not be effective until 61 days following notice from the holder to us. Â Exercise Price Â The exercise price per whole share of Common Stock purchasable upon exercise of the 2024 Warrants, the 2020 Warrants, the Harley Warrants and the PIPE Warrants is equal to \$1.65, \$7.2392, \$1.68 and \$1.84, respectively. The exercise price is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock



combinations, reclassifications or similar events affecting our Common Stock and also upon any distributions of assets, including cash, stock or other property to our stockholders. The exercise price of the 2024 Warrants will also be adjusted if, while the 2024 Warrants are outstanding, the Company engages in any transaction involving the issuance or sale of shares of common stock or equivalent securities at an effective price per share less than the Base Share Price. In such case, the exercise price of the 2024 Warrants will be reduced to equal the Base Share Price. **Transferability** **Subject to applicable laws, the Warrants may be offered for sale, sold, transferred or assigned without our consent.** **Exchange Listing** **The Warrants are not listed on any securities exchange or nationally recognized trading system.** **Fundamental Transactions** **In the event of a fundamental transaction, as described in the Warrants and generally including any reorganization, recapitalization or reclassification of our Common Stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding Common Stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding Common Stock, the holders of the Warrants will be entitled to receive upon exercise of the Warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the Warrants immediately prior to such fundamental transaction.** **Rights as a Stockholder** **Except as otherwise provided in the Warrants or by virtue of such holder's ownership of shares of our Common Stock, the holder of a Warrant does not have the rights or privileges of a holder of our Common Stock, including any voting rights, until the holder exercises the Warrant.** **Governing Law** **The Warrants are governed by New York law.** **10** **CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS** **The following discussion summarizes certain U.S. federal income tax considerations of the acquisition, ownership and disposition of the Common Stock offered by this prospectus but does not purport to be a complete analysis of all potential tax effects. This discussion does not address effects of other U.S. federal tax laws, such as estate and gift tax laws, or of state, local, non-U.S. or other tax considerations that may be relevant to a purchaser or holder of the Common Stock in light of their particular circumstances. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), the Treasury regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service (the "IRS"), in each case as of the date hereof. These authorities may change, possibly with retroactive effect, or may be subject to differing interpretations that may adversely affect a holder of the Common Stock. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the acquisition, ownership and disposition of the Common Stock. This discussion is limited to holders that hold the Common Stock as a capital asset within the meaning of Section 1221 of the Code (generally property held for investment). This discussion does not describe all of the U.S. federal income tax consequences that may be relevant to a holder in light of its particular circumstances, including the impact of the alternative minimum tax and of the Medicare contribution tax on net investment income. In addition, it does not address consequences for holders subject to special rules, including without limitation:** **A** **U.S. expatriates and former citizens or long-term residents of the United States;** **A** **persons holding the Common Stock as part of a hedge, straddle, conversion, or other integrated transaction;** **A** **banks, insurance companies, and other financial institutions;** **A** **brokers, dealers or traders in securities;** **A** **controlled foreign corporations, and passive foreign investment companies, and corporations that accumulate earnings** **A** **to avoid U.S. federal income tax;** **A** **S corporations or entities or arrangements that are treated as partnerships for U.S. federal income tax purposes (and investors therein);** **A** **tax-exempt organizations or governmental organizations;** **A** **real estate investment trusts or regulated investment companies;** **A** **U.S. persons whose functional currency is not the U.S. dollar;** **A** **persons subject to special tax accounting rules;** **A** **persons who hold or receive the Common Stock pursuant to the exercise of any employee stock option or otherwise as compensation;** **A** **persons deemed to sell our Common Stock under the constructive sale provisions of the Code;** **A** **tax-qualified retirement plans, individual retirement accounts or other tax-deferred accounts; and** **A** **qualified foreign pension funds** **as defined in Section 897(l)(2) of the Code.** **11** **A** **If a partnership (or any other entity treated as a partnership for U.S. federal income tax purposes) holds the Common Stock, the U.S. federal income tax treatment of a partner of that partnership generally will depend upon the status of the partner and the activities of the partnership. If you are a partnership or a partner of a partnership holding the Common Stock, you should consult your tax advisors as to the particular U.S. federal income tax consequences of holding and disposing of the Common Stock. This discussion is for information purposes only and is not tax advice. You should consult your own independent tax advisor concerning the application of the U.S. federal income tax laws to your particular circumstances as well as any tax consequences for the acquisition, ownership, or disposition of the Common Stock arising under other U.S. federal tax laws and the laws of any state, local or non-U.S. tax jurisdiction or under any applicable income tax treaty. For purposes of this discussion, a "U.S. holder" is a beneficial owner of our Common Stock that, for U.S. federal income tax purposes, is or is treated as:** **A** **an individual who is a citizen or resident of the United States;** **A** **a corporation created or organized under the laws of the United States, any state thereof, or the District of Columbia;** **A** **an estate the income of which is subject to U.S. federal income taxation regardless of its source; or** **A** **a trust that (i) is subject to the primary supervision of a U.S. court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code) or (ii) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.** **A** **"non-U.S. holder" is any beneficial owner of our Common Stock that is not a U.S. holder.** **U.S. Holders** **Distributions in General** **If distributions are made with respect to the Common Stock, such distributions will be treated as dividends to the extent of our current or accumulated earnings and profits as determined under the Code. Subject to customary conditions and limitations, dividends will be eligible for the dividends-received deduction in the case of U.S. holders that are (or are treated for U.S. federal income tax purposes) as corporations. Dividends paid to non-corporate U.S. holders generally will qualify for taxation at preferential rates if those holders meet certain holding period and other applicable requirements. Dividends received by non-corporate U.S. holders may also be subject to the additional 3.8% tax on net investment income. Any portion of a distribution that exceeds our current and accumulated earnings and profits will first be applied to reduce a U.S. holder's tax basis in the Common Stock, but not below zero. Distributions in excess of our current and accumulated earnings and profits and in excess of a U.S. holder's tax basis in its shares will be taxable as gain from the disposition of the Common Stock, the tax treatment of which is discussed below.** **Extraordinary Dividends** **Dividends that exceed certain thresholds in relation to a U.S. holder's tax basis in the Common Stock could be characterized as "extraordinary dividends" under Section 1059 of the Code. Corporate U.S. holders that have held our Common Stock for two years or less before the dividend announcement date and that receive an extraordinary dividend will generally be required to reduce their tax basis in the stock by the nontaxed portion of the dividend due to the dividends-received deduction. If the amount of**

reduction exceeds the U.S. holder's tax basis in the stock, the excess will be taxable as gain from the disposition of the stock, the tax treatment of which is discussed below. Non-corporate U.S. holders that receive an extraordinary dividend will be required to treat any losses on the sale of our Common Stock as long-term capital losses to the extent of the extraordinary dividends such U.S. holders receive that qualify for taxation as the preferential rates discussed above under "Distributions in General." U.S. holders are urged to consult their tax advisors with respect to the eligibility for and amount of any dividend received deduction and the application of Section 1059 of the Code to any dividends they receive.

**12 Disposition of Common Stock by Sale, Exchange or Redemption** Upon any sale or disposition (other than certain redemptions, as discussed below) of the Common Stock, a U.S. holder generally will recognize capital gain or loss equal to the difference between the amount realized by the U.S. holder and the U.S. holder's adjusted tax basis in the Common Stock. Such capital gain or loss will be long-term capital gain or loss if the U.S. holder's holding period for the Common Stock is longer than one year. Non-corporate U.S. holders may be eligible for preferential tax rates on long-term capital gains but also may be subject to the additional 3.8% tax on net investment income. The deductibility of capital losses is subject to limitations.

A redemption of the Common Stock will be treated as a sale or exchange described in the preceding paragraph if the redemption, based on the facts and circumstances, is treated for U.S. federal income tax purposes as (i) a "complete termination" of your interest in the Common Stock, (ii) a "substantially disproportionate" redemption of your Common Stock, or (iii) a "not essentially equivalent to a dividend", each within the meaning of Section 302 of the Code. In determining whether any of these tests has been met, you must take into account not only the Common Stock and other equity interests that you actually own but also other equity interests that you constructively own under U.S. federal income tax rules. If you meet none of the alternative tests described above, the redemption will be treated as a distribution subject to the rules described under "Distributions in General."

If a redemption of the Common Stock is treated as a distribution that is taxable as a dividend, you are urged to consult your tax advisor regarding the allocation of your tax basis as between the redeemed and remaining shares of Common Stock.

**Information Reporting and Backup Withholding** We or an applicable withholding agent will report to our U.S. holders and the IRS the amount of dividends (including deemed dividends) paid during each year and the amount of any tax withheld with respect to the Common Stock. Certain non-corporate U.S. holders may be subject to U.S. backup withholding at a rate of 28% on payments of dividends on the Common Stock unless the holder furnishes the payor or its agent with a taxpayer identification number, certified under penalties of perjury, and certain other information or otherwise establishes an exemption from backup withholding. Backup withholding tax is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a U.S. holder's U.S. federal income tax liability, provided the U.S. holder timely furnishes the required information to the IRS.

**Non-U.S. Holders**

**Distributions** If distributions are made with respect to the Common Stock, such distributions will be treated as dividends to the extent of our current or accumulated earnings and profits as determined under the Code and may be subject to withholding as discussed below. Any portion of a distribution that exceeds our current and accumulated earnings and profits will first be applied to reduce the Non-U.S. holder's basis in the Common Stock, but not below zero. If the distribution exceeds our current and accumulated earnings and profits and the Non-U.S. holder's basis, the excess will be treated as gain from the disposition of the Common Stock, the tax treatment of which is discussed below.

In addition, if we are classified as a U.S. real property holding corporation (a "USRPHC") within the meaning of Section 897(c) of the Code and any distribution exceeds our current and accumulated earnings and profits, we will need to satisfy our withholding requirements either by (a) treating the entire distribution (even if in excess of earnings and profits) as a dividend subject to the withholding rules described below and withhold at a minimum rate of 15% or such lower rate as may be specified by an applicable income tax treaty for distributions from a USRPHC; or (b) treating (i) only the amount of the distribution equal to our reasonable estimate of our current and accumulated earnings and profits as a dividend subject to the withholding rules in the following paragraph; and (ii) the excess portion of the distribution as subject to withholding at a rate of 15% (or such lower rate as may be specified by an applicable income tax treaty), as if such excess were the result of a sale of shares in a USRPHC, with a credit generally allowed against the Non-U.S. holder's U.S. federal income tax liability for the tax withheld from such excess. We believe that we currently are not a USRPHC, and we do not expect to become a USRPHC for the foreseeable future (see discussion of USRPHCs below under "Disposition of Common Stock, Including Redemptions").

**13 Dividends** (including amounts distributed by a USRPHC and subject to withholding as dividends per the preceding paragraph) paid to a Non-U.S. holder of the Common Stock will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. However, dividends that are treated as being effectively connected with the conduct of a trade or business by the Non-U.S. holder within the United States (and, where a tax treaty applies, are attributable to a permanent establishment maintained by the Non-U.S. holder in the United States) are not subject to this withholding tax, provided that certain certification and disclosure requirements are satisfied including completing IRS Form W-8ECI (or other applicable form). Instead, such dividends are subject to U.S. federal income tax on a net income basis in the same manner as if the Non-U.S. holder were a United States person (as defined under the Code), unless an applicable income tax treaty provides otherwise. Any such effectively connected dividends received by a foreign corporation may be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A Non-U.S. holder of the Common Stock who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding for dividends, as discussed below, will be required to (i) complete IRS Form W-8BEN or Form W-8BEN-E (or other applicable form) and certify under penalty of perjury that such holder is not a United States person as defined under the Code and is eligible for treaty benefits, or (ii) if the Common Stock is held through certain foreign intermediaries, satisfy the relevant certification requirements of applicable Treasury regulations. A Non-U.S. holder of the Common Stock eligible for a reduced rate of U.S. withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the U.S. Internal Revenue Service.

**Disposition of Common Stock, Including Redemptions** Any gain realized by a Non-U.S. holder on the disposition of the Common Stock generally will not be subject to U.S. federal income or withholding tax unless:

- the gain is effectively connected with the conduct of a trade or business by the Non-U.S. holder in the United States (and, if required by an applicable income tax treaty, attributable to a permanent establishment maintained by the Non-U.S. holder in the United States);
- the Non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition, and certain other conditions are met; or
- we are or have been a USRPHC, as defined in Section 897(c) of the Code, and a Non-U.S. holder owned directly or pursuant to applicable attribution rules at any time during the five-year period ending on the date of disposition more than 5% of the



Common Stock assuming that the Common Stock is regularly traded on an established securities market, within the meaning of Section 897(c)(3) of the Code. A Non-U.S. holder described in the first bullet point immediately above will generally be subject to tax on the gain derived from the sale under regular graduated U.S. federal income tax rates in the same manner as if the Non-U.S. holder were a United States person as defined under the Code, and, if it is a corporation, may also be subject to branch profits tax equal of 30% (generally applicable to its effectively connected earnings and profits) or at such lower rate as may be specified by an applicable income tax treaty. An individual Non-U.S. holder described in the second bullet point immediately above will be subject to a flat 30% tax (or at such reduced rate as may be provided by an applicable tax treaty) on the gain derived from the sale, which may be offset by U.S. source capital losses, even if the individual is not considered a resident of the United States for U.S. federal income tax purposes. A Non-U.S. holder described in the third bullet point above will be subject to U.S. federal income tax under regular graduated U.S. federal income tax rates with respect to the gain realized in the same manner as if the Non-U.S. holder were a United States person as defined under the Code. A corporation is a USRPHC if it is a U.S. corporation and the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business. We believe that we currently are not a USRPHC for U.S. federal income tax purposes, and we do not expect to become a USRPHC for the foreseeable future. Our Common Stock will be listed on the NASDAQ Capital Market and we believe that, for as long as we continue to be so listed, our Common Stock will be treated as regularly traded on an established securities market. However, if we become a USRPHC and our Common Stock is regularly traded on an established securities market, a Non-U.S. holder generally will be subject to U.S. federal income tax on any gain from the disposition of such stock if such Non-U.S. holder has owned or is deemed to have owned more than 5% of our Common Stock, at any time within the shorter of the five-year period preceding the disposition or such holder's holding period for such stock. 14 If a Non-U.S. holder is subject to U.S. federal income tax on any sale, exchange, redemption (except as discussed below), or other disposition of the Common Stock, the Non-U.S. holder will recognize capital gain or loss equal to the difference between the amount realized by the Non-U.S. holder and the Non-U.S. holder's adjusted tax basis in the Common Stock. Such capital gain or loss will be long-term capital gain or loss if the Non-U.S. holder's holding period for the Common Stock is longer than one year. A Non-U.S. holder should consult its own independent tax advisors with respect to applicable tax rates and netting rules for capital gains and losses. Certain limitations exist on the deduction of capital losses by both corporate and non-corporate taxpayers. If a Non-U.S. holder is subject to U.S. federal income tax on any disposition of the Common Stock, a redemption of shares of the Common Stock will be a taxable event. If the redemption is treated as a sale or exchange, instead of as a dividend, a Non-U.S. holder generally will recognize capital gain or loss, equal to the difference between the amount of cash received and fair market value of any property received and the Non-U.S. holder's adjusted tax basis in the Common Stock redeemed (except that to the extent that any cash received is attributable to any accrued but unpaid dividends), and such capital gain or loss will be long-term capital gain or loss if the Non-U.S. holder's holding period for such Common Stock exceeds one year. A payment made in redemption of the Common Stock may be treated as a dividend (subject to taxation as discussed above under "Disposition of Common Stock, Including Redemptions"), rather than as payment in exchange for the Common Stock, in the same circumstances discussed above under "Disposition of Common Stock, Including Redemptions." Each Non-U.S. holder of the Common Stock should consult its own independent tax advisors to determine whether a payment made in redemption of the Common Stock will be treated as a dividend or as payment in exchange for the Common Stock. Information Reporting and Backup Withholding We must annually report to the IRS and to each Non-U.S. holder the amount of dividends (including constructive dividends) paid to such Non-U.S. holder and the tax withheld with respect to such dividends, regardless of whether withholding was required. Copies of the information returns reporting such dividends and withholding may also be made available under the provisions of an applicable tax treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides. U.S. backup withholding will generally apply to the payment of dividends to non-U.S. holders unless such non-U.S. holders furnish to the payor an IRS Form W-8BEN or Form W-8BEN-E (or other applicable form) or otherwise establish an exemption. Payment by a U.S. office of a broker of the proceeds of a sale of shares of our Common Stock is subject to both backup withholding and information reporting unless the non-U.S. holder, or beneficial owner thereof, as applicable, certifies that it is a non-U.S. holder on Form W-8BEN or Form W-8BEN-E (or other suitable substitute or successor form), or otherwise establishes an exemption. Subject to certain exceptions, backup withholding and information reporting generally will not apply to a payment of proceeds from the sale of shares of our Common Stock if such sale is effected through a foreign office of a broker, provided that the broker does not have certain U.S. connections. Any amount withheld under the backup withholding rules from a payment to a non-U.S. holder is allowable as a credit against such holder's U.S. federal income tax liability (if any), which may entitle the holder to a refund if in excess of such liability, provided that the holder timely provides the required information to the IRS. Non-U.S. holders are urged to consult their own tax advisers regarding the application of backup withholding in their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding under current Treasury Regulations. 15 Foreign Account Tax Compliance Act Sections 1471 to 1474 of the Code (such sections, and the Treasury Regulations and administrative guidance issued thereunder, commonly referred to as FATCA) impose a 30% U.S. withholding tax on certain "withholdable payments" made to a "foreign financial institution" or a "nonfinancial foreign entity." Withholdable payments include payments of dividends and the gross proceeds from a disposition of certain property (such as shares of our Common Stock), if such disposition occurs after December 31, 2018. In general, if a holder is a "foreign financial institution" (which includes investment entities such as hedge funds and private equity funds), the 30% withholding tax will apply to withholdable payments made to such holder, unless such holder enters into an agreement with the U.S. Department of Treasury to collect and provide substantial information regarding its U.S. account holders, including certain account holders that are foreign entities with U.S. owners, and to withhold 30% on certain "pass-through payments." If such holder is a "non-financial foreign entity," FATCA also generally will impose a withholding tax of 30% on withholdable payments made to such holder unless the holder provides the withholding agent with a certification that it does not have any "substantial United States owners" or a certification identifying its direct and indirect substantial United States owners. Intergovernmental agreements between the United States and a holder's resident country may modify some of the foregoing requirements. Although withholding under FATCA would also have applied to payments of gross proceeds from the sale or other disposition of the Common Stock on or after January 1, 2019, Treasury Regulations proposed in late 2018 eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers generally may rely on these proposed Treasury

Regulations until final Treasury Regulations are issued. We will not pay any additional amounts to holders of the Common Stock in respect of any amounts withheld. Non-U.S. holders should consult their own tax advisers with respect to the U.S. federal income tax consequences of FATCA on their ownership and disposition of shares of our Common Stock. Documentation that holders provide in order to be treated as FATCA compliant may be reported to the IRS and other tax authorities, including information about a holder's identity, its FATCA status and if applicable, its direct and indirect U.S. owners. Prospective investors should consult their tax advisers about how information reporting and the possible imposition of withholding tax under FATCA may apply to their investment in the Common Stock.

**16 PLAN OF DISTRIBUTION** The Selling Stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling Resale Shares or interests in Resale Shares received after the date of this prospectus from a Selling Stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their Resale Shares or interests in Resale Shares on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices. The Selling Stockholders may use any one or more of the following methods when disposing of shares or interests therein: ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers; block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction; purchases by a broker-dealer as principal and resale by the broker-dealer for its account; an exchange distribution in accordance with the rules of the applicable exchange; privately negotiated transactions; short sales effected after the date the registration statement of which this prospectus is a part is declared effective by the SEC; through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise; broker-dealers may agree with the Selling Stockholders to sell a specified number of such shares at a stipulated price per share; a combination of any such methods of sale; and any other method permitted by applicable law. The Selling Stockholders may, from time to time, pledge or grant a security interest in some or all of the Resale Shares owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the Resale Shares, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of Selling Stockholders to include the pledgee, transferee or other successors in interest as Selling Stockholders under this prospectus. The Selling Stockholders also may transfer the Resale Shares in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus. In connection with the sale of shares of our Common Stock or interests therein under this prospectus, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of shares of our Common Stock in the course of hedging the positions they assume. The Selling Stockholders may also sell shares of our Common Stock short and deliver these securities to close out their short positions, or loan or pledge the shares to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

**17** The aggregate proceeds to the Selling Stockholders from the sale of the Resale Shares offered by them will be the purchase price of the Resale Shares less discounts or commissions, if any. Each of the Selling Stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of Resale Shares to be made directly or through agents. We will not receive any of the proceeds from this offering. The Selling Stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule. The Selling Stockholders and any underwriters, broker-dealers or agents that participate in the sale of the Resale Shares or interests therein may be "underwriters" within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling Stockholders who are "underwriters" within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act. To the extent required, the shares of our Common Stock to be sold, the names of the Selling Stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus. In order to comply with the securities laws of some states, if applicable, the Resale Shares may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the Common Stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with. We have advised the Selling Stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the Selling Stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the Selling Stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The Selling Stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act. We have agreed to indemnify the Selling Stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus. We have agreed with the Selling Stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which all of the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

**LEGAL MATTERS** Certain legal matters will be passed upon for us by Troutman Pepper Hamilton Sanders LLP, Charlotte, North Carolina. Additional legal matters may be passed upon for us or any underwriters, dealers or agents, by counsel that we will name in the applicable prospectus supplement.

**EXPERTS** The consolidated financial statements of Fortress Biotech, Inc. as of December 31, 2023 and December 31, 2022, and for each of the years in the two-year period ended December 31, 2023, have been incorporated by reference herein and in the registration statement, in reliance on the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon

the authority of said firm as expert in accounting and auditing. 18 WHERE YOU CAN FIND MORE INFORMATION We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the Common Stock offered hereby. This prospectus does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto. For further information with respect to the Company and its Common Stock, reference is made to the registration statement and the exhibits and any schedules filed therewith. Statements contained in this prospectus as to the contents of any contract or other document referred to are not necessarily complete and in each instance, if such contract or document is filed as an exhibit, reference is made to the copy of such contract or other document filed as an exhibit to the registration statement, each statement being qualified in all respects by such reference. We are subject to the information reporting requirements of the Exchange Act, and we file periodic reports and other information with the SEC. These filings include our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and proxy statements on Schedule 14A, as well as any amendments to those reports and proxy statements, which are available free of charge through our website as soon as reasonably practicable after we file them with, or furnish them to, the SEC. Our Internet website address is [www.fortressbiotech.com](http://www.fortressbiotech.com). Our website and the information contained on, or that can be accessed through, the website will not be deemed to be incorporated by reference in, and are not considered part of, this prospectus. You should not rely on any such information in making your decision whether to purchase our securities. The SEC also maintains a website at [www.sec.gov](http://www.sec.gov) that contains reports, proxy and information statements and other information regarding us and other issuers that file electronically with the SEC.

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE** The SEC allows us to incorporate by reference information we file with it into this prospectus, which means that we can disclose important information to you by referring you to other documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC and incorporate by reference will automatically update and supersede this information. We incorporate by reference into this prospectus the documents listed below and all future filings made by us with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, except for information furnished under Items 2.02, 7.01 or 9.01 on Form 8-K or other information furnished to the SEC which is not deemed filed and not incorporated in this prospectus, until the termination of the offering of securities described in the applicable prospectus supplement. We hereby incorporate by reference the following documents: (a) our Annual Report on Form 10-K for the year ended December 31, 2023, filed with the SEC on March 28, 2024; (b) the information specifically incorporated by reference into our Annual Report on Form 10-K for the year ended December 31, 2023 from our Definitive Proxy Statement on Schedule 14A, filed with the SEC on April 5, 2024; (c) the Quarterly Reports on Form 10-Q for fiscal periods ended March 31, 2024 and June 30, 2024, filed with the SEC on May 15, 2024 and August 13, 2024 respectively; (d) our Current Reports on Form 8-K filed with the SEC on January 3, 2024, January 26, 2024, May 29, 2024, June 25, 2024, June 28, 2024, July 5, 2024, July 19, 2024, July 25, 2024 and September 23, 2024; and (e) the description of our Common Stock included in our registration statements on Form 8-A12B, filed with the SEC on December 7, 2011 and November 7, 2017, and any amendment or report filed for the purpose of further updating such descriptions.

19 Any statement contained in this prospectus or in a document incorporated by reference into this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus modifies or supersedes such statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus. Any statement contained in this prospectus or in a document incorporated by reference into this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus modifies or supersedes such statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus. We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, including exhibits to these documents. You should direct any requests for documents in writing to: Fortress Biotech, Inc., 1111 Kane Concourse Suite 301 Bay Harbor Islands, FL 33154, Attention: Corporate Secretary, tel: 781-652-4500. These documents are also available on the Investors section of our website, which is located at [www.fortressbiotech.com](http://www.fortressbiotech.com), or as described under "Where You Can Find More Information" above. The reference to our website address does not constitute incorporation by reference of the information contained on our website into this prospectus. You should rely only on information contained in, or incorporated by reference into, this prospectus. We have not authorized anyone to provide you with information different from that contained in this prospectus or incorporated by reference in this prospectus. We are not making offers to sell the securities in any jurisdiction in which such an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make such offer or solicitation.

20 Fortress Biotech, Inc. 6,189,786 Shares of Common Stock PROSPECTUS , 2024 21 PART II INFORMATION NOT REQUIRED IN PROSPECTUS Item 13. Other Expenses of Issuance and Distribution Amount to Be Paid U.S. Securities and Exchange Commission registration fee \$1,300 Legal fees and expenses \$25,000 Accounting fees and expenses \$25,000 Total \$51,300 Item 14. Indemnification of Directors and Officers Under the General Corporation Law of the State of Delaware (the DGCL), a corporation may include provisions in its certificate of incorporation that will relieve its directors of monetary liability for breaches of their fiduciary duty to the corporation, except under certain circumstances, including a breach of the director's duty of loyalty, acts or omissions of the director not in good faith or which involve intentional misconduct or a knowing violation of law, the approval of an improper payment of a dividend or an improper purchase by the corporation of stock or any transaction from which the director derived an improper personal benefit. The Company's Amended and Restated Certificate of Incorporation eliminates the personal liability of directors to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director with certain limited exceptions set forth in the DGCL. Section 145 of the DGCL grants to corporations the power to indemnify each officer and director against liabilities and expenses incurred by reason of the fact that he or she is or was an officer or director of the corporation if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The Company's Amended and Restated Certificate of Incorporation and Bylaws provide for indemnification of each officer and director of the Company to the fullest extent permitted by the DGCL. Section 145 of the DGCL also empowers corporations to purchase and maintain insurance on

behalf of any person who is or was an officer or director of the corporation against liability asserted against or incurred by him in any such capacity, whether or not the corporation would have the power to indemnify such officer or director against such liability under the provisions of Section 145 of the DGCL. Â Item 15. Recent Sales of Unregistered Securities Â Set forth below is information regarding all securities sold by us since September 27, 2021, the offer and sale of which were not registered under the Securities Act. Also included is the consideration received by us for such securities and information relating to the section of the Securities Act, or rule of the SEC, under which exemption from registration was claimed. Â As discussed above under the section "Summary" of the Grant of 2024 Warrants, on July 25, 2024, we entered into the 2024 Credit Agreement with Oaktree and the lenders from time to time party thereto, in connection with which we granted to the selling stockholders warrants to purchase an aggregate of 506,390 shares of Common Stock at an exercise price per share of \$2.0735. Such warrants were issued in a transaction that is exempt from registration under Section 4(a)(2) of the Securities Act. Â On June 27, 2024, the Company issued 2,028,345 shares of its Common Stock to the former holders of the Urica Preferred Stock. The issuance of the Shares was in satisfaction of obligations under the Dividend and Exchange Agreement. On June 27, 2024, based on the formula provided by the terms of the Urica Preferred Stock, Fortress elected to issue Shares of Common Stock, rather than pay cash, and paid \$20,747.62 in lieu of fractional shares and for accumulated and unpaid dividends that would otherwise have been payable in Common Stock, upon its receipt of all of the issued and outstanding shares of Urica Preferred Stock from the prior holders of such Urica Preferred Stock. The foregoing issuances were made in a transaction exempt from registration under the Securities Act pursuant to Section 4(a) thereof. Â 22 Â Â As discussed above under the section "Summary" of the Sale of PIPE Warrants and Chairman Shares, on September 23, 2024, we entered into the PIPE Purchase Agreements with the PIPE Selling Stockholders, in connection with which we issued to the selling stockholders warrants to purchase an aggregate of 4,702,753 shares of Common Stock at an exercise price per of \$1.84. Additionally, pursuant to a PIPE Purchase Agreement with our Chairman, we issued 763,359 shares of Common Stock to Dr. Rosenwald. Such warrants and shares were issued in a transaction that is exempt from registration under Section 4(a)(2) of the Securities Act. Â Item 16. Exhibits and Financial Statement Schedules Â The exhibits to the Registration Statement are listed in the Exhibit Index attached hereto and incorporated by reference herein. Â EXHIBIT INDEX Â Exhibit Number Â Description 3.1 Â Amended and Restated Certificate of Incorporation of Fortress Biotech, Inc. (formerly Coronado Biosciences, Inc.) dated April 21, 2010 (incorporated by reference to Exhibit 3.1 of the Registrant's Form 10 (file No. 000-54463) filed with the SEC on July 15, 2011). 3.2 Â First Certificate of Amendment to Amended and Restated Certificate of Incorporation of Fortress Biotech, Inc. dated May 20, 2011 (incorporated by reference to Exhibit 3.2 of the Registrant's Form 10 (file No. 000-54463) filed with SEC on July 15, 2011). 3.3 Â Second Certificate of Amendment to Amended and Restated Certificate of Incorporation, as amended, of Fortress Biotech, Inc. dated October 1, 2013 (incorporated by reference to Exhibit 3.8 of the Registrant's Annual Report on Form 10-K (file No. 001-35366) filed with the SEC on March 14, 2014). 3.4 Â Third Certificate of Amendment to Amended and Restated Certificate of Incorporation, as amended, of Fortress Biotech, Inc. dated April 22, 2015 (incorporated by reference to Exhibit 3.9 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on April 27, 2015). 3.5 Â Certificate of Designation of Rights and Preferences of the Fortress Biotech, Inc. 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on November 7, 2017). 3.6 Â Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Fortress Biotech, Inc. dated June 18, 2020 (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 19, 2020). 3.7 Â Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Fortress Biotech, Inc. dated June 23, 2021 (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 23, 2021). 3.8 Â Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Fortress Biotech, Inc. dated July 8, 2022, (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on July 11, 2022). 3.9 Â Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Fortress Biotech, Inc. dated October 9, 2023 (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on October 10, 2023). 3.10 Â Certificate of Amendment of the Amended and Restated Certificate of Incorporation, as Amended, of Fortress Biotech, Inc. dated October 9, 2023 (incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (file No. 001-35366) filed with SEC on October 10, 2023). 3.11 Â Fourth Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with SEC on June 25, 2024). 4.1 Â Specimen certificate evidencing shares of common stock, filed as Exhibit 4.1 to Form 10-12G on July 15, 2011 (File no. 000-54463) and incorporated herein by reference. 4.2 Â Certificate of Designation of Rights and Preferences 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on November 7, 2017). Â 23 Â Â 4.3 Â Certificate of Amendment to the Certificate of Designations of Rights and Preferences of the Fortress Biotech, Inc. 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock under the Amended and Restated Certificate of Incorporation of Fortress Biotech, Inc. dated June 18, 2020 (incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 19, 2020). 4.4 Â Description of Securities of Fortress Biotech, Inc. (incorporated by reference to Exhibit 4.4. of the Registrant's Annual Report on Form 10-K (file No. 001-35366) filed with the SEC on March 28, 2024). 4.5 Â Form of Amended and Restated Warrant (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 16, 2023). 4.6 Â Form of Warrant (Incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on November 14, 2023). 4.7 Â Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on January 3, 2024). 4.8 Â Form of Warrant issued to certain affiliates of Oaktree Fund Administration, LLC on July 25, 2024.\* 4.9 Â Form of PIPE Warrant (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on September 23, 2024). 5.1 Â Opinion of Troutman Pepper Hamilton Sanders LLP.\* 10.1 Â Form of Stock Option Award Agreement (incorporated by reference to Exhibit 10.9 of the Registrant's Form 10 (file No. 000-54463) filed with the SEC on July 15, 2011).# 10.2 Â Amended and Restated Consulting Agreement, entered into as of January 1, 2019, by and between the Registrant and Eric Rowinsky

(incorporated by reference to Exhibit 10.3 of the Registrant's Annual Report on Form 10-K (file No. 001-35366) filed with the SEC on March 18, 2019). # 10.3 Restricted Stock Issuance Agreement, dated as of February 20, 2014, by and between the Registrant and Michael S. Weiss (incorporated by reference to Exhibit 10.55 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on February 26, 2014). # 10.4 Form of Indemnification Agreement by and between the Registrant and its officers and directors (incorporated by reference to Exhibit 10.25 of the Registrant's Form 10 (file No. 000-54463) filed with the SEC on August 24, 2011). # 10.5 Restricted Stock Issuance Agreement, dated as of December 19, 2013, by and between the Registrant and Michael S. Weiss (incorporated by reference to Exhibit 10.57 of the Registrant's Annual Report on Form 10-K (file No. 001-35366) filed with the SEC on March 14, 2014). # 10.6 Restricted Stock Issuance Agreement, dated as of December 19, 2013, by and between the Registrant and Lindsay A. Rosenwald, M.D (incorporated by reference to Exhibit 10.58 of the Registrant's Annual Report on Form 10-K (file No. 001-35366) filed with the SEC on March 14, 2014). 10.7 Coronado Biosciences, Inc. Deferred Compensation Plan for Directors, dated March 12, 2015 (incorporated by reference to Exhibit 10.67 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on March 18, 2015). # 10.8 Fortress Biotech, Inc. 2012 Employee Stock Purchase Plan, as amended (incorporated by reference to Exhibit 10.38 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 12, 2017). # 10.9 Amendment to Fortress Biotech, Inc. 2012 Employee Stock Purchase Plan (incorporated by reference to Exhibit A of the Registrant's Schedule 14A (file No. 001-35366) filed with the SEC on April 30, 2018). # 10.10 Amendment to the Fortress Biotech, Inc. 2012 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 23, 2023). # 10.11 Fortress Biotech, Inc. Amended and Restated Long-Term Incentive Plan (incorporated by reference to Exhibit 10.39 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 12, 2017). # 10.12 Development, Option and Stock Purchase Agreement by and among Caelum Biosciences, Inc., Alexion Pharmaceuticals, Inc., Fortress Biotech, Inc., and the several shareholders of Caelum Biosciences, Inc., dated January 30, 2019 (incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q (file No. 001-35366) filed with the SEC on May 10, 2019). 10.13 Fortress Biotech, Inc. 2013 Stock Incentive Plan, as amended (incorporated by reference to Appendix A of the Registrant's Schedule 14-A (file No. 001-35366) filed with the SEC on June 4, 2015). # 24 10.14 Form of Stock Incentive Plan Award Agreement (Fortress Biotech, Inc. 2013 Stock Incentive Plan) (incorporated by reference to Exhibit 10.60 of the Registrant's Form S-8 (file No. 333-194588) filed with the SEC on March 14, 2014). # 10.15 Amendment to the Fortress Biotech, Inc. 2013 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 19, 2020). # 10.16 Amendment to the Fortress Biotech, Inc. 2013 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 27, 2022). # 10.17 Amendment to the Fortress Biotech, Inc. 2013 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on June 23, 2023). # 10.18 Credit Agreement entered into by and among Fortress Biotech, Inc., the lenders from time to time party thereto, and Oaktree Fund Administration, LLC on August 27, 2020 (incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q (file No. 001-35366) filed with the SEC on November 9, 2020). 10.19 Restricted Stock Unit Award Agreement between Fortress Biotech, Inc. and David Jin effective October 26, 2022 (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on October 28, 2022). # 10.20 Indemnification Agreement between Fortress Biotech, Inc. and Lucy Lu, M.D. dated as of December 14, 2022 (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on December 19, 2022). # 10.21 Form of Securities Purchase Agreement, dated November 10, 2023, by and among the Registrant and the purchasers party thereto (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on November 14, 2023). 10.22 Form of Securities Purchase Agreement, dated December 29, 2023, by and among the Registrant and the purchasers party thereto (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on January 3, 2024). 10.23 Form of Placement Agency Agreement, dated November 10, 2023, by and among the Registrant and Roth Capital Partners, LLC (Incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on November 14, 2023). 10.24 Placement Agency Agreement, dated December 29, 2023, by and among the Registrant and Roth Capital Partners, LLC (Incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on January 3, 2024). 10.25 At Market Issuance Sales Agreement between the Company and Cantor Fitzgerald & Co., Oppenheimer & Co. Inc., H.C. Wainwright & Co., LLC, B. Riley FBR, Inc., and Dawson James Securities, Inc., dated May 29, 2020 (incorporated by reference to Exhibit 1.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on May 29, 2020). 10.26 Form of Securities Purchase Agreement, dated December 29, 2023, by and among the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on January 3, 2024). 10.27 Placement Agency Agreement, dated December 29, 2023, by and between the Company and Roth Capital Partners, LLC (incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on January 3, 2024). 10.28 Amendment to the Fortress Biotech, Inc. 2013 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on May 29, 2024). 10.29 Amendment to the Fortress Biotech, Inc. 2012 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on May 29, 2024). 10.30 Amendment to the Fortress Biotech, Inc. Amended and Restated Long Term Incentive Plan (incorporated by reference to Exhibit 10.3 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on May 29, 2024). 10.31 Form of Securities Purchase Agreement, dated September 19, 2024, by and among the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on September 23, 2024). 25 10.32 Form of Lockup Agreement (incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K (file No. 001-35366) filed with the SEC on September 23, 2024). 10.33 Placement Agent Agreement entered into by and between the Company and the Placement Agent, dated September 19, 2024 (incorporated by reference to Exhibit 10.3 of the Registrant's Current Report on Form 8-K

(file No. 001-35366) filed with the SEC on September 23, 2024). 10.34 Credit Agreement entered into by and among Fortress Biotech, Inc., the lenders from time to time party thereto, and Oaktree Fund Administration, LLC on July 25, 2024.\* 21.1 Subsidiaries of the Registrant (incorporated by reference to Exhibit 21.1 of the Registrant's Annual Report on Form 10-K (file No. 001-35366) filed with the SEC on March 28, 2024). 23.1 Consent of Troutman Pepper Hamilton Sanders LLP (to be included in Exhibit 5.1).\* 23.2 Consent of KPMG LLP, an Independent Registered Accounting Firm.\* 24.1 Power of Attorney (included on signature page to this registration statement.\* 107 Filing Fee Table.\* \* Filed herewith. # Management contract or compensatory plan. Â Item 17. Undertakings Â (a) The undersigned registrant hereby undertakes: Â 1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement: Â i. To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933; Â ii. To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; Â iii. To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; Â provided, however, that paragraphs (i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or, is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement. Â 2. That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Â 3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering. Â 4. That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser: Â (A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and Â 26 Â (B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date. Â 5. That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser: Â i. Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424; Â ii. Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant; Â iii. The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and Â iv. Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser. Â (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefits plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Â (h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act of 1933, as amended, and will be governed by the final adjudication of such issue. Â 27 Â (i) The undersigned registrant hereby undertakes that: Â (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant



pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective. (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. 28 SIGNATURES Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized. FORTRESS BIOTECH, INC. September 27, 2024 By: /s/ Lindsay A. Rosenwald, M.D. Lindsay A. Rosenwald, M.D. Chairman, President and Chief Executive Officer (Principal Executive Officer) POWERS OF ATTORNEY Each person whose signature appears below constitutes and appoints Lindsay A. Rosenwald, M.D., his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including pre-effective and post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto and other documents in connection therewith, including any Registration Statement filed pursuant to Rule 462(b) under the Securities Act of 1933, with the SEC, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or any of his substitutes, may lawfully do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities indicated as of September 27, 2024. Signature Title Date /s/ Lindsay A. Rosenwald, M.D. Chairman of the Board of Directors, September 27, 2024 Lindsay A. Rosenwald, M.D. President and Chief Executive Officer (Principal Executive Officer) /s/ David Jin Chief Financial Officer September 27, 2024 David Jin (Principal Financial Officer and Principal Accounting Officer) /s/ Michael S. Weiss Executive Vice Chairman, Strategic September 27, 2024 Michael S. Weiss Development and Director /s/ Jimmie Harvey, Jr., M.D. Director September 27, 2024 Jimmie Harvey, Jr., M.D. /s/ Malcolm Hoenlein Director September 27, 2024 Malcolm Hoenlein /s/ Dov Klein Director September 27, 2024 Dov Klein /s/ J. Jay Lobell Director September 27, 2024 J. Jay Lobell /s/ Kevin L. Lorenz, J.D. Director September 27, 2024 Kevin L. Lorenz, J.D. /s/ Lucy Lu, M.D. Director September 27, 2024 Lucy Lu, M.D. EX-4.8 2 tm2425082d1\_ex4-8.htm EXHIBIT 4.8 CONFIDENTIAL Form of WARRANT NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON ITS EXERCISE OR CONVERSION HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAW AND MAY NOT BE TRANSFERRED EXCEPT (I) IN ACCORDANCE WITH THE SECURITIES ACT OR SUCH APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, OR (II) WHERE, IN THE OPINION OF COUNSEL, REGISTRATION UNDER THE SECURITIES ACTS OR SUCH APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED IN CONNECTION WITH SUCH PROPOSED TRANSFER. No. O- WARRANT Shares of Voting Common Stock This WARRANT (this "Warrant") is issued as of July 25, 2024 (the "Initial Issuance Date") by FORTRESS BIOTECH, INC., a Delaware corporation (the "Company"), a Purchaser and, together with any assignee(s) or transferee(s), "Credit Holders"). WHEREAS, the Company and the Purchaser as lender are parties to that certain Credit Agreement, dated as of July 25, 2024 (the "Credit Agreement"), pursuant to which the Company may borrow from Purchaser and the other lenders party thereto (collectively, the "Lenders"), and the Lenders may loan to the Company, up to \$50,000,000 from the date of the Credit Agreement through the Maturity Date; and WHEREAS, the Company is issuing this Warrant to Purchaser as a condition precedent to the making of the loans by Purchaser pursuant to the Credit Agreement. NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Purchaser agree as follows: Section 1. Definitions. Unless otherwise defined herein, capitalized terms have the meanings set forth in the Credit Agreement (as in effect on the date hereof), however, the following terms when used herein have the following meanings: "Aggregate Exercise Price" means, in connection with any Exercise of this Warrant pursuant to Section 4 (whether in whole or in part), an amount equal to the product of (i) the number of Underlying Shares in respect of which this Warrant is then being exercised pursuant to such Section 4, multiplied by (ii) the Exercise Price. "Common Stock Equivalents" means any securities of the Company that would entitle the holder thereof to acquire at any time shares of Voting Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for shares of Voting Common Stock, or otherwise entitles the holder thereof to receive, shares of Voting Common Stock. "Fair Market Value" means, with respect to any security or other property, the fair market value of such security or other property as determined by the independent members of the Board of Directors of the Company, acting in good faith. If the Holder objects in writing to the Board of Directors' calculation of Fair Market Value within ten (10) days of receipt of written notice thereof and the Holder and the Company are unable to agree on Fair Market Value during the five (5) day period following the delivery of the Holder's objection, the valuation dispute resolution procedure set forth in Section 21 hereof shall be invoked to determine Fair Market Value. "Market Price" means, with respect to a particular security, on any given day, the last reported sale price, regular way, or, in case no such reported sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case on the principal national securities exchange on which the applicable securities are listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange, the last quoted bid price on the OTCQB, OTCQX or The Pink Open Market over-the-counter markets maintained by OTC Markets Group Inc. or similar organization succeeding to its function. "Market Price" shall be determined without reference to after hours or extended hours trading. If such security is not listed and traded in a manner that the quotations referred to above are available for the period required hereunder, the Market Price per share of Voting Common Stock shall be deemed to be the fair market value per share of such security as determined in good faith by the independent members of the Board of Directors in reliance upon an opinion of an independent appraiser or valuation firm of nationally recognized standing retained by the Company for this purpose and reasonably acceptable to the Holder (or if there is more than one Holder, a majority in interest of Holders excluding any Holder that is an Affiliate of the Company). For the purposes of determining the Market Price of the Voting Common Stock on the Trading Day preceding, on or following the occurrence of an event, (i) that Trading Day shall be deemed to commence immediately after the regular scheduled closing time of trading on the Trading Market

[illegible]

for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Warrant, in determining the number of outstanding shares of Voting Common Stock, a Holder of this Warrant may rely on the number of outstanding shares of Voting Common Stock as reflected in the most recent of (1) the Company's Form 10-K, Form 10-Q or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or its transfer agent setting forth the number of shares of Voting Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall, within five (5) Trading Days, confirm to such Holder the number of shares of its Voting Common Stock then outstanding. Furthermore, upon the written request of the Company, a Holder shall confirm to the Company its then current beneficial ownership with respect to the Company's Voting Common Stock.

**-4- Section 5. No Fractional Shares.** No fractional shares may be issued upon any exercise of this Warrant or as a consequence of any adjustment pursuant to Section 7, and any fractions shall be rounded upwards to the nearest whole number of shares. If upon any exercise or adjustment of this Warrant a fraction of a share results, the Company will pay to the Holder the cash value of any such fractional share, calculated on the basis of the Exercise Price.

**Section 6. Securities Laws.** (a) Holder acknowledges that the Underlying Shares are being offered and sold by the Company in accordance with an applicable exemption or exemptions from registration under the Securities Act and that the Underlying Shares will constitute restricted securities as defined in Rule 144 under the Securities Act. Neither the offer and sale of this Warrant nor the Underlying Shares have been registered under the Securities Act, or any state securities laws (Blue Sky Laws). This Warrant has been acquired for the Holder's own account for investment purposes and not with a current view to distribution or resale and may not be sold or otherwise transferred (i) without an effective registration statement for such Warrant under the Securities Act and such applicable Blue Sky Laws, or (ii) unless Holder shall have delivered to the Company an opinion of counsel to the effect that the Warrant or such portion of the Warrant to be sold or transferred may be sold or transferred under an exemption from such registration; provided, that, subject to applicable law, the foregoing conditions shall not apply to any transfer of this Warrant from Purchaser to any Affiliate, managed fund or account of Oaktree Capital Management, L.P.

(b) The Company covenants and agrees that all Underlying Shares will, upon issuance and payment therefor, be legally and validly issued and outstanding, free from all taxes, liens, charges and preemptive or similar rights, if any, with respect thereto or to the issuance thereof. The Company will take all such action as may be reasonably necessary or appropriate to assure that the Underlying Shares may be issued as provided herein without violating any applicable law or regulation, or any requirements of the Trading Market upon which the Voting Common Stock may be listed.

(c) The certificates or book entries representing the Underlying Shares will bear the following or similar legend, unless the Company determines otherwise in compliance with applicable law: **THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE US SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT) AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR (3) PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS.**

**-5- Section 7. Anti-Dilution Adjustments.** (a) Stock Dividends and Splits. If the Company shall at any time prior to the expiration of this Warrant (i) subdivide the Voting Common Stock (by stock split, recapitalization, or any other similar event) into a larger number of shares, (ii) combine the Voting Common Stock (by stock split or reverse stock split, recapitalization, combination of shares, or any other similar event) or (iii) issue by reclassification of shares of Voting Common Stock any shares of capital stock of the Company (with the exception of any reclassification that constitutes a Fundamental Change, as hereinafter defined), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the effective date of the subdivision, combination or re-classification by a fraction, the numerator of which shall be the number of shares of Voting Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Voting Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the Aggregate Exercise Price shall remain unchanged. Before taking any action which would result in an adjustment in the number of Underlying Shares for which this Warrant is exercisable or to the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(b) Subsequent Equity Sales. If the Company, while this Warrant is outstanding, shall sell, enter into an agreement to sell, or grant any option to purchase, or sell or grant any right to reprice, or otherwise dispose of or issue any Common Stock or Common Stock Equivalents, at an effective price per share less than the Exercise Price then in effect (such lower price, the Base Share Price and such issuance collectively, a Dilutive Issuance) (it being understood and agreed that if the holder of the Voting Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Voting Common Stock at an effective price per share that is less than the Exercise Price, such issuance shall be deemed to have occurred for less than the Exercise Price on such date of the first Dilutive Issuance at such effective price), then simultaneously with the consummation of such Dilutive Issuance, the Exercise Price shall be reduced and only reduced to equal the Base Share Price. Notwithstanding the foregoing, no adjustments shall be made, paid or issued under this Section 7(b) in respect of an Exempt Issuance or Permitted Transaction. Exempt Issuance means the issuance of (x) shares of Voting Common Stock or options to employees, officers, directors or consultants of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company or (y) securities upon the exercise or exchange of or conversion of Warrants of this series and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Warrant, provided that such securities described in sections (x) and (y) above have not been amended since the date of this Warrant to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities or to extend the term of such securities. The Company shall notify the Holder, in writing, no later than the Trading Day following the issuance or deemed issuance of any shares of Voting

Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 7(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Underlying Shares based upon the Exercise Price as adjusted in accordance with this Section 7(b) regardless of whether the Holder accurately refers to the adjusted Exercise Price in the Notice of Exercise. -6- (c) During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to all (or substantially all) of holders of shares of Voting Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Voting Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date as of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Voting Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Voting Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage). (d) If the Company shall at any time prior to the expiration of this Warrant (in each case, occurring after the date hereof) be a party to any merger, consolidation, exchange of shares of Voting Common Stock, sale of a majority of the Voting Common Stock, sale of all or substantially all of the assets of the Company, separation, reorganization, recapitalization, winding up or liquidation of the Company, or other similar event or transaction (each, a "Fundamental Change"), as a result of which shares of Voting Common Stock shall be changed into the same or a different number or class or classes of securities of the Company or another entity, or the holders of shares of Voting Common Stock are entitled to receive cash or other property, then, upon the Exercise of this Warrant by the Holder, such Holder shall receive, for the Aggregate Exercise Price as in effect immediately prior to such Fundamental Change (subject to all other adjustments under this Warrant), the aggregate number of shares or such other securities, cash or other property which such Holder would have received if this Warrant had been exercised immediately prior to such Fundamental Change (collectively, the "Fundamental Change Receivable"), which, upon the Holder's election, may be received net of the Aggregate Exercise Price (for the avoidance of doubt, without payment by the Holder of any cash in an amount equal to the then Exercise Price). In the case of any Fundamental Change, the successor or purchasing party of such merger, consolidation, exchange of shares of Voting Common Stock, sale of all or substantially all of the assets of the Company or reorganization (if other than the Company) shall duly execute and deliver to the Holder a supplement to this Warrant acknowledging the Company and such party's obligations under this Section 7(d). The terms of this Warrant shall be applicable to the Fundamental Change Receivable due to the Holder upon the consummation of any such Fundamental Change. -7- (e) If any event of the type contemplated by the provisions of this Section 7 but not expressly provided for by such provisions occurs, then the Board of Directors of the Company shall make an appropriate adjustment to the Exercise Price and the number of Underlying Shares issuable upon exercise of this Warrant so as to protect the rights of the Holder in a manner consistent with the provisions of this Section 7; provided that no such adjustment pursuant to this Section 7(e) shall increase the Exercise Price or decrease the number of Underlying Shares issuable as otherwise determined pursuant to this Section 7. (f) Not less than five (5) days prior to the record date or effective date, as the case may be, of any event which requires or might require an adjustment or readjustment pursuant to Section 7(a), Section 7(b) or Section 7(e) (each, an "Adjustment Event"), and not less than twenty (20) days prior to the record date or effective date, as the case may be, of any Fundamental Change, the Company shall give written notice of such Adjustment Event or Fundamental Change (as applicable) to the Holder or Holders, describing such Adjustment Event or Fundamental Change in reasonable detail and specifying the record date or effective date, as the case may be. Such notice shall additionally include the Company's certification of the following computations, as applicable, each of which shall have been made by the Company in good faith: (i) in the case of an Adjustment Event, if determinable, the required adjustment and the computation thereof or, if the required adjustment is not determinable at the time of such notice, the Company shall give notice to the Holder or Holders of such adjustment and computation promptly after such adjustment becomes determinable, and (ii) in the case of a Fundamental Change, the number of shares or such other securities, cash or other property which is payable to the Holder or Holders upon exercise of this Warrant following the Fundamental Change, the computation thereof, and the computation of the then applicable Exercise Price. Except as otherwise prohibited by applicable laws, to the extent that any notice provided pursuant to this Section 7(f) contains material, non-public information regarding the Company, the Company shall disclose such information regarding the Company in a Current Report on Form 8-K and file such Current Report on Form 8-K with the SEC no later than the second Trading Day following the date such notice is delivered to the Holder. (g) Notwithstanding any other provision hereof, if an exercise of all or any portion of this Warrant is to be made in connection with a Fundamental Change or a public offering, such exercise may, at the election of the Holder, be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction. -8- (h) At all times on and prior to the Expiration Date, the Company shall at all times reserve and keep available out of its authorized but unissued Voting Common Stock (or other equity interests then constituting Underlying Shares), solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Underlying Shares issuable upon the exercise of this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates or effectuating the book entry of uncertificated shares to execute and issue, or enter, the necessary certificates or book entries (as applicable) for the Underlying Shares upon the exercise of the purchase rights under this Warrant. The Company shall not increase the par value of any Underlying Shares receivable upon the exercise of this Warrant above the Exercise Price then in effect, and shall take all such actions within its power as may

be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Underlying Shares upon the exercise of this Warrant. **Section 8. Transfer of Warrant.** Subject to compliance with applicable federal and state securities laws, the Holder may, from time to time, transfer this Warrant or the Underlying Shares, in each case, in whole or in part, by giving the Company a written notice of the portion of the Warrant or the shares of the Underlying Shares being transferred, such notice to set forth the name, address and taxpayer identification number of the transferee, the anticipated date of such transfer, and surrendering this Warrant or the certificates or book-entry records representing shares of the Underlying Shares, as applicable, to the Company for reissuance to the transferee(s). Upon surrender of this Warrant by a Holder to the Company for transfer, in whole or in part, the Company shall issue a new warrant to such Holder in such denomination as shall be requested by such Holder covering the number of Underlying Shares, if any, in respect of which this Warrant shall not have been transferred. Such new warrant shall be identical in all other respects to this Warrant. This Warrant may be divided or combined with other Warrants upon presentation hereof at the office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with this Section 8 as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated as of the Initial Issuance Date and shall be identical to this Warrant except as to the number of Underlying Shares issuable pursuant thereto. Any transferee or subsequent Holder will provide the Company with a duly executed and completed IRS Form W-9 or applicable IRS Form W-8, and any other form or certification reasonably requested by the Company in order for the Company to comply with its obligations under applicable tax law. Any and all documentary, stamp and similar issue or transfer taxes due on any transfer pursuant to this Section 8, or on the issuance of Underlying Shares to any transferee, shall be borne by the transferor, and no such transfer or issue shall be made unless and until the Person requesting such transfer or issue has paid to the Company the amount of any such tax or has established to the satisfaction of the Company that such tax has been paid or is not payable. **Section 9. No Impairment.** The Company may not, including, without limitation, by amendment of its certificate of incorporation or bylaws, or through a Fundamental Change or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and the Company shall at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder or Holders against impairment. Without limiting the generality of the foregoing, the Company shall take (a) all such action as may be necessary or appropriate in order that the Company may duly and validly issue fully paid and non-assessable Underlying Shares, free from any taxes, liens, charges and preemptive rights, upon the exercise of this Warrant, and (b) use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be necessary to enable the Company to perform its obligations under this Warrant. **Section 10. No Rights or Liabilities as a Stockholder.** This Warrant shall not entitle the Holder or Holders hereof to any voting rights or other rights as a stockholder of the Company with respect to the Underlying Shares prior to the exercise of the Warrant. No provision of this Warrant, in the absence of affirmative action by the Holder or Holders to purchase the Underlying Shares, and no mere enumeration herein of the rights or privileges of the Holder or Holders, shall give rise to any liability of such Holder or Holders for the Exercise Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company. **Section 11. Representations and Warranties of the Company.** The Company hereby represents and warrants: **A** (a) As of the Initial Issuance Date, the Company (A) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, (B) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as currently proposed to be conducted, to issue and enter into the Warrant and to carry out the transactions contemplated thereby, and (C) except where the failure to do so, individually or in the aggregate, has not had, and could not be reasonably expected to have, a material adverse effect on the business, assets, financial condition or operations of the Company, is qualified to do business and, where applicable is in good standing, in every jurisdiction where such qualification is required. **(b)** This Warrant is, and any Warrant issued in substitution for or replacement of this Warrant (including pursuant to Section 15) shall be, upon issuance, duly authorized and validly issued. This Warrant constitutes, and any Warrant issued in substitution for or replacement of this Warrant shall be, upon issuance, a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity. **-10- A** **(c)** As of the Initial Issuance Date, the execution, delivery and performance by the Company of the Warrant does not and will not (A) violate any material provision of applicable law or the organizational documents of the Company, (B) conflict with, result in a breach of, or constitute (with the giving of any notice, the passage of time, or both) a default under any material agreement of the Company or (C) result in or require the creation or imposition of any lien upon any assets of the Company. **Section 12. Successors.** All the covenants and provisions of this Warrant by or for the benefit of the Company or the Holder or Holders shall bind and inure to the benefit of their respective successors and assigns. **Section 13. Survival.** The rights of the Holder or Holders under this Warrant, and the covenants and agreements of the Company set forth in this Warrant for the benefit of the Holder or Holders, shall survive exercise of all or any portion of this Warrant and shall inure to the Holder or Holders of any Underlying Shares. **Section 14. Remedies.** If the Company violates, breaches or defaults under this Warrant, the Holder may proceed to protect and enforce its rights by any action at law, suit in equity or other appropriate proceeding, whether for specific performance of any agreement contained in this Warrant, or for an injunction against a violation of any of the terms hereof, or in and of the exercise of any power granted hereby or by law, in each case without providing any bond or other security in connection with such action, suit or other proceeding. In case of any violation, breach or default under this Warrant, the Company shall pay to the Holder on demand all reasonable costs and expenses of enforcing the Holder's rights under this Warrant, including, without limitation, reasonable attorneys' fees and legal expenses. **Section 15. Loss, Theft, Destruction or Mutilation of Warrant.** The Company covenants that upon its receipt of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Underlying Shares (and, in the case of mutilation, the surrender and cancellation of this Warrant or such stock certificate), the Company shall make and deliver to the Holder a new Warrant or stock certificate that is identical to this Warrant or to such stock certificate (as applicable). **Section 16. Taxes.** **A** (a) **Tax Treatment.** No later than sixty (60) days after the Initial Issuance Date,

Oaktree Fund Administration, LLC (the "Oaktree"), on behalf of the Purchaser, shall provide the Company with a valuation of the Warrant for tax purposes (the "Proposed Valuation"). If the Company disagrees with the Proposed Valuation, it shall propose reasonable comments to the Proposed Valuation within fifteen (15) days of receiving the Proposed Valuation, and Oaktree (on behalf of the Purchaser) shall consider such comments in good faith. If the parties cannot agree as to the Proposed Valuation within ninety (90) days after the Initial Issuance Date after good faith discussion, an independent valuation firm shall be engaged (at the Company's expense) to provide the Company and the Purchaser with a final valuation of the Warrant for tax purposes (the "Final Valuation") within thirty (30) days of its engagement, and such Final Valuation shall be binding on Purchaser and the Company for all U.S. tax purposes.

11. (b) Withholding. The Company and its paying agent shall be entitled to deduct and withhold taxes on all payments and distributions (or deemed distributions) with respect to this Warrant (or upon the exercise thereof) and the Underlying Shares, in each case, to the extent required by applicable law; provided that, other than in the case of U.S. federal withholding taxes, the Holder has received written notice from the Company advising it of the availability of any exemption or reduction and containing all applicable documentation. To the extent that any amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes of this Warrant as having been paid to the Person in respect of which such deduction or withholding was made. In the event the Company previously remitted any amounts to a Governmental Authority on account of taxes required to be deducted or withheld in respect of any payment or distribution (or deemed distribution) with respect to this Warrant (or upon the exercise thereof) or the Underlying Shares, the Company shall be entitled (i) to offset any such amounts against any amounts otherwise payable in respect of this Warrant or the Underlying Shares, any Underlying Shares otherwise required to be issued upon the exercise of this Warrant or any amounts otherwise payable in respect of this Warrant received upon the exercise of this Warrant, or (ii) to require the Person in respect of whom such deduction or withholding was made to reimburse the Company for such amounts.

Section 17. Article and Section Headings. Numbered and titled article and section headings are for convenience only and shall not be construed as amplifying or limiting any of the provisions of this Warrant.

Section 18. Notice. Any and all notices, elections or demands permitted or required to be made under this Warrant shall be in writing, signed by the party giving such notice, election or demand and shall be delivered in accordance with the notice provisions in the Credit Agreement.

Section 19. Severability. If any provisions(s) of this Warrant or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Warrant and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 20. Entire Agreement. This Warrant and between the Company and the Holder represents the entire agreement between the parties concerning the subject matter hereof, and all oral discussions and prior agreement are merged herein.

Section 21. Valuation Dispute Resolution. In the case of any dispute as to the determination of any amount or valuation hereunder or in connection with the amount or value of any Voting Common Stock or Underlying Shares to be issued, withheld or otherwise determined, the calculation of the Aggregate Exercise Price or any other computation or valuation required to be made hereunder or in connection herewith, in the event the Holder, on the one hand, and the Company, on the other hand, are unable to settle such dispute within five (5) Trading Days, then either party may elect to submit the disputed matter(s) for resolution by an accounting firm of nationally recognized standing as may be mutually agreed upon by the Holder and the Company. Such firm's determination of such disputed matter(s) shall be binding upon all parties absent demonstrable error, and the Company and the Holder shall each pay one half of the fees and costs of such firm.

12. Section 22. Governing Law. This Warrant and the rights and obligations of the parties hereunder, and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Warrant and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York.

Section 23. Jurisdiction; Waiver of Venue; Service of Process. (a) Each party hereto irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any other party hereto in any way relating to this Warrant or the transactions relating hereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof; and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section 22. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 18.

Section 24. Amendment. No amendment or modification hereof shall be effective except in a writing executed by the Company and the Holder.

Section 25. Counterparts. This Warrant may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Warrant.

Section 26. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS WARRANT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 26.

[Signature Page Follows]

13. IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

COMPANY: FORTRESS BIOTECH, INC. By: Name: Title: PURCHASER: [Signature Page to Warrant] Annex A NOTICE OF EXERCISE TO: FORTRESS BIOTECH, INC. (1) The



undersigned hereby elects to purchase \_\_\_\_\_ Underlying Shares of the Company pursuant to the terms of the attached Warrant originally issued on July 25, 2024, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any. (2) Payment shall take the form of (check applicable box):  
in lawful money of the United States; or the cancellation of such number of Underlying Shares as is necessary, in accordance with the formula set forth in Section 4(a), to exercise this Warrant with respect to the maximum number of Underlying Shares purchasable pursuant to the cashless exercise procedure set forth in Section 4(a). (3) Please issue said Underlying Shares in the name of the undersigned or in such other name as is specified below: \_\_\_\_\_  
The Underlying Shares shall be delivered to the following  
DWAC Account Number: \_\_\_\_\_  
(4) Accredited Investor. The undersigned is an accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended. [SIGNATURE OF HOLDER] Name of Investing Entity: \_\_\_\_\_

Signature of Authorized \_\_\_\_\_  
Name of \_\_\_\_\_  
Title of \_\_\_\_\_  
Date: \_\_\_\_\_  
Authorized Signatory: \_\_\_\_\_  
Authorized Signatory: \_\_\_\_\_

5.1 3 tm2425082d1\_ex5-1.htm EXHIBIT 5.1 Exhibit 5.1 Troutman Pepper Hamilton Sanders LLP 301 S College Street, Suite 3400 Charlotte, NC 28202 troutman.com September 27, 2024 Fortress Biotech, Inc. 1111 Kane Concourse, Suite 301 Bay Harbor Islands, FL 33154 Re: Securities Registered under Registration Statement on Form S-1 Ladies and Gentlemen: We have acted as counsel to Fortress Biotech, Inc., a Delaware corporation (the "Company"), in connection with the Company's registration statement on Form S-1 (the "Registration Statement"), including the prospectus that is part of the Registration Statement (the "Prospectus"), filed on the date hereof, with the U.S. Securities and Exchange Commission (the "Commission"), under the Securities Act of 1933, as amended (the "Securities Act"). The Registration Statement relates to the registration of the resale by the selling stockholders named in the Registration Statement (the "Selling Stockholders") of up to an aggregate of (i) 5,426,427 shares (the "Warrant Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), issuable upon the exercise of warrants issued to the Selling Stockholders and (ii) 763,359 shares of Common Stock (the "Chairman Shares" together with the Warrant Shares, the "Shares") that were issued to Lindsay A. Rosenwald, M.D., the Chairman, President and Chief Executive Officer of the Company (the "Chairman"), in connection with a private placement transaction, which Shares may be sold from time to time by the Selling Stockholders. This opinion letter is being furnished in accordance with the requirements of Item 16 of Form S-1 and Item 601(b)(5)(i) of Regulation S-K promulgated under the Securities Act. Capitalized terms used and not defined herein shall have the meanings assigned to them in the Registration Statement. The Shares are described in the Registration Statement. The Warrant Shares are issuable (i) upon exercise of the warrants granted to Oaktree Fund Administration, LLC (the "Oaktree") and certain of its affiliates (the "2024 Warrants"), pursuant to the senior secured credit agreement dated as of July 25, 2024 by and between the Company, Oaktree, as administrative agent, and the lenders from time to time party thereto; (ii) upon exercise of the warrants granted to certain of the Selling Stockholders (the "2020 Warrants") pursuant to the senior secured credit agreement dated as of August 27, 2020 by and between the Company, Oaktree, as administrative agent, and the lenders from time to time party thereto; (iii) upon exercise of the warrants granted to certain affiliates of Harley Capital, LLC (the "Harley Warrants") pursuant to the terms of the letter agreement dated December 8, 2022, by and among Harley Capital, LLC, Urica Therapeutics, Inc., a controlled subsidiary of the Company, and the Company; and (iv) upon exercise of the warrants sold to certain Selling Stockholders (the "PIPE Warrants" collectively with the 2024 Warrants, the 2020 Warrants and the Harley Warrants, the "Warrants") pursuant to the terms of certain purchase agreements, each dated September 19, 2024 (the "PIPE Purchase Agreements" and each a "PIPE Purchase Agreement"). The Chairman Shares were issued to the Chairman pursuant to a PIPE Purchase Agreement. Fortress Biotech, Inc. September 27, 2024 Page 2 In connection with this opinion, we have reviewed the corporate proceedings taken by the Company with respect to the issue and sale, and registration of the resale of, the Shares. We have also examined and relied upon originals or copies of such corporate records, documents, agreements or other instruments of the Company, and such certificates and records of public officials, and such other documents, as we have deemed necessary or appropriate in connection herewith, including, but not limited to, the Company's Amended and Restated Certificate of Incorporation, the Company's Fourth Amended and Restated Bylaws, the 2024 Warrants, the 2020 Warrants, the Harley Warrants, the PIPE Warrants and the PIPE Purchase Agreement with the Chairman pursuant to which the Chairman Shares were issued. As to all matters of fact (including, without limitation, factual conclusions and characterizations and descriptions of purpose, intention or other state of mind) we have relied entirely upon a certificate of an officer of the Company, and have assumed, without independent inquiry, the accuracy of that certificate. In rendering this opinion, we have assumed the genuineness and authenticity of all signatures on the original documents; the legal capacity of all natural persons; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as certified or photocopies; the accuracy and completeness of all documents and records reviewed by us; the accuracy, completeness and authenticity of certificates issued by any governmental official, office or agency and the absence of change in the information contained therein from the effective date of any such certificate; and the due authorization, execution and delivery of all documents where authorization, execution and delivery are prerequisites to the effectiveness of such documents, except that we make no such assumption with respect to the Company. Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We are not opining as to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or, in the case of Delaware, any other laws, or as to matters of municipal law or the laws of any local agencies within any states (including blue sky or other state securities laws). Based upon the foregoing, we are of the opinion that, as of the date hereof, (i) the Chairman Shares have been duly authorized and validly issued and are fully paid and non-assessable and (ii) the Warrant Shares, when issued and delivered upon exercise of the Warrants against payment of the exercise price therefor, will be validly issued, fully paid and non-assessable. Fortress Biotech, Inc. September 27, 2024 Page 3 We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof. We hereby consent to the filing of this opinion as a part of the Registration Statement and to the

reference of our firm under the caption “Legal Matters” in the Prospectus. In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. Except as otherwise set forth herein, this opinion may not be used, circulated, quoted or otherwise referred to for any purpose or relied upon by any other person without the express written permission of this firm.

Â Very truly yours, Â Â Â Â /s/ Troutman Pepper Hamilton Sanders LLP Â EX-10.34 4 tm2425082d1\_ex10-34.htm EXHIBIT 10.34 Â Exhibit 10.34 Â Execution Version Â Â CREDIT AGREEMENT Â dated as of July 25, 2024 Â by and among Â FORTRESS BIOTECH, INC., as the Borrower, Â THE LENDERS FROM TIME TO TIME PARTY HERETO as the Lenders, Â and Â OAKTREE FUND ADMINISTRATION, LLC, as the Administrative Agent Â U.S. \$50,000,000 Â Â Â Â Â TABLE OF CONTENTS Â Section 1. DEFINITIONS 1 Â Â Â Â 1.01 Â Certain Defined Terms 1 1.02 Â Accounting Terms and Principles 27 1.03 Â Â Interpretation 28 1.04 Â Â Division 29 Â Â Â Â Section 2. THE COMMITMENT AND THE LOANS 29 Â Â Â Â 2.01 Â Loans 29 2.02 Â Borrowing Procedures 30 2.03 Â Notes 30 2.04 Â Use of Proceeds 30 Â Â Â Â Section 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC. 30 Â Â Â Â 3.01 Â Scheduled Repayments and Prepayments Generally; Application 30 3.02 Â Interest 31 3.03 Â Prepayments 31 3.04 Â Benchmark Replacement 34 Â Â Â Â Section 4. 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Â WITNESSETH: Â WHEREAS, the Borrower has requested that the Lenders provide a senior secured term loan facility to the Borrower in an aggregate principal amount of up to \$50,000,000, consisting of (a) a Tranche A Term Loan in a principal amount of \$35,000,000 to be extended on the Closing Date and (b) a Tranche B Term Loan in a principal amount of up to \$15,000,000 to be extended on the Tranche B Term Loan Borrowing Date; and Â WHEREAS, the Lenders are willing, on the terms and subject to the

conditions set forth herein, to provide such senior secured term loan facility. NOW, THEREFORE, the parties hereto agree as follows:

**Section 1. DEFINITIONS**

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

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

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

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

**Affected Financial Institution** means (i) any EEA Financial Institution or (ii) any U.K. Financial Institution.

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

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

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

**Applicable Margin** means 7.625%.

**Applicable Prepayment Percentage** means 20.0%.

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

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

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

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

**Bail-In Legislation** means, (a) 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, regulation, rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their Affiliates (other than through liquidation, administration or other insolvency proceedings).

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

**Benchmark** means, initially, Term SOFR with an Interest Period of three months, provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then **Benchmark** means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.04.

**Benchmark Replacement** means the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent (in consultation with the Borrower) giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Governmental Authority or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the Benchmark for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided, further, that any such Benchmark Replacement shall be administratively feasible as determined by the Administrative Agent in its reasonable discretion.

**Benchmark Replacement Adjustment** means, with respect to any replacement of the Benchmark with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent (in consultation with the Borrower) giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Benchmark with the applicable Unadjusted Benchmark Replacement by the Governmental Authority or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated credit facilities at such time (for the avoidance of doubt, such Benchmark Replacement Adjustment shall not be in the form of a reduction to the Applicable Margin).

**Benchmark Replacement Conforming Changes** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of **Interest Period**, timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent (in consultation with the Borrower) decide may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent reasonably decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent reasonably determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

**Benchmark Replacement Date** means the earlier to occur of the following events with respect to the Benchmark: (1) in the case of clause (1) or (2) of the definition of **Benchmark Transition Event**, the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or (2) in the case of clause (3) of the definition of **Benchmark**

Transition Event, the date of the public statement or publication of information referenced therein. -3- **“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the Benchmark: (1) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; (2) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or (3) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative. **“Benchmark Transition Start Date”** means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety (90) days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent by notice to the Borrower and Lenders. **“Benchmark Unavailability Period”** means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Benchmark and solely to the extent that the Benchmark has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced SOFR for all purposes hereunder in accordance with Section 3.04 and (y) ending at the time that a Benchmark Replacement has replaced the Benchmark for all purposes hereunder pursuant to Section 3.04. **“Beneficial Ownership Certification”** means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation. **“Beneficial Ownership Regulation”** means 31 C.F.R. § 1010.230. **“Benefit Plan”** means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which the Borrower or any Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise. **“Board”** means, with respect to any Person, the board of directors or equivalent management or oversight body of such Person or any committee thereof authorized to act on behalf of such board (or equivalent body). **“Board Observer”** has the meaning set forth in Section 8.13(b). **“Borrower”** has the meaning set forth in the preamble hereto. **“Borrower Party”** has the meaning set forth in Section 13.03(b). **“Borrowing”** means the borrowing of the Tranche A Term Loan on the Closing Date and the borrowing of the Tranche B Term Loan on the Tranche B Term Loan Borrowing Date, as applicable. **“Borrowing Notice”** means a written notice substantially in the form of Exhibit B. **“Business Day”** means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City. **“Capital Lease Obligations”** means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, which obligations are required to be classified and accounted for as a capitalized lease or finance lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP. **“Capital Raise”** means the consummation of one or more of the following: common equity financing transactions or Monetization Events. **“Capital Raise Covenant”** has the meaning set forth in Section 8.17. **“Capital Raise Measurement Date”** has the meaning set forth in Section 8.17. **“Capital Raise Measurement Period”** has the meaning set forth in Section 8.17. **“Casualty Event”** means the damage, destruction or condemnation, as the case may be, of property of the Borrower or any of its Subsidiaries in excess of \$2,000,000. **“CFC”** means (a) a Subsidiary that is a controlled foreign corporation within the meaning of Section 957 of the Code and (b) a Subsidiary of an entity described in the foregoing clause (a). **“CFC Holding Company”** means (a) any Domestic Subsidiary that owns no material assets (directly or indirectly) other than Equity Interests, or Equity Interests and debt, of one or more CFCs or Domestic Subsidiaries that are themselves CFC Holding Companies and (b) a Subsidiary of an entity described in the foregoing clause (a). **“Change of Control”** means an event or series of events (i) as a result of which any person or group (as such terms are used in Sections 13(d) and 14(d) of the Securities Act, but excluding any of such person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such Plan) becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have beneficial ownership of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an option right)), directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or (ii) as a result of which, during any period of twelve (12) consecutive months, a majority of the members of the Board of the Borrower cease to be composed of individuals (x) who were members of such Board on the first day of such period, (y) whose election or nomination to such Board was approved by individuals referred to in clause (x) above constituting at the time of such election or nomination at least a majority of such Board or equivalent governing body or (z) whose election or nomination to such Board was approved by individuals referred to in clauses (x) and (y) above constituting at the time of such election or nomination at least a majority of such Board; or (iii) that results in the sale of all or substantially all of the assets or businesses of the Borrower and its Subsidiaries, taken as a whole. **“Checkpoint”** means Checkpoint Therapeutics, Inc., a Delaware corporation. **“Claims”** means (and includes) any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, judgement or other similar process, whether in respect of assessments or reassessments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing. **“Closing Date”** means the date on which the conditions precedent specified in Section 6.01 are satisfied (or waived in accordance with Section 13.04) and on which the Tranche A Term Loan is to be made to the Borrower.

“Closing Date Equity Interests” has the meaning set forth in Section 9.19. “Code” means the Internal Revenue Code of 1986, as amended from time to time. “Collateral” means any real, personal and mixed property (including Equity Interests), whether tangible or intangible, in which Liens are granted or purported to be granted to the Administrative Agent as security for the Obligations under any Loan Document on or after the Closing Date, including future acquired or created assets or property (or collectively, all such real, personal and mixed property, as the context may require). “Commitment” means, with respect to each Lender, such Lender’s (a) Tranche A Term Loan Commitment and (b) Tranche B Term Loan Commitment, which commitments are in the amount set forth opposite such Lender’s name on Schedule 1 under the caption “Commitment”, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise. The aggregate amount of Commitments on the date of this Agreement is up to \$50,000,000. “Compliance Certificate” has the meaning set forth in Section 8.01(c). “Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes. -6- “Contracts” means any contract, license, lease, agreement, obligation, promise, undertaking, understanding, arrangement, document, commitment, entitlement or engagement under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied, and whether in respect of monetary or payment obligations, performance obligations or otherwise). “Control” means, in respect of a particular Person, the possession by one or more other Persons, directly or indirectly, of the power to direct or cause the direction of the management or policies of such particular Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto. “Controlled Account” has the meaning set forth in Section 8.15(a). “Copyright” means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof and all other rights whatsoever accruing thereunder or pertaining thereto throughout the world. “Cyprium” means Cyprium Therapeutics, Inc. “Default” means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default. “Default Rate” has the meaning set forth in Section 3.02(b). “Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of country- or territory-wide Sanctions. “DFD-29 Approval Milestone” means that date on which DFD-29 (minocycline hydrochloride modified release capsules, 40 mg) receives approval for the treatment of rosacea by the U.S. Food and Drug Administration. “Disqualified Equity Interests” means, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date. “Division” has the meaning set forth in Section 1.04. “Dollars” and “\$” means lawful money of the United States of America. -7- “Domestic Subsidiary” means any Subsidiary that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the laws of the United States, any state of the United States or the District of Columbia. “DOSPA” means that certain Second Amended and Restated Development, Option and Stock Purchase Agreement, dated as of March 1, 2021, by and among Alexion Pharmaceuticals, Inc., Caelum Biosciences, Inc., the Sellers (as defined therein) and the Borrower. “Early Opt-in Election” means the occurrence of: (1) a determination by the Administrative Agent to incorporate or adopt a new benchmark interest rate to replace the Benchmark, and (2) the election by the Administrative Agent to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and Lenders. “EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent. “EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway. “EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution. “Eligible Transferee” means and includes (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course, (vi) with respect to any Lender, any of its Affiliates or such Lender’s or Affiliate’s managed funds or accounts, and (vii) any other “accredited investor” (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes. “Environmental Claims” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, information request, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment, arising out of a violation of Environmental Law or any Hazardous Materials Activity. -8- “Environmental Law” means all laws (including common law and any federal, state, provincial or local governmental law), rule, regulation, order, writ, judgment, notice, requirement, binding agreement, injunction or decree, whether U.S. or non-U.S., relating in any way to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) to the extent related to Hazardous Materials Activity, occupational safety and health, industrial hygiene, land use, natural resources or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility. “Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or

disposal of any Hazardous Materials, (iii)Â exposure to any Hazardous Materials, (iv)Â the release or threatened release of any Hazardous Materials into the environment or (v)Â any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing. Â €œEquity Interestsâ€ means, with respect to any Person (for purposes of this defined term, an €œissuerâ€), all shares of, interests or participations in, or other equivalents in respect of such issuerâ€™s capital stock, including all membership interests, partnership interests or equivalent, and all debt or other securities directly or indirectly exchangeable, exercisable or otherwise convertible into, such issuerâ€™s capital stock, whether now outstanding or issued after the Closing Date, and in each case, however designated and whether voting or non-voting. Â €œEquivalent Amountâ€ means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination. Â €œERISAâ€ means the United States Employee Retirement Income Security Act of 1974, as amended. Â €œERISA Affiliateâ€ means, collectively, the Borrower, any Subsidiary thereof, and any Person under common control, or treated as a single employer, with the Borrower or any Subsidiary thereof, within the meaning of SectionÂ 414(b)Â or (c)Â of the Code and solely for purposes of SectionÂ 412 of the Code and SectionÂ 302 of ERISA, SectionÂ 414(m)Â or (o)Â of the Code. Â -9-Â Â Â €œERISA Eventâ€ means (i)Â a reportable event as defined in SectionÂ 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events for which the 30-day notice requirement has been waived; (ii)Â a withdrawal by the Borrower or any ERISA Affiliate thereof from a Title IV Plan during a plan year in which such entity was a €œsubstantial employerâ€ as defined in SectionÂ 4001(a)(2)Â of ERISA or a cessation of operations that is treated as such a withdrawal under SectionÂ 4062(e)Â of ERISA or the termination of any Title IV Plan with at least two or more contributing sponsors that are not ERISA Affiliates resulting in liability under SectionÂ 4064 of ERISA; (iii)Â the withdrawal of the Borrower or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of SectionÂ 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by the Borrower or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is insolvent pursuant to SectionÂ 4245 of ERISA; (iv)Â the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under SectionÂ 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (v)Â the imposition of liability on the Borrower or any ERISA Affiliate thereof pursuant to Sections 4062(e)Â or 4069 of ERISA or by reason of the application of SectionÂ 4212(c)Â of ERISA; (vi)Â the failure by the Borrower or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of SectionÂ 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with SectionÂ 412(c)Â of the Code) or the failure to make by its due date a required installment under SectionÂ 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (vii)Â the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (viii)Â the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under SectionÂ 4007 of ERISA, upon the Borrower or any ERISA Affiliate thereof; (ix)Â an application for a funding waiver under SectionÂ 303 of ERISA or an extension of any amortization period pursuant to SectionÂ 412 of the Code with respect to any Title IV Plan; or (x)Â the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of the Borrower or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including SectionÂ 302(f)Â or 303(k)Â of ERISA or to SectionÂ 401(a)(29) or 430(k)Â of the Code. Â €œERISA Funding Rulesâ€ means the rulesÂ regarding minimum required contributions (including any installment payment thereof) to Title IV Plans, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA. Â €œEU Bail-In Legislation Scheduleâ€ means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time. Â €œEvent of Defaultâ€ has the meaning set forth in SectionÂ 11.01. Â €œExchange Actâ€ means the Securities Exchange Act of 1934, as amended, and the rulesÂ and regulations promulgated thereunder. Â €œExchange Rateâ€ means, as of any date, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Bloomberg screen at or about 11:00 a.m.Â (Eastern time) on such date. In the event that such rate does not appear on the Bloomberg screen, the €œExchange Rateâ€ shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably designated by the Administrative Agent. Â €œExcluded Taxesâ€ means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i)Â Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x)Â imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y)Â that are Other Connection Taxes, (ii)Â in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (1)Â such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under SectionÂ 5.04(b)) or (2)Â such Lender changes its lending office, except in each case to the extent that, pursuant to SectionÂ 5.03, amounts with respect to such Taxes were payable either to such Lenderâ€™s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii)Â Taxes attributable to such Recipientâ€™s failure to comply with SectionÂ 5.03(f), and (iv)Â any withholding Taxes imposed under FATCA. Â -10-Â Â Â €œFacilityâ€ means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased or operated by the Borrower or any of its Subsidiaries. Â €œFATCAâ€ means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to SectionÂ 1471(b)(1)Â of the Code and any fiscal or regulatory legislation, rulesÂ or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code. Â €œFederal Funds Effective Rateâ€ means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such dayâ€™s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three (3)Â major banks of recognized standing selected by it; and provided further, that if the Federal Funds Effective Rate as so determined would be less than zero,



such rate shall be deemed to be zero for the purposes of this Agreement. "Fee Letter" means the Fee Letter, dated as of the date of this Agreement, among the Borrower, the Lenders and the Administrative Agent. "Foreign Lender" means a Lender that is not a U.S. Person. "Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary. "Funding Date Certificate" means a certificate substantially in the form of Exhibit A H. "GAAP" means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. All references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to Section 6.01(f)(i).

-11- "Governmental Approval" means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance or exemption that is issued or granted by or from (or pursuant to any act of) any Governmental Authority, including any application or submission related to any of the foregoing. "Governmental Authority" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of any country, in each case whether U.S. or non-U.S. "Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include (x) endorsements for collection or deposit and (y) guarantees of operating leases, in each case, in the ordinary course of business. "Hazardous Material" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or would reasonably be expected to pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment. "Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, recycling, disposition or handling of any Hazardous Materials, and any investigation, monitoring, corrective action or response action with respect to any of the foregoing. "Hedging Agreement" means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

-12- "Immaterial Subsidiary" means any Subsidiary of the Borrower that (i) individually constitutes or holds less than five percent (5%) of the Borrower's consolidated total assets or generates less than five percent (5%) of the Borrower's consolidated total revenue, and (ii) when taken together with all then existing Immaterial Subsidiaries, such Subsidiary and such Immaterial Subsidiaries, in the aggregate, would constitute or hold less than fifteen percent (15%) of the Borrower's consolidated total assets or generate less than fifteen percent (15%) of the Borrower's consolidated total revenue, in each case as pursuant to the most recent fiscal period for which financial statements were required to have been delivered pursuant to Sections 8.01(a) or (b). "Indebtedness" of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business and not overdue by more than ninety (90) days), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (x) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (xi) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (xii) all guaranteed minimum payments of such Person under any license or other agreements, (xiii) any Disqualified Equity Interests of such Person, and (xiv) all other obligations required to be classified as indebtedness of such Person under GAAP; provided that, notwithstanding the foregoing, Indebtedness shall not include accrued expenses, deferred rent, deferred taxes, deferred compensation or customary obligations under employment agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. "Indemnified Party" has the meaning set forth in Section 13.03(b). "Indemnified Taxes" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (ii) to the extent not otherwise described in clause (i), Other Taxes. "Information Certificate" means the Information Certificate delivered pursuant to Section 6.01(c). "Insolvency Proceeding" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such

Personâ€™s creditors, in each case undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

Â -13-Â Â Â â€œIntellectual Propertyâ€ means, collectively, all rights, priorities and privileges relating to intellectual property, whether arising under the laws of the U.S. or any other jurisdiction throughout the world, or political subdivision thereof (including any multinational laws or otherwise), including all inventions (whether patentable or unpatentable and whether or not reduced to practice) and discoveries, and all improvements thereto, and all know-how, confidential or proprietary information, software, trade secrets, data, Patents, Trademarks, Copyrights and internet domain names, together with all common law rights and moral rights therein, and all goodwill associated therewith, and all rights of the same or similar effect or nature in any jurisdiction corresponding to such intellectual property throughout the world.

Â â€œInterest Periodâ€ means with respect to SOFR Loans, three calendar months (commencing on the first day of each calendar quarter and ending on the last day of each calendar quarter regardless of whether a SOFR Loan is outstanding on either date); provided that (a)Â the initial Interest Period applicable to SOFR Loans shall mean the period commencing on the Closing Date and ending on SeptemberÂ 30, 2024.

Â â€œInterest Rateâ€ means a rate equal to Term SOFR plus the Applicable Margin, as may be increased pursuant to SectionÂ 3.02(b).

Â â€œInventionâ€ means any novel, inventive or useful art, apparatus, method, process, machine (including any article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

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

Â â€œIRSâ€ means the U.S. Internal Revenue Service or any successor agency.

Â â€œJMCâ€ means Journey Medical Corporation, a Delaware corporation.

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

Â -14-Â Â Â â€œLendersâ€ has the meaning set forth in the preamble hereto.

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

Â â€œLoanâ€ means, collectively, the (i)Â Tranche A Term Loan and (ii)Â Tranche B Term Loan.

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

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

Â â€œMajority Lendersâ€ means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect.

Â â€œMargin Stockâ€ means â€œmargin stockâ€ within the meaning of Regulations U and X.

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

Â -15-Â Â Â â€œMaterial Agreementâ€ means any Contract required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act of 1933 or Securities Exchange Act of 1934, as may be amended. For the avoidance of doubt, employment and management contracts shall not be Material Agreements.

Â â€œMaterial Indebtednessâ€ means, at any time, any Indebtedness of the Borrower or any Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds \$5,000,000 (or the Equivalent Amount in other currencies).

Â â€œMaterial Subsidiaryâ€ means any Subsidiary of the Borrower that is not an Immaterial Subsidiary and in which the Borrower owns more than fifty percent (50%) of the outstanding Equity Interests.

Â â€œMaturity Dateâ€ means JulyÂ 25, 2027.

Â â€œMaximum Rateâ€ has the meaning set forth in SectionÂ 13.17.

Â â€œMinimum Liquidity Amountâ€ means, (i)Â at any time the outstanding principal balance of the Loans is less than or equal to \$10,000,000, \$0, and (ii)Â at all other times, \$7,000,000 which amount may be reduced or increased as follows: (w)Â the Minimum Liquidity Amount shall be reduced to \$5,000,000 at any time the outstanding principal amount of the Loans is less than or equal to \$25,000,000; (x)Â if the Borrower has not achieved the DFD-29 Approval Milestone by MarchÂ 31, 2025, the Minimum Liquidity Amount pursuant to this clause (ii)Â shall be increased by \$3,750,000 on such date; (y)Â if the Borrower has not achieved the DFD-29 Approval Milestone by DecemberÂ 31, 2025, the Minimum Liquidity Amount pursuant to this clause (ii)Â shall be further increased by an additional \$3,750,000 on such date, and

(z)Â once Borrower achieves the DFD-29 Approval Milestone, the Minimum Liquidity Amount pursuant to this clause (ii)Â shall be reduced to the Minimum Liquidity Amount applicable pursuant to this clause (ii)Â without giving effect to any increase pursuant to subclauses (x)Â or (y)Â of this clause (ii). Â â€œMinimum Net Sales Amountâ€ means (i)Â at any time the outstanding principal balance of the Loans is less than or equal to \$10,000,000, \$0, and (ii)Â at all other times, \$50,000,000, which amount shall be increased as follows: upon the six-month anniversary of achievement of the DFD-29 Approval Milestone, the Minimum Net Sales Amount shall increase by \$7,500,000 as of the next fiscal quarter end and by an additional \$7,500,000 as of end of each fiscal quarter thereafter; provided, that the Minimum Net Sales Amount shall in no event exceed \$80,000,000. Â â€œMinimum Net Sales Covenantâ€ has the meaning set forth in SectionÂ 10.02. Â â€œMinimum Net Sales Cure Rightâ€ has the meaning set forth in SectionÂ 11.04(a). Â â€œMonetization Eventâ€ means the occurrence of any of the following events: (i)Â an Asset Sale (other than an Asset Sale permitted pursuant to Sections 9.09(a), (b), (c)Â or (d)), (ii)Â a Special Monetization Event, (iii)Â the sale of any priority review voucher by Mustang Bio,Â Inc., and (iv)Â the receipt by the Borrower of any dividend or other distribution (other than royalty payments received based on customary revenue or sales payments, but excluding any such payments relating to milestones or regulatory developments) in cash from any of its Subsidiaries in excess of \$5,000,000 other than in connection with an event referred to in clauses (i)Â through (iii)Â above. For the avoidance of doubt, receipt by Borrower of its net pro rata portion of the Earn-Out Payment (as defined in the DOSPA) set forth in SectionÂ 4.6(a)(2)-(5)Â of the DOSPA would constitute a Monetization Event. Â -16-Â Â â€œMultiemployer Planâ€ means any multiemployer plan, as defined in SectionÂ 4001(a)(3)Â of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise. Â â€œNet Proceedsâ€ means, (i)Â with respect to any Casualty Event experienced or suffered by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (x)Â costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y)Â Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; and (ii)Â with respect to any Monetization Event, the amount of total consideration (including but not limited to consideration in the form of cash and Equity Interests) received (directly or indirectly) from time to time (including any contingent consideration, including but not limited to milestone payments and royalty payments) by or on behalf of such Person after deducting therefrom only (x)Â costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y)Â Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; provided that, in each case of clauses (i)Â and (ii), costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x)Â actually paid to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries and (y)Â properly attributable to such Casualty Event, Asset Sale or other Monetization Event, as the case may be. Â â€œNet Salesâ€ means Revenue from (i)Â product sales in the United States (excluding, for the avoidance of doubt, any Revenue from licensing and any one-time non-recurring Revenue that is not attributable to product sales) and (ii)Â royalties on product net sales outside of the United States (excluding milestone revenue). Â â€œNet Sales Cure Paymentâ€ means, with respect to any fiscal quarter of the Borrower in which the Minimum Net Sales Covenant applies, a payment of \$6,000,000 in cash. Â â€œNoteâ€ means a promissory note, in substantially the form of ExhibitÂ A hereto, executed and delivered by the Borrower to any Lender in accordance with SectionÂ 2.03. Â â€œNotice of Intent to Cure Net Sales Covenantâ€ has the meaning set forth in SectionÂ 11.04(b). Â â€œNY UCCâ€ means the UCC as in effect from time to time in New York. Â â€œOaktree Lenderâ€ means any Lender that is an Affiliate or managed fund or account of Oaktree Capital Management, L.P. Â -17-Â Â â€œObligationsâ€ means, with respect to the Borrower, all amounts, obligations, liabilities, covenants and duties of every type and description owing by the Borrower to any Secured Party (including all Warrant Obligations) any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i)Â all Loans, (ii)Â all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii)Â all other fees, expenses (including fees, charges and disbursement of counsel), interest, Yield Protection Premium, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to the Borrower under any Loan Document. Â â€œOFACâ€ has the meaning assigned to such term in the definition of â€œAnti-Terrorism Laws.â€ Â â€œOrdinary Courseâ€ means ordinary course of business or ordinary trade activities that are customary for similar businesses in the normal course of their ordinary operations and not while in financial distress. Â â€œOrganic Documentâ€ means, for any Person, such Personâ€™s formation documents, including, as applicable, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to such Personâ€™s Equity Interests, or any equivalent document of any of the foregoing. Â â€œOther Connection Taxesâ€ means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document). Â â€œOther Taxesâ€ means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to SectionÂ 5.04(b)). Â â€œParticipantâ€ has the meaning set forth in SectionÂ 13.05(e). Â â€œParticipant Registerâ€ has the meaning set forth in SectionÂ 13.05(e). Â â€œPatentsâ€ means all patents and patent applications, including (i)Â the Inventions and improvements described and claimed therein, (ii)Â the reissues, divisions, continuations, renewals, extensions, and continuations in part thereof, and (iii)Â all rights whatsoever accruing thereunder or pertaining thereto throughout the world. Â â€œPatriot Actâ€ has the meaning set forth in SectionÂ 13.19. Â -18-Â Â â€œPayment Dateâ€ means (i)Â MarchÂ 31, JuneÂ 30, SeptemberÂ 30 and DecemberÂ 31 of each year, commencing on the first such date to occur after the Closing Date; and (ii)Â the Maturity Date. Â â€œPBGCâ€ means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions. Â â€œPermitted Acquisitionâ€ means any Acquisition by the Borrower or any of its Subsidiaries,

whether by purchase, merger or otherwise; provided that: (a) immediately prior to, and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to result therefrom; (b) such Acquisition shall comply in all material respects with all applicable Laws and all applicable Governmental Approvals; (c) in the case of any Acquisition of Equity Interests of another Person, after giving effect to such Acquisition, all Equity Interests of such other Person acquired by the Borrower or any of its Subsidiaries shall be owned, directly or indirectly, beneficially and of record, by the Borrower or any of its Subsidiaries, and the Borrower shall satisfy each of the actions set forth in Section 8.11 as required by such Section; (d) on a Pro Forma Basis after giving effect to such Acquisition, the Borrower shall have at least the greater of (i) \$5,000,000 and (ii) the then effective Minimum Liquidity Amount in cash in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent; (e) to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof does not exceed \$10,000,000 (or the Equivalent Amount in other currencies) in any fiscal year; (f) to the extent that the purchase price for any such Acquisition is paid in Equity Interests, all such Equity Interests shall be Qualified Equity Interests; (g) promptly upon request by the Administrative Agent in the case of any such Acquisition, the Borrower shall provide to the Administrative Agent (i) at least ten (10) Business Days<sup>TM</sup> prior written notice of any such Acquisition, together with summaries, prepared in reasonable detail, of all due diligence conducted by or on behalf of the Borrower or the applicable Subsidiary, as applicable, prior to such Acquisition, in each case subject to customary confidentiality restrictions, (ii) subject to customary confidentiality restrictions, a copy of the draft purchase agreement related to the proposed Acquisition (and any related documents requested by the Administrative Agent), (iii) pro forma financial statements of the Borrower and its Subsidiaries (as of the last day of the most recently ended fiscal quarter prior to the date of consummation of such Acquisition for which financial statements are required to be delivered pursuant to Sections 8.01(a) or (b)) after giving effect to such Acquisition, and (iv) subject to customary confidentiality restrictions, any other information reasonably requested (to the extent available), by the Administrative Agent and available to the Borrower; and -19- (h) neither the Borrower nor any of its Subsidiaries (including any acquired Person) shall, in connection with any such Acquisition, assume or remain liable with respect to (x) any Indebtedness of the related seller or the business, Person or assets acquired, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to Section 9.02 or (z) any other liabilities (including Tax, ERISA and environmental liabilities), except to the extent the assumption of such liability could not reasonably be expected to result in a Material Adverse Effect. Any other such Indebtedness, liabilities or Liens not permitted to be assumed, continued or otherwise supported by the Borrower or Subsidiary thereof hereunder shall be paid in full or released within sixty (60) days of the acquisition date. (i) "Permitted Cash Equivalent Investments" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any member states of the European Union or any agency or any state thereof having maturities of not more than one (1) year from the date of acquisition, (ii) commercial paper maturing no more than two hundred seventy (270) days after the date of acquisition thereof and having the highest rating from either Standard & Poor's<sup>TM</sup> Ratings Group or Moody's<sup>TM</sup> Investors Service, Inc., and (iii) funds held in ICS and CDARS programs. (j) "Permitted Indebtedness" means any Indebtedness permitted under Section 9.01. (k) "Permitted Liens" means any Liens permitted under Section 9.02. (l) "Permitted Refinancing" means, with respect to any Indebtedness permitted to be refinanced, extended, renewed or replaced hereunder, any refinancings, extensions, renewals and replacements of such Indebtedness; provided that such refinancing, extension, renewal or replacement shall not (i) increase the outstanding principal amount of the Indebtedness being refinanced, extended, renewed or replaced, except by an amount equal to accrued interest and a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred in connection therewith, (ii) contain terms relating to outstanding principal amount, amortization, maturity, collateral security (if any) or subordination (if any), or other material terms that, taken as a whole, are less favorable in any material respect to the Borrower and its Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing such existing Indebtedness, (iii) have an applicable interest rate which does not exceed the greater of (A) the rate of interest of the Indebtedness being replaced and (B) the then applicable market interest rate, (iv) contain any new requirement to grant any Lien or to give any Guarantee that was not an existing requirement of such Indebtedness and (v) after giving effect to such refinancing, extension, renewal or replacement, no Default shall have occurred (or could reasonably be expected to occur) as a result thereof. (m) "Person" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature. (n) "Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA. (o) "Prepayment Price" has the meaning set forth in Section 3.03(a)(i). (p) "Private Subsidiary" is any Subsidiary that is not a Public Subsidiary. (q) "Pro Forma Basis" shall mean, with respect to the calculation of any financial ratio, as of any date, that pro forma effect will be given to the Transactions, any Permitted Acquisition, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio is being calculated) and all sales, transfers and other dispositions or discontinuance of any subsidiary, line of business or division, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the "Reference Period"), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made, as if each such event occurred on the first day of the Reference Period. (r) "Prohibited Payment" means any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value (including meals or entertainment) to any officer, employee or ceremonial office holder of any government or instrumentality thereof, political party or supra-national organization (such as the United Nations), any political candidate, any royal family member or any other person who is connected or associated personally with any of the foregoing that is prohibited under any Law for the purpose of influencing any act or decision of such payee in his official capacity, inducing such payee to do or omit to do any act in violation of his lawful duty, securing any improper advantage or inducing such payee to use his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or

instrumentality. "Proportionate Share" means, with respect to any Lender, the percentage obtained by dividing (i) the Commitment (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect. "Public Subsidiary" is any Subsidiary the Equity Interests of which are traded on any public market or exchange. "Qualified Equity Interest" means, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest. "Qualified Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Borrower or any ERISA Affiliate thereof or to which the Borrower or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code. "Recipient" means the Administrative Agent or any Lender. "Refinanced Indebtedness" means the Indebtedness incurred under that certain Credit Agreement, dated as of August 27, 2020, by and among Borrower, each lender from time to time party thereto and the Administrative Agent. "Register" has the meaning set forth in Section 13.05(d). "Regulation T" means Regulation T of the Board of Governors of the Federal Reserve System, as amended. "Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System, as amended. "Regulation X" means Regulation X of the Board of Governors of the Federal Reserve System, as amended. "Reinvestment Period" has the meaning set forth in Section 3.03(b). "Related Parties" has the meaning set forth in Section 13.16. "Required Capital Raise Amount" has the meaning set forth in Section 8.17. "Resignation Effective Date" has the meaning set forth in Section 12.09. "Resolution Authority" means an EEA Resolution Authority or, with respect to any U.K. Financial Institution, a U.K. Resolution Authority. "Responsible Officer" of any Person means each of the president, chief executive officer, chief financial officer and similar officer of such Person. "Restricted Payment" means any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to any Equity Interests of the Borrower or any of its Subsidiaries, or any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of the Borrower or any of its Subsidiaries, any payment of interest, principal or fees in respect of any Indebtedness owed by the Borrower or any of its Subsidiaries to any holder of any Equity Interests of the Borrower or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of the Borrower or any of its Subsidiaries. "Restrictive Agreement" means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of the Borrower or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its properties or assets (other than customary provisions in Contracts (including without limitation leases and in-bound licenses of Intellectual Property) restricting the assignment thereof), or (ii) the ability of the Borrower or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to the Borrower or any of its Subsidiaries or to Guarantee Indebtedness of the Borrower or any of its Subsidiaries. "Revenue" means, with respect to any Person for any relevant fiscal period, the consolidated total revenues of such Person for such fiscal period, as recognized on the income statement of such Person, determined on a consolidated basis in accordance with GAAP. "Sanction" means any international economic or financial sanction or trade embargo imposed, administered or enforced from time to time by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union or its Member States, His Majesty's Treasury or other relevant sanctions authority where the Borrower is located or conducts business. "SEC" means United States Securities and Exchange Commission. "Secured Parties" means the Lenders, the Administrative Agent and any of their respective permitted transferees or assigns. "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder. "Security Agreement" means the Security Agreement, delivered pursuant to Section 6.01(h), between the Borrower and the Administrative Agent, granting a security interest in the Borrower's personal property in favor of the Administrative Agent, for the benefit of the Secured Parties. "Security Documents" means, collectively, the Security Agreement, each Short-Form IP Security Agreement, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Secured Parties for purposes of securing the Obligations. "Short-Form IP Security Agreements" means short-form copyright, trademark or patent (as the case may be) security agreements, substantially in the form of Exhibit B, C and D to the Security Agreement, entered into by the Borrower in favor of the Secured Parties, each in form and substance satisfactory to the Administrative Agent (and as amended, modified or replaced from time to time). "Solvent" means, as to any Person as of any date of determination, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person's property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability. "SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator. "SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate). "SOFR Loan" means a Loan that bears interest at SOFR. "Special Monetization Event" means the occurrence of any of the following events: (i) the sale of over fifty percent (50%) of the Equity Interests in Checkpoint held by Borrower in one transaction or a series of related transactions (the "Checkpoint Monetization Event"), (ii) the sale of over fifty percent (50%) of the Equity Interests in JMC held by Borrower in one transaction or a series of related transactions (the "JMC Monetization Event"), (iii) the receipt by Borrower of the distribution of proceeds from Cyprium following the sale of any priority review voucher by Cyprium (the "Cyprium Monetization Event"); and (iv) receipt by Borrower of its net pro rata portion of the Earn-Out Payment (as defined in the DOSPA) set forth in Section 4.6(a)(1) of the DOSPA (the "Caelum Monetization Event"). "Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company,

partnership, association or other entity (i) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly, or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more direct or indirect subsidiaries of the parent or by the parent and one or more direct or indirect subsidiaries of the parent. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower. "Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto. "Term SOFR" means, for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, 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 Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, 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 Periodic Term SOFR Determination Day; provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso) shall ever be less than 2.50%, then Term SOFR shall be deemed to be 2.50%; provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso) shall ever be greater than 5.75%, then Term SOFR shall be deemed to be 5.75%. -24- "Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion). "Term SOFR Reference Rate" means the forward-looking term rate based on SOFR. "Title IV Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Borrower or any ERISA Affiliate thereof or to which the Borrower or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA. "Trademarks" means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, and other indicia of origin, including (i) all renewals of trademark and service mark registrations and (ii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof. "Tranche A Term Loan" means each loan advanced by the Lenders pursuant to Section 2.01(a). For purposes of clarification, any calculation of the aggregate outstanding principal amount of the Tranche A Term Loan on any date of determination shall mean the aggregate principal amount of the Tranche A Term Loan made pursuant to Section 2.01(a) that has not yet been repaid as of such date. "Tranche A Term Loan Commitment" means the commitment of a Lender to make or otherwise fund the Tranche A Term Loan. The amount of each Lender's Tranche A Term Loan Commitment, if any, is set forth on Schedule 1. The aggregate amount of the Tranche A Term Loan Commitments as of the Closing Date is \$35,000,000. "Tranche B Term Loan" means each loan advanced by a Lender pursuant to Section 2.01(b). For purposes of clarification, any calculation of the aggregate outstanding principal amount of the Tranche B Term Loan on any date of determination shall mean the aggregate principal amount of the Tranche B Term Loan made pursuant to Section 2.01(b) that has not yet been repaid as of such date. "Tranche B Term Loan Borrowing Date" means the Business Day on which all of the conditions set forth in Section 6.02 have been satisfied or waived by the Lenders and the Tranche B Term Loan is made. "Tranche B Term Loan Commitment" means the commitment of a Lender to make or otherwise fund a Tranche B Term Loan and "Tranche B Term Loan Commitments" means such commitments of all Lenders in the aggregate. The amount of each Lender's Tranche B Term Loan Commitment, if any, is set forth on Schedule 1. The maximum aggregate amount of the Tranche B Term Loan Commitments as of the Closing Date is \$15,000,000. -25- "Transactions" means (a) the negotiation, preparation, execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the making of the Loans hereunder, and all other transactions contemplated pursuant to this Agreement and the other Loan Documents, including the creation of the Liens pursuant to the Security Documents, (b) the repayment in full and termination of the Refinanced Indebtedness and (c) the payment of all fees and expenses incurred or paid by the Borrower in connection with the foregoing. "U.K. Financial Institutions" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms. "U.K. Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any U.K. Financial Institution. "UCC" means, with respect to any applicable jurisdictions, the Uniform Commercial Code as in effect in such jurisdiction, as may be modified from time to time. "United States" or "U.S." means the United States of America, its fifty states and the District of Columbia. "U.S. Person" means a "United States Person" within the meaning of Section 7701(a)(30) of the Code. "U.S. Tax Compliance Certificate" has the meaning set forth in Section 5.03(f)(ii)(B)(3). "VWAP" has the meaning set forth in the Warrant. "Warrant" means that certain Warrant, dated as of the Closing Date and delivered pursuant to Section 6.01(k), evidenced by an instrument substantially in the form of Exhibit F hereto, as amended, replaced or otherwise modified pursuant to the terms thereof. "Warrant Obligations" means all Obligations of Borrower arising out of, under or in connection with the Warrant. "Withdrawal Liability" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA. "Withholding Agent" means the Borrower or the Administrative Agent. -26- "Write-Down and Conversion Powers" means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the



Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any U.K. Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers. **Yield Protection Premium** means (a) with respect to any prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration, payment of a Net Sales Cure Payment or otherwise (other than by mandatory prepayment in connection with a Special Monetization Event), (i) occurring on or prior to the eighteen (18) month anniversary of the Closing Date, an amount equal to the amount of interest that would have been paid on the principal amount of the Loans being so repaid or prepaid for the period from and including the date of such repayment or prepayment to but excluding the date that is the eighteen (18) month anniversary of the Closing Date, plus one percent (1%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, and (ii) occurring after the eighteen (18) month anniversary of the Closing Date, an amount equal to one percent (1%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, and (b) with respect to any mandatory prepayment of all or any portion of the Loans in connection with a Special Monetization Event, occurring (i) on or prior to the six (6) month anniversary of the Closing Date, an amount equal to nine percent (9%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (ii) at any time after the six (6) month anniversary of the Closing Date but on or prior to the first year anniversary of the Closing Date, an amount equal to five and a half percent (5.5%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iii) at any time after the first anniversary of the Closing Date but on or prior to the eighteen (18) month anniversary of the Closing Date, an amount equal to three percent (3%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, and (iv) at any time after the eighteen (18) month anniversary of the Closing Date, an amount equal to one percent (1%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid. **Accounting Terms and Principles.** Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under Section 10 and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication. If the Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in each case, occurring after the date of this Agreement, then the Lenders and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders and Borrower after such change or issuance conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such change or issuance has occurred and (ii) the Borrower shall provide to the Lenders a written reconciliation in form and substance reasonably satisfactory to the Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to such change or issuance.

**Interpretation.** For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, (a) the terms defined in this Agreement include the plural as well as the singular and vice versa; (b) words importing gender include all genders; (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement; (d) any reference to this Agreement refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision; (e) references to days, months and years refer to calendar days, months and years, respectively; (f) all references herein to include or including shall be deemed to be followed by the words without limitation; (g) the word from when used in connection with a period of time means from and including and the word until means to but not including; (h) the words asset and property shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or intangible, real or personal, including cash, securities, rights under contractual obligations and permits and any right or interest in any such assets or property; (i) accounting terms not specifically defined herein (other than property and asset) shall be construed in accordance with GAAP; (j) the word will shall have the same meaning as the word shall; (k) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or, to the knowledge of such Person, indirectly; and (l) references to any Lien granted or created hereunder or pursuant to any other Loan Document securing any Obligations shall be deemed to be a Lien for the benefit of the Secured Parties.

**28- Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto permitted by the Loan Documents. Any definition or reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law. If any payment required to be made pursuant to the terms and conditions of any Loan Document falls due on a day which is not a Business Day, then such required payment date shall be extended to the immediately following Business Day. For purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries will be deemed to be equal to 100% of the outstanding principal amount thereof or payment obligations with respect thereto at the time of determination thereof. 1.04 Division.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws) (a **Division**), if (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been

transferred from the original Person to the subsequent Person, and (b) Any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

**2. THE COMMITMENT AND THE LOANS**

**2.01 Tranche A Term Loans.**

(a) Subject to the terms and conditions of this Agreement and relying on the representations and warranties set forth herein, each Lender, severally and not jointly, agrees to provide its share of the Tranche A Term Loan to the Borrower on the Closing Date in a principal amount equal to such Lender's Tranche A Term Loan Commitment. No Lender shall have an obligation to make a Tranche A Term Loan in excess of such Lender's Commitment.

(ii) The Borrower may make one (1) Borrowing under the Tranche A Term Loan Commitment which shall be on the Closing Date. Subject to Section 3.03, all amounts owed hereunder with respect to the Tranche A Term Loan shall be paid in full no later than the Maturity Date. Each Lender's Tranche A Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Tranche A Term Loan Commitment on such date.

(b) Tranche B Term Loan.

(i) Subject to the terms and conditions of this Agreement and relying on the representations and warranties set forth herein, each Lender, severally and not jointly, agrees to provide, prior to the Maturity Date, its share of the Tranche B Term Loan to the Borrower on the Tranche B Term Loan Borrowing Date in Dollars in a principal amount equal to such Lender's Tranche B Term Loan Commitment. No Lender shall have an obligation to make a Tranche B Term Loan in excess of such Lender's Tranche B Term Loan Commitment.

(ii) The Borrower may make one (1) Borrowing under the Tranche B Term Loan Commitment which shall be on the Tranche B Term Loan Borrowing Date. Subject to Section 3.03, all amounts owed hereunder with respect to the Tranche B Term Loan shall be paid in full no later than the Maturity Date. Each Lender's Tranche B Term Loan Commitment shall terminate immediately and without further action on the earlier of (x) the Tranche B Term Loan Borrowing Date after giving effect to the funding of such Lender's Tranche B Term Loan Commitment on such date and (y) the Maturity Date.

(c) No amounts paid or prepaid with respect to any Loan may be reborrowed.

(d) Any term or provision hereof (or of any other Loan Document) to the contrary notwithstanding, Loans made to the Borrower will be denominated solely in Dollars and will be repayable solely in Dollars and no other currency.

2.02 Borrowing Procedures. At least one (1) Business Day prior to the Closing Date or the Tranche B Term Loan Borrowing Date, as applicable (or such shorter period agreed by the Administrative Agent), the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice in the form of Exhibit B signed by a duly authorized representative of the Borrower (which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. (Eastern time) on a Business Day, shall be deemed to have been delivered on the next Business Day). Each Borrowing Notice shall be for the full amount of the Commitments and no Borrowing Notice for less than such full amount shall be permitted.

2.03 Notes. If requested by any Lender, the Loan of such Lender shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to the Lender such promissory note(s) substantially in the form attached hereto as Exhibit A.

2.04 Use of Proceeds. The Borrower shall use the proceeds of the Tranche A Term Loans (i) for repaying the Refinanced Indebtedness and (ii) for working capital and general corporate purposes, including the payment of fees and expenses associated with this Agreement. The Borrower shall use the proceeds of the Tranche B Term Loans for future business development, bolt-on product acquisitions and in-licensing activities.

**Section 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC.**

3.01 Scheduled Repayments and Prepayments Generally; Application. The Borrower hereby promises to pay to the Administrative Agent for the account of each Lender (as such amounts may in each case be reduced from time to time in accordance with Section 3.03), on the last day of the last fiscal quarter ending prior to the date that is 90 days before the Maturity Date, the aggregate outstanding principal balance of the Loans in the amount of fifty percent (50%) of the aggregate principal balance of Loans then outstanding as of such payment date (together with accrued and unpaid interest and any other accrued and unpaid charges thereon and all other obligations due and payable by the Borrower under this Agreement as of such payment date). Except as otherwise provided in this Agreement, each payment (including each repayment and prepayment) by the Borrower (other than fees payable pursuant to the Fee Letter) will be deemed to be made ratably in accordance with the Lenders' Proportionate Shares. To the extent not previously paid, the Borrower shall pay in full all outstanding Obligations, which shall include the Yield Protection Premium, if applicable, on the Maturity Date.

3.02 Interest.

(a) Interest Generally. The outstanding principal amount of the Loans shall accrue interest from the date made to repayment (whether by acceleration or otherwise and whether voluntary or mandatory) at the Interest Rate.

(b) Default Interest. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Interest Rate shall increase automatically by two and a half percent (2.5%) per annum (the Interest Rate, as increased pursuant to this Section 3.02(b), being the Default Rate). If any Obligation (other than Warrant Obligations but including, without limitation, fees, costs and expenses payable hereunder) is not paid when due (giving effect to any applicable grace period) under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

(c) Interest Payment Dates. Accrued interest on the Loans shall be payable in arrears on each Payment Date in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate shall also be payable in cash from time to time on demand by the Administrative Agent.

3.03 Prepayments.

(a) Optional Prepayments.

(i) Subject to prior written notice pursuant to clause (ii) below, the Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Business Day for an amount equal to the sum of (A) the aggregate principal amount of the Loans being prepaid, (B) any accrued but unpaid interest on the principal amount of the Loans being prepaid, (C) any applicable Yield Protection Premium and (D) if applicable, other unpaid amounts then due and owing pursuant to this Agreement and the other Loan Documents (such aggregate amount, the Prepayment Price); provided that each partial prepayment of principal of Loans shall be in an aggregate amount at least equal to \$5,000,000 and integral multiples of \$1,000,000 in excess thereof.

(ii) A notice of optional prepayment shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (Eastern time) on a date not less than three (3) (nor more than five (5)) Business Days prior to the proposed prepayment date. Each notice of optional

prepayment shall specify the proposed prepayment date, the Prepayment Price, the principal amount to be prepaid and any conditions to prepayment (if applicable). -31- (b) Mandatory Prepayments for Casualty Events and Monetization Events. Within five (5) Business Days following Borrower's receipt of Net Proceeds from any Casualty Event or Monetization Event, the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i)(A) for any Casualty Event or Monetization Event (other than any Cyprium Monetization Event or JMC Monetization Event), the Applicable Prepayment Percentage of the Net Proceeds received by the Borrower with respect to such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, as the case may be, (B) for any Cyprium Monetization Event, \$10,000,000, and (C) for any JMC Monetization Event, \$25,000,000, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Yield Protection Premium; provided that, the mandatory prepayment required in the event of a Caelum Monetization Event shall be no less than \$5,000,000; provided, further, that, so long as no Default has occurred and is continuing or shall result therefrom, if, within five (5) Business Days following Borrower's receipt of Net Proceeds from any such Casualty Event or Monetization Event (other than any Special Monetization Event) as a result of which the Borrower receives Net Proceeds in an aggregate amount less than \$5,000,000, a Responsible Officer of the Borrower delivers to the Administrative Agent a notice to the effect that the Borrower intends to apply the Net Proceeds from such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, to reinvest in the business of the Borrower (a Reinvestment), then such Net Proceeds of such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event may be applied for such purpose in lieu of such mandatory prepayment to the extent such Net Proceeds of such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event are actually applied for such purpose; provided, further, that, in the event that Net Proceeds have not been so applied within three hundred sixty-five (365) days (the Reinvestment Period) following the occurrence of such Casualty Event or Monetization Event (other than any Special Monetization Event), the Borrower shall no later than the end of such period make a mandatory prepayment of the Loans in an aggregate amount equal to the sum of (i) the Applicable Prepayment Percentage of the unused balance of such Net Proceeds received by the Borrower with respect to such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Yield Protection Premium; provided, further, that other than as provided in clauses (d) and (e) below or with respect to any JMC Monetization Event, Borrower shall not be required to prepay more than \$10 million of principal amount of the Loans in the aggregate with respect to any Asset Sale(s) and/or other Monetization Event(s) related to the Equity Interests in, or assets of, any individual Subsidiary. (c) Mandatory Prepayments for Debt Issuances. Immediately upon receipt by the Borrower or any of its Subsidiaries of proceeds from any issuance, incurrence or assumption of Indebtedness other than Indebtedness permitted by Section 9.01, on or after the Closing Date, the Borrower shall prepay the Loans and other Obligations in an amount equal to 100% of the cash proceeds received, plus the Yield Protection Premium, if applicable. (d) Mandatory Prepayments for Failure to Comply with Capital Raise Covenant. In the event that, on or after December 31, 2024, the Borrower fails to comply with the Capital Raise Covenant, (i) the Borrower shall immediately prepay the Loans and other Obligations in an amount equal to 33% of the then-outstanding principal balance of the Loans, plus the Yield Protection Premium, if applicable, and (ii) the Borrower shall then prepay the remaining outstanding principal balance of the Loans (together with accrued and unpaid interest and any other accrued and unpaid charges thereon and all other obligations due and payable by the Borrower under this Agreement as of each such payment date) in two equal installments over the next two calendar quarters, commencing on the last day of the first full calendar quarter ending after the date of the payment described in clause (i), with each such payment due on the last day of the applicable calendar quarter. -32- (e) Mandatory Prepayments for Failure to Comply with Minimum JMC Stake Covenant. In the event that the Borrower fails to comply with the Minimum JMC Stake Covenant, (i) the Borrower shall immediately prepay the Loans and other Obligations in an amount equal to 25% of the then-outstanding principal balance of the Loans, plus the Yield Protection Premium, if applicable, and (ii) the Borrower shall then prepay the remaining outstanding principal balance of the Loans (together with accrued and unpaid interest and any other accrued and unpaid charges thereon and all other obligations due and payable by the Borrower under this Agreement as of each such payment date) in three equal installments over the next three calendar quarters, commencing on the last day of the first full calendar quarter ending after the date of the payment described in clause (i), with each such payment due on the last day of the applicable calendar quarter. (f) General. The Borrower shall notify the Administrative Agent not later than 12:00 p.m. (Eastern time) on a date not less than two (2) Business Days (but not more than three (3) Business Days) prior to any mandatory prepayment. Notwithstanding anything in this Section 3.03 to the contrary, any Lender may elect, by written notice to the Administrative Agent no later than 12:00 p.m. (Eastern time), one (1) Business Day prior to the prepayment date (or such later time as the Administrative Agent may agree), to decline all or any portion of any mandatory prepayment of its Loans pursuant to this Section 3.03. Any Lender that fails to deliver such notice to the Administrative Agent in the time frame set forth above shall be deemed to have accepted its share of any mandatory prepayment. The aggregate amount of the prepayment that would have been applied to prepay Loans but was so declined may be retained by the Borrower and used for any general corporate purpose not prohibited by this Agreement. If any Lender declines all or any portion of any mandatory prepayment of its Loans in connection with a Monetization Event (other than any Special Monetization Event), the Borrower shall grant such Lender warrants in an amount equal to 2.50% of the principal amount of mandatory prepayment so declined, with an exercise price equal to the VWAP of the Borrower's common stock for the period beginning on the trading day that is 30 days prior to the issuance date and ending on the last trading day immediately preceding the issuance date. For the avoidance of doubt, the issuance of any warrants pursuant to this clause (f) shall not be deemed to be a prepayment and shall not reduce the Borrower's obligations to make any mandatory prepayment required under clause (b) above with respect to any such Monetization Event occurring after the issuance of such warrants. (g) Yield Protection Premium. Without limiting the foregoing, whenever the Yield Protection Premium is in effect and payable pursuant to the terms hereof or any other Loan Document, such Yield Protection Premium shall be payable on each prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise (other than any prepayment pursuant to Section 5.02). (h) Partial Prepayments. Prepayments shall be accompanied by accrued interest to the extent required by Section 3.02. -33- 3.04 Benchmark Replacement. A

(a) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the Benchmark with a Benchmark Replacement. No replacement of SOFR with a Benchmark Replacement pursuant to this Section will occur prior to the applicable Benchmark Transition Start Date. (b) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(c) the Administrative Agent will promptly notify the Borrower of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section.

#### Section 4. PAYMENTS, ETC. 4.01 Payments.

(a) Payments Generally. Each payment of principal, interest and other amounts to be made by the Borrower under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Administrative Agent designated by the Administrative Agent by notice to the Borrower, and (ii) not later than 2:00 p.m. (Eastern time) on the date on which such payment is due (each such payment made after such time on such due date may in the Administrative Agent's discretion be deemed to have been made on the next succeeding Business Day).

(b) Application of Payments. Notwithstanding anything herein to the contrary, following the occurrence and continuance of an Event of Default, all payments shall be applied as follows:

(A) first, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, expenses or other amounts (including fees and disbursements and other charges of counsel payable under Section 13.03) payable to the Administrative Agent in its capacity as such;

(B) second, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, costs, expenses and other amounts (other than principal and interest, but including fees and disbursements and other charges of counsel payable under Section 13.03 and any Yield Protection Premium) payable to the Lenders arising under the Loan Documents (other than the Warrant), ratably among them in proportion to the respective amounts described in this clause (B) payable to them;

(C) third, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause

(D) payable to them;

(E) fifth, in reduction of any other Obligation then due and owing, ratably among the Administrative Agent and the Lenders based upon the respective aggregate amount of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(F) sixth, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or such other Person as may be lawfully entitled to or directed by the Borrower to receive the remainder.

(c) Non-Business Days. If the due date of any payment under this Agreement (whether in respect of principal, interest, fees, costs or otherwise) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day and, in the case of any payment accruing interest, interest thereon shall continue to accrue and be payable for the period of such extension; provided that if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and actual days elapsed during the period for which payable. Interest is calculated from and including the date of the Borrowing of each Loan to, but excluding, the date of repayment or prepayment of such Loan.

4.03 Set-Off. (a) Set-Off Generally. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Administrative Agent, any Lender and any of their Affiliates to or for the credit or the account of the Borrower against any and all of the Obligations, whether or not such Person shall have made any demand and although such obligations may be unmaturing. Any Person exercising rights of set off hereunder agrees promptly to notify the Borrower after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, the Lenders and each of their Affiliates under this Section 4.03 are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) Exercise of Rights Not Required. Nothing contained in Section 4.03(a) shall require the Administrative Agent, any Lender or any of their Affiliates to exercise any such right or shall affect the right of such Persons to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower.

(c) Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff pursuant to this Section 4.03, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally

intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. **Section 5. YIELD PROTECTION, TAXES, ETC.** **5.01** **Change in Law Generally.** If, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law, or any change in any Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by the Administrative Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall (i) impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement (except any reserve requirement reflected in Term SOFR), in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office), (ii) impose on a Lender (or its lending office) any other condition (other than Taxes) affecting the Loans or the Commitment, or (iii) subject any Lender to any Taxes on its Loan, Commitment or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, by an amount reasonably deemed by such Lender in good faith to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction. **-36-** **Change in Capital Requirements.** If a Lender shall have determined that, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction. **(c) Notification by Lender.** Each Lender promptly will notify the Borrower of any event of which it has knowledge, occurring after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), which will entitle such Lender to compensation pursuant to this Section 5.01. Before giving any such notice pursuant to this Section 5.01(c) such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this Section 5.01, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error. **(d) Notwithstanding anything herein to the contrary,** (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Law for all purposes of this Section 5.01, regardless of the date enacted, adopted or issued. **(e) Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to this Section 5.1 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 5.1 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender Section 5.1 notifies the Borrower of the event giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the event giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof). **-37-** **5.02 Illegality.** Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) the adoption of or any change in any Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof, following which if such Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Law in an amount equal to the Prepayment Price (notwithstanding anything herein to the contrary, without any Yield Protection Premium) applicable on such prepayment date in accordance with Section 3.03(a). **5.03 Taxes.** For purposes of this Section 5.03, the term "applicable Law" includes FATCA. **(a) Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by any applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 5.03) the applicable Recipient

receives an amount equal to the sum it would have received had no such deduction or withholding been made. (b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent or each Lender, timely reimburse it for the payment of any Other Taxes. (c) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 5.03, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. (d) Indemnification by the Borrower. The Borrower shall reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error. (e) Indemnification by the Lender. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.05(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 5.03(e). (f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or as reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 5.03(f)(ii)(A), (ii)(B), and (ii)(D)) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. (ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person: (A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax; (B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable: (1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the interest article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the business profits or other income article of such tax treaty; (2) executed copies of IRS Form W-8ECI (or successor form); (3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit C-1 to the effect that such Foreign Lender is not a bank within the meaning of Section 881(c)(3)(A) of the Code, a 10 percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code (a U.S. Tax Compliance Certificate) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or (4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate, substantially in the form of Exhibit C-2 or C-3, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-4 on behalf of each such direct and indirect partner. (C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this



Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

40. (D) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) The Administrative Agent (including any successor Administrative Agent) shall deliver to Borrower on or prior to the date on which it becomes an Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed copies of IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding tax. Each Lender and the Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Tax Benefits. If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5 (including by the payment of additional amounts pursuant to this Section 5), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 5 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 5.03(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 5.03(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 5.03(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 5.03(g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

41. Each party hereto hereby acknowledges and agrees that the Tranche A Term Loan is part of an investment unit within the meaning of Section 1273(c)(2) of the Code, which includes the Warrant. For federal income tax purposes, pursuant to Treasury Regulations 1.1273-2(h), the Borrower, the Administrative Agent and the Lenders acknowledge that the "issue price" of the Tranche A Term Loan is 97.5% of the stated principal amount of the Tranche A Term Loan minus the fair market value and purchase price of the Warrant (as determined in accordance with the terms of the Warrant). Each of the Borrower, the Administrative Agent and the Lenders agree to use the foregoing issue price, fair market value and purchase price for U.S. federal income tax purposes with respect to the transactions contemplated hereby (unless otherwise required by a final determination by the IRS or a court of competent jurisdiction).

5.04 Mitigation Obligations; Replacement of Lender. (a) If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to Section 5.01 or Section 5.03, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

(b) If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (a) of this Section 5.04, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 13.05), all of its interests, rights (other than its existing rights to payments pursuant to Section 5.01 or Section 5.03) and obligations under this Agreement and the related Loan Documents to an Eligible Transferee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(ii) in the case of any such assignment resulting from a claim for compensation under Section 5.01 or payments required to be made pursuant to Section 5.03, such assignment will result in a reduction in such compensation or payments thereafter; and

42. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

5.05 Survival. Each party's obligations under this Section 5 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document. 6. CONDITIONS 6.01 Conditions to the Borrowing of the Tranche A Term Loans. The obligation of each Lender to make its Tranche A Term Loan shall be subject to the delivery of a Borrowing Notice as required pursuant to Section 2.02, and the prior or concurrent satisfaction or waiver of each of the conditions precedent set forth below in this Section 6.01. (a) Loan Documents. The Administrative Agent shall have received each Loan Document required to be executed by the Borrower on the Closing Date and delivered by the Borrower (which may be delivered by facsimile or other electronic means for the purposes of satisfying this clause (a) on the Closing Date) and such Loan Documents shall be in form and substance satisfactory to the Administrative Agent and the Lenders and their respective counsels. (b) Secretary's Certificate, Etc. The Administrative Agent shall have received from the Borrower (x) a copy of a good standing certificate, dated a date reasonably close to the Closing Date and (y) a certificate, dated as of the Closing Date, duly executed and delivered by the Borrower's Responsible Officer, as to: (i) resolutions of the Borrower's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by the Borrower and the Transactions; (ii) the incumbency and signatures of Responsible Officers authorized to execute and deliver each Loan Document to be executed by the Borrower; and (iii) the full force and validity of each Organic Document of the Borrower and copies thereof; upon which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the Responsible Officer of any such Person cancelling or amending the prior certificate of such Person. (c) Information Certificate. The Administrative Agent shall have received a fully completed Information Certificate in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of the Borrower. All documents and agreements required to be appended to the Information Certificate, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties and shall be in full force and effect. -43- (d) Funding Date Certificate. The Administrative Agent shall have received a Funding Date Certificate, dated as of the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower. (e) Delivery of Notes. The Administrative Agent shall have received a Note to the extent requested by any Lender pursuant to Section 2.03 for the Loans duly executed and delivered by a Responsible Officer of the Borrower. (f) Financial Information, Etc. The Administrative Agent shall have received: (i) audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2023; and (ii) unaudited consolidated balance sheets of the Borrower and its Subsidiaries for the fiscal quarter ended March 31, 2024, together with the related consolidated statement of operations, shareholder's equity and cash flows for such fiscal quarter. (g) Solvency. The Administrative Agent shall have received a solvency certificate, substantially in the form of Exhibit G, duly executed and delivered by the chief financial officer of the Borrower, dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent. (h) Security Documents. The Administrative Agent shall have received executed counterparts of a Security Agreement, in form and substance reasonably acceptable to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by the Borrower, together with all documents (including share certificates, transfers and stock transfer forms, notices or any other instruments) required to be delivered or filed under the Security Documents and evidence satisfactory to it that arrangements have been made with respect to all registrations, notices or actions required under the Security Documents to be effected, given or made in order to establish a valid and perfected first priority security interest in the Collateral in accordance with the terms of the Security Documents, including: (i) delivery of all certificates (in the case of Equity Interests that are certificated securities (as defined in the UCC)) evidencing the issued and outstanding capital securities owned by the Borrower that are required to be pledged and so delivered under the Security Agreement, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Equity Interests that are uncertificated securities (as defined in the UCC), confirmation and evidence reasonably satisfactory to the Administrative Agent and the Lenders that the security interest required to be pledged therein under the Security Agreement has been transferred to and perfected by the Administrative Agent and the Lenders in accordance with Articles 8 and 9 of the NY UCC and all laws otherwise applicable to the perfection of the pledge of such Equity Interests; -44- (ii) financing statements naming the Borrower as a debtor and the Administrative Agent as the secured party, or other similar instruments or documents, in each case suitable for filing, filed under the UCC (or equivalent law) of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Liens of the Secured Parties pursuant to the Security Agreement; and (iii) UCC-3 termination statements, if any, necessary to release all Liens and other rights of any Person in any collateral described in the Security Agreement previously granted by any Person. (i) Lien Searches. The Administrative Agent shall be satisfied with Lien searches regarding the Borrower made as of a date reasonably close to the Closing Date. (j) Warrant. The Administrative Agent shall have received an executed counterpart of the Warrant. (k) Insurance. The Administrative Agent shall have received certified copies of the insurance policies (or binders in respect thereof), from one or more insurance companies satisfactory to the Administrative Agent, evidencing coverage required to be maintained pursuant to each Loan Document. (l) Opinions of Counsel. The Administrative Agent shall have received an opinion, dated as of the Closing Date and addressed to the Administrative Agent and the Lenders, from independent legal counsel to the Borrower, in form and substance reasonably acceptable to the Administrative Agent. (m) Fee Letter. The Administrative Agent shall have received an executed counterpart of the Fee Letter, duly executed and delivered by the Borrower. (n) Closing Fees, Expenses, Etc. Each of the Administrative Agent and each Lender shall have received for its own account, (i) the upfront fee as set forth in the Fee Letter, which shall be paid by way of

the Administrative Agent retaining such amount from the proceeds of the Loan and (ii) all fees, costs and expenses due and payable to it pursuant to the Fee Letter and Section 13.03, including all reasonable closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' legal fees and expenses) in each case, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Closing Date. (o) Material Adverse Change. Since December 31, 2023, no event, circumstance or change has occurred that has caused or could reasonably be expected to cause, either individually or in the aggregate, a Material Adverse Change, both before and after giving effect to the Loans to be made on the Closing Date. (p) Know Your Customer. The Administrative Agent shall have received, a duly executed W-9 (or other applicable tax form) of the Borrower, and, as applicable, all documentation and other information required by bank regulatory authorities under applicable know your customer and Anti-Terrorism Laws, including, without limitation, the Patriot Act. -45- (q) No Default. No event shall have occurred or be continuing or would result from the making of the Loans that would constitute a Default or Event of Default. (r) Representations and Warranties. The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to Section 6.01(a) shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date. (s) Payoff of Existing Indebtedness. The Refinanced Indebtedness (other than contingent obligations (including indemnification obligations) that by their terms are to survive the termination of the relevant loan documentation and debt instruments evidencing the Refinanced Indebtedness, as applicable) shall have been (or substantially concurrently with the making of the Tranche A Term Loan on the Closing Date shall be) repaid or satisfied and discharged, and in connection therewith all guarantees and liens shall have been released, on or prior to the Closing Date. (t) Beneficial Ownership Certificate. To the extent requested by any Lender or the Administrative Agent, the Borrower shall have provided to such Lender and the Administrative Agent all documentation and other information so requested, including a duly executed W-9 of the Borrower (or such other applicable tax form), in connection with applicable know your customer and anti-money laundering rules and regulations, including the Patriot Act, and if the Borrower qualifies as a legal entity customer under the Beneficial Ownership Regulation, a Beneficial Ownership Certification, in each case prior to the Closing Date. 6.02 Conditions to the Borrowing of the Tranche B Term Loans. The obligation of each Lender to make its Tranche B Term Loan shall be subject to the delivery of a Borrowing Notice as required pursuant to Section 2.02, and the prior or concurrent satisfaction or waiver of each of the conditions precedent set forth below in this Section 6.02. (a) Funding Date Certificate. The Administrative Agent shall have received a Funding Date Certificate, dated as of the Tranche B Term Loan Borrowing Date and in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower. (b) Delivery of Notes. The Administrative Agent shall have received a Note to the extent requested by any Lender pursuant to Section 2.03 for the Loans duly executed and delivered by a Responsible Officer of the Borrower. (c) Closing Fees, Expenses, Etc. Each of the Administrative Agent and each Lender shall have received for its own account, (i) the upfront fee as set forth in the Fee Letter, which shall be paid by way of the Administrative Agent retaining such amount from the proceeds of the Loan and (ii) all fees, costs and expenses due and payable to it pursuant to the Fee Letter and Section 13.03, including all reasonable closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' legal fees and expenses) in each case, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Tranche B Term Loan Borrowing Date. -46- (d) No Default. No event shall have occurred or be continuing or would result from the making of the Loans that would constitute a Default or Event of Default. (e) Representations and Warranties; Updated Schedules. The representations and warranties contained in this Agreement and in the other Loan Documents shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Tranche B Term Loan Borrowing Date, except (i) to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date and (ii) the representations and warranties made under Section 7.04(a) shall be deemed to refer to the most recent financial statements of the Borrower furnished to the Administrative Agent pursuant to Section 8.01. The Borrower shall have delivered to the Administrative Agent an updated copy of Schedule 7.12, to the extent required to satisfy the foregoing requirements set forth in this Section 6.02(e). (f) Lenders' Prior Written Consent. The Administrative Agent shall have received Lenders' prior written consent for funding the Tranche B Term Loans in accordance with this Agreement (as shall be determined by the Lenders in their sole discretion) and any such funding shall be in any such Lender's sole and absolute discretion. Section 7. REPRESENTATIONS AND WARRANTIES The Borrower hereby represents and warrants to the Administrative Agent and each Lender on the Closing Date and the Tranche B Term Loan Borrowing Date, as applicable, and any other date such representation and warranty is required to be made under the Loan Documents, as set forth below: 7.01 Power and Authority. The Borrower and each of its Subsidiaries (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) has all requisite corporate or other power, and has all Governmental Approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted, except to the extent that failure to have the same could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary except where failure so to qualify could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (iv) has full power, authority and legal right to enter into and perform its obligations under each of the Loan Documents and to borrow the Loans hereunder. -47- (g)

7.02 Authorization; Enforceability Each Transaction is within the Borrower's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational action including, if required, approval by all necessary holders of Equity Interests. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each of the other Loan Documents when executed and delivered by the Borrower will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. None of the execution, delivery and performance by the Borrower of the Loan Documents or the consummation by the Borrower of the Transactions (i) requires any Governmental Approval of, registration or filing with, or any other action by, any Governmental Authority or any other Person, except for (x) such as have been obtained or made and are in full force and effect and (y) filings and recordings in respect of perfecting or recording the Liens created pursuant to the Security Documents, (ii) will violate (1) any Law, (2) any Organic Document of the Borrower or any of its Subsidiaries or (3) any order of any Governmental Authority, that in the case of clause (ii)(1) or clause (ii)(3), individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (iii) will violate or result in a default under any Material Agreement binding upon the Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or (iv) will result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of the Borrower or any of its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) Financial Statements. The Borrower has heretofore furnished to the Administrative Agent (who shall forward to the Lenders) certain consolidated financial statements as provided for in Section 6.01(f). Such financial statements, and all other financial statements delivered by the Borrower pursuant to this Agreement present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements of the type described in Section 8.01(a). Neither the Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements.

(b) No Material Adverse Change. Since December 31, 2023, no event, circumstance or change has occurred that has caused or could reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change.

7.05 Properties.

(a) Property Generally. The Borrower and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal property material to its business, subject only to Permitted Liens and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Intellectual Property.

(i) The Borrower is the sole and exclusive owner of all right, title and interest in and to all Intellectual Property that is owned or purported to be owned by the Borrower, free and clear of any Liens or Claims other than Permitted Liens. Without limiting the foregoing, and except as set forth in Schedule 7.05(b)(i): (A) to the knowledge of the Borrower, the operation and conduct of the business of the Borrower or any of its Subsidiaries, including the use of their respective material Intellectual Property in such Person's Ordinary Course, does not violate, infringe or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person in a manner that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect; (B) Except as has not resulted in and would not be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries has received any notice from, or Claim by, any Person that the operation and conduct of the business of the Borrower or any of its Subsidiaries (including their respective use of material Intellectual Property) infringes upon, violates or constitutes a misappropriation of, any Intellectual Property of any other Person in any material respect; (C) the Borrower does not have knowledge that any material Intellectual Property is being infringed, violated, or misappropriated by any other Person in a manner that has resulted in, or is reasonably expected to result in, a Material Adverse Effect; (D) except as would not reasonably be expected to result in a Material Adverse Effect, the Borrower owns or has a valid and enforceable license or right to use all material Intellectual Property used in or necessary for the conduct of its business as conducted as of the date hereof; and (E) all current and former employees and contractors that have developed material Intellectual Property for or on behalf of the Borrower or any of its Subsidiaries have executed written confidentiality and invention assignment Contracts with the Borrower or such Subsidiary, as applicable, that irrevocably and presently assign to the Borrower or such Subsidiary, as applicable, or its designee all rights of such employees and contractors to any such material Intellectual Property, except as would vest initially in the Borrower or its Subsidiary by operation of Law.

7.06 No Actions or Proceedings.

(a) Litigation. There is no litigation, investigation or proceeding pending or, to the knowledge of the Borrower or any of its Subsidiaries threatened in writing, with respect to the Borrower or any such Subsidiaries by or before any Governmental Authority or arbitrator that, (i) if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (ii) involves this Agreement or any other Loan Document.

(b) Environmental Matters. Except with respect to any matters that (either individually or in the aggregate) could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received any Environmental Claim, or has knowledge that any is threatened, (iv) has entered into any agreement in which the Borrower or any of its Subsidiaries has assumed or undertaken responsibility or obligations of any other person with respect to any Environmental Liability or (v) has knowledge of any basis for any other Environmental Liability.

(c) Labor Matters. Neither the Borrower nor any of its Subsidiaries has engaged in unfair labor practices as defined in 29 U.S.C. §§ 152(8) and 158 of the National Labor Relations Act and there are no pending or threatened in writing labor actions, disputes, grievances, arbitration proceedings, or similar Claims or actions involving the employees of the Borrower or any of its Subsidiaries, in each case that could reasonably be

expected to have a Material Adverse Effect. There are no strike or work stoppages in existence or threatened in writing against the Borrower and to the knowledge of the Borrower, no union organizing activity is taking place. There are no collective bargaining agreements covering employees of the Borrower or any of its Subsidiaries.

7.07 Compliance with Laws and Agreements. The Borrower is in compliance with (i) all Laws binding on it and orders of any Governmental Authority applicable to it, its operations or its property and (ii) all obligations binding upon it, its operations or its property pursuant to any Contract, in each case except for such failures to comply which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

7.08 Taxes. Except as set forth on Schedule 7.08, the Borrower and its Subsidiaries have timely filed or caused to be filed all tax returns and reports required to have been filed and have paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

7.09 Full Disclosure. None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower or any of its Subsidiaries to the Administrative Agent (on behalf of itself and the Lenders) in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time, and it being understood that such projected financial information and all other forward looking information are not to be viewed as facts and that actual results during the period or periods covered thereby may differ from such projected results and that the differences may be material.

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7.10 Investment Company Act and Margin Stock Regulation. (a) Investment Company Act. Neither the Borrower nor any of its Subsidiaries is an investment company as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended. (b) Margin Stock. The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and the Borrower and its Subsidiaries do not own or hold any Margin Stock, with the exception of Equity Interests held by the Borrower in Avenue Therapeutics, Inc., Checkpoint Therapeutics, Inc. and Mustang Bio, Inc.. The Borrowing of the Loans by the Borrower, and the use of the proceeds thereof, will not violate Regulation U or X.

7.11 Solvency. The Borrower is and, immediately after giving effect to the making of the Loans, the use of proceeds thereof, and the consummation of the Transactions, will be, Solvent.

7.12 Subsidiaries. Set forth on Schedule 7.12 is a complete and correct list of all direct and indirect Subsidiaries of the Borrower. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said Schedule 7.12, and the percentage ownership by the Borrower in each such Subsidiary thereof on an issued and outstanding basis is as shown in said Schedule 7.12.

7.13 Indebtedness and Liens. Set forth on Schedule 7.13(a) is a complete and correct list of all Indebtedness of the Borrower and each of its Subsidiaries outstanding as of the Closing Date. Set forth on Schedule 7.13(b) is a complete and correct list of all Liens granted by the Borrower and each of its Subsidiaries with respect to their respective property and outstanding as of the Closing Date.

7.14 Material Agreements. Except as set forth on Schedule 7.14, neither the Borrower nor any Subsidiary is in material default under any Material Agreement, nor does the Borrower have any knowledge of (i) any Claim against it or any of its Subsidiaries for any material breach of any such Material Agreement or (ii) any material default by any party to any such Material Agreement.

7.15 Restrictive Agreements. Except as set forth in Schedule 7.15, as of the Closing Date, neither the Borrower nor any of its Subsidiaries is subject to any Restrictive Agreement, except (i) those permitted under Section 9.11, (ii) restrictions and conditions imposed by Law or by this Agreement, (iii) any stockholder agreement, charter, by-laws, or other organizational documents of the Borrower or any of its Subsidiaries as in effect on the date hereof and (iv) limitations associated with Permitted Liens.

7.16 Real Property. Schedule 7.16 correctly sets forth all real property that is owned or leased by the Borrower, indicating in each case whether the respective property is owned or leased, the identity of the owner and lessee (if applicable) and the location of the respective property. Except as set forth in Schedule 7.16, the Borrower does not own or lease (as tenant thereof) any real property as of the Closing Date.

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7.17 Pension Matters. To Borrower's knowledge, each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Laws so qualifies. Except for those that could not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Laws, (y) there are no existing or pending (or to the knowledge of the Borrower or any of its Subsidiaries, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which the Borrower or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event has occurred. The Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and neither the Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent valuation date. As of the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate has incurred any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Transactions with Affiliates. Except as set forth on Schedule 7.18 and for Arm's Length Transactions, neither the Borrower nor any of its Subsidiaries has entered into, renewed, extended or been a part to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate.

7.19 OFAC; Anti-Terrorism Laws. (a) Neither the Borrower nor any of its Subsidiaries is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or

has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws.

(b) Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers, or employees (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction in violation of Sanctions, or (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction, in violation of Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or, to the knowledge of the Borrower, indirectly, to lend, contribute or provide to, or has been or will be otherwise made available for the purpose of funding, any activity or business in any Designated Jurisdiction in violation of Sanctions or for the purpose of funding any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, in violation of Sanctions, or in any other manner that will result in any violation by any party to this Agreement of Sanctions.

7.20 Anti-Corruption. Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers or employees, directly or, to the knowledge of the Borrower, indirectly, has (i) materially violated or is in material violation of any applicable anti-corruption Law, or (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or, to the knowledge of the Borrower, indirectly, any Prohibited Payment.

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7.21 Priority of Obligations. The Obligations constitute unsubordinated obligations of the Borrower, and except for any obligations which have priority under applicable Law, rank at least pari passu in right of payment with all other unsubordinated Indebtedness of the Borrower.

Section 8. AFFIRMATIVE COVENANTS

The Borrower covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made) including the Yield Protection Premium, if applicable, have been indefeasibly paid in full in cash:

8.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent:

(a) as soon as available and in any event within forty-five (45) days after the end of the first three (3) fiscal quarters of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate of a Responsible Officer of the Borrower stating that (x) such financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at such date and (y) the results of operations of the Borrower and its Subsidiaries for the period ended on such date have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this Section 8.01(a) shall be deemed furnished on the date that such documents are publicly available on EDGAR (with the related certificate separately delivered);

(b) as soon as available and in any event within ninety (90) days after the end of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal year and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of KPMG LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any going concern or like qualification or exception or emphasis of matter of going concern footnote or any qualification or exception as to the scope of such audit; provided that documents required to be furnished pursuant to this Section 8.01(b) shall be deemed furnished on the date that such documents are publicly available on EDGAR;

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(c) together with the financial statements required pursuant to 8.01(a) and (b), a compliance certificate signed by the chief financial or accounting Responsible Officer of the Borrower as of the end of the applicable accounting period (which delivery may be by electronic communication including fax or email and shall be deemed to be an original, authentic counterpart thereof for all purposes) substantially in the form of Exhibit D (a Compliance Certificate) including (i) details of any issues that are material that are raised by auditors and any occurrence or existence of any event, circumstance, act or omission that would cause any representation or warranty contained in Section 7.07 to be incorrect in any material respect (or in any respect if such representation or warranty is qualified by materiality or by reference to Material Adverse Effect or Material Adverse Change) if such representation or warranty were to be made at the time of delivery of a Compliance Certificate and (ii) for any fiscal period when the Minimum Net Sales Covenant is in effect, a certification that the Borrower is in compliance with the Minimum Net Sales Covenant as of the last day of such period.;

(d) after being prepared by the Borrower and approved by its Board, and promptly following the Administrative Agent's request therefor, a consolidated financial budget for the Borrower and its Subsidiaries for the fiscal year to which such budget relates; provided that, for each fiscal year, on or before the ninetieth (90th) day following the beginning of such fiscal year, the Borrower shall prepare, and its Board shall approve such consolidated financial budget for such fiscal year, and the Borrower shall notify the Administrative Agent promptly after the Board has given such approval;

(e) promptly after the same are released, copies of all press releases; provided that documents required to be furnished pursuant to this Section 8.01(e) shall be deemed furnished on the date that such documents are publicly available on EDGAR;

(f) promptly, and in any event within five (5) Business Days after receipt thereof by the Borrower, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which the Borrower may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Borrower; provided that documents required to be furnished pursuant to this Section 8.01(f) shall be deemed furnished on the date that such documents are publicly available on EDGAR;

(g) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower and its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or its Subsidiaries may file or be required to file



with any securities regulator or exchange to the authority of which the Borrower or such Subsidiary, as applicable, may become subject from time to time; provided that documents required to be furnished pursuant to this Section 8.01(g) shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

54. (h) the information regarding insurance maintained by the Borrower and its Subsidiaries as required under Section 8.05; (i) together with the delivery of the Compliance Certificate, evidence satisfactory to the Administrative Agent, based upon the Borrower's bank account statements that the Borrower has met its minimum liquidity requirement set out in Section 10.01; and (j) such other information respecting the businesses, financial performance, operations condition of the assets or liabilities of the Borrower (including with respect to the Collateral), taken as a whole, as the Administrative Agent may from time to time reasonably request.

8.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent written notice of the following (x) with respect to clause (a) below within three (3) Business Days and (y) with respect to clause (b) through (j) below, within five (5) Business Days:

(a) the occurrence of any Default or Event of Default; (b) the occurrence of any event with respect to the property or assets of the Borrower or any of its Subsidiaries resulting in an actual loss in excess of insurance or for which the insurer has denied coverage, in an aggregate amount of \$2,000,000 (or the Equivalent Amount in other currencies) or more; (c) (i) any proposed acquisition of stock, assets or property by the Borrower or any of its Subsidiaries that could reasonably be expected to result in material Environmental Liability, and (ii) any spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material by the Borrower or any of its Subsidiaries required to be reported to any Governmental Authority and that could reasonably be expected to result in material Environmental Liability; (d) the assertion of any Claim under any Environmental Law by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged liability or non-compliance with any Environmental Laws or any permits, licenses or authorizations issued pursuant to Environmental Laws which could reasonably be expected to involve damages in excess of \$2,000,000 (or the Equivalent Amount in other currencies) other than any such Claim or alleged violation that, if adversely determined, could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect; (e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that could reasonably be expected to result in a Material Adverse Effect; (f) the intention of any ERISA Affiliate to file any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) the filing by any ERISA Affiliate of a request for a minimum funding waiver under Section 412 of the Code with respect to any Title IV Plan, in writing and in reasonable detail (including a description of any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto);

55. (g) any material change in accounting policies or financial reporting practices by the Borrower or any of its Subsidiaries; (h) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving the Borrower; (i) any change to the Borrower's or any of its Subsidiaries' ownership of any Controlled Account, by delivering to the Administrative Agent a notice setting forth a complete and correct list of all such accounts as of the date of such change; and (j) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect. Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this Section 8.02 is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

8.03 Existence. The Borrower shall, and shall cause each of its Subsidiaries to, preserve, renew and maintain in full force and effect its legal existence; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 9.03.

8.04 Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries, except (A) to the extent such Taxes, fees, assessments or governmental charges or levies or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP or (B) to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect, and (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien.

8.05 Insurance. The Borrower will, and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses. Upon the request of the Administrative Agent, the Borrower shall furnish the Administrative Agent from time to time with (i) material information as to the insurance carried by it and, if so requested, copies of all such insurance policies and (ii) a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Secured Parties to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this Section 8.05 or otherwise to obtain similar insurance in place of such policies, in each case, the Borrower will be responsible for the reasonable and documented cost of such insurance (to be payable on demand). The amount of any such reasonable and documented expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute Obligations.

56. 8.06 Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct (in all material respects) entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and for so long as JMC is a Subsidiary will cause JMC to, permit any representatives designated by the Administrative Agent or the Lenders, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and independent

accountants, during normal business hours (but not more often than twice per year unless an Event of Default has occurred and is continuing) as the Administrative Agent or the Lenders may request; provided that such representative shall use its commercially reasonable efforts to minimize disruption to the business and affairs of the Borrower or JMC, as applicable, as a result of any such visit, inspection, examination or discussion. Notwithstanding anything to the contrary contained herein, neither the Borrower nor JMC will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to any Lender (or their respective representatives or contractors) is prohibited by any applicable Law or any binding agreement with a third party (so long as such agreement is not entered into in contemplation of this Agreement) or (iii) that is subject to attorney-client or similar privilege, which could reasonably be expected to be lost or forfeited if disclosed to the Administrative Agent or any Lender. The Borrower shall pay all reasonable and documented costs of all such inspections. 8.07 Compliance with Laws and Other Obligations. The Borrower will, and will cause each of its Subsidiaries to, (i) comply with all Laws (including Anti-Terrorism Laws, Sanctions and Environmental Laws) applicable to it and its business activities, (ii) comply in all material respects with all Governmental Approvals applicable to it and its business activities and (iii) maintain in full force and effect, remain in compliance with, and perform all obligations under all Material Agreement to which it is a party, except, in the case of clause (i) and (iii) above, where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Borrower shall maintain in effect and enforce policies and procedures reasonably designed to promote compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and Sanctions. 8.08 Maintenance of Properties, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, necessary or useful in the conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted and except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. -57- 8.09 Licenses. The Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. 8.10 Use of Proceeds. The proceeds of the Loans will be used only as provided in Section 2.04. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X. 8.11 Further Assurances. (a) Subject to clauses (b) and (c) below: (i) the Borrower will take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement and the Security Agreement; and (ii) without limiting the generality of the foregoing, the Borrower will take such action from time to time (including delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) as shall be reasonably requested by the Administrative Agent to create, in favor of the Secured Parties, perfected security interests and Liens in substantially all of the personal property (other than Excluded Assets (as defined in the Security Agreement)) of the Borrower as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents; provided, further that, without limiting the right of the Administrative Agent to require a Lien or security interest in any newly acquired or created Subsidiary or asset, upon the prior written request of the Borrower, the Borrower and the Administrative Agent shall consult, in good faith, as to whether the cost of obtaining a Lien or security interest thereon would be unreasonably excessive relative to the benefit thereof. (b) CFCs, etc. Any term or provision of this Section 8.11 to the contrary notwithstanding, the Borrower shall not be required to pledge (or cause to be pledged) to the Administrative Agent, for the benefit of the Secured Parties, Equity Interests of any Subsidiary representing, in the aggregate, more than sixty-five percent (65%) of the Equity Interests of any CFC or CFC Holding Company; provided, that the above restrictions shall apply only to the extent the Borrower reasonably determines (after consultation with the Administrative Agent) that the failure to impose such restrictions could reasonably be expected to generate a current or future income inclusion, or other adverse tax consequence, to the Borrower or any of its Subsidiaries (as determined in good faith from time to time). (c) Limitations on Certain Obligations. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Borrower shall not be required to enter into or obtain any mortgage, deed of trust, leasehold mortgage or any similar agreement in respect to any fee interest or leasehold interest in real property. 8.12 Termination of Non-Permitted Liens. In the event that the Borrower shall become aware of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of the Borrower or any of its Private Subsidiaries, which Lien is not a Permitted Lien, the Borrower shall use its commercially reasonable efforts to promptly terminate or cause the termination of such Lien. -58- 8.13 Board Materials; Oaktree Lender Board Observer. (a) The Borrower shall deliver to the Administrative Agent copies of any agenda and other written materials provided to the board of directors (or any committee thereof) of the Borrower prior to any meeting of the board of directors (or such committee thereof), at or promptly after such materials are furnished to the members of the board of directors (or such committee thereof), (b) copies of all minutes of meetings of the board of directors (or any committee thereof) of the Borrower at or promptly after such minutes are furnished to the members of the board of directors (or such committee thereof), (c) copies of all material written consents duly passed by the board of directors (or any committee thereof) of the Borrower and (d) promptly upon presentation of any regular periodic materials to the board of directors (or any committee thereof) of the Borrower reporting on the current, past or future financial performance and business and operations of the Borrower or any of its Subsidiaries (which shall include, among other things, updates with respect to material events relating to other Material Agreements), copies of such materials shall be delivered to the Administrative Agent; provided that any such material may be redacted by the Borrower to exclude information that directly relates to either the Lenders in their capacities as debt lenders or future debt refinancing transactions. (b) Upon the request of the Oaktree Lender, the Borrower shall permit a single designee of the Oaktree Lender to be an observer to the board of directors of the

Borrower (the "Board Observer"). In such capacity, the Board Observer shall be entitled to attend all meetings of the board of directors of the Borrower. The Borrower shall ensure that the Board Observer is invited to each such meeting at the same time as each other member of the board of directors and that such Board Observer receives all board materials at the same time as each other member of the board of directors; provided that any such material may be redacted by the Borrower, and the Borrower may exclude the Board Observer from meetings of the board of directors, in order to prevent the Board Observer from receiving or learning information that directly relates to either the Oaktree Lender in its capacity as a debt lender or future debt refinancing transactions. If appointed, the Board Observer may resign or withdraw at any time, or, at the request of the Oaktree Lender, be replaced by a designee of the Oaktree Lender.

**8.14 ERISA Compliance.** The Borrower shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA with respect to any Plans to which the Borrower or such Subsidiary is a party as an employer in all material respects.

**8.15 Cash Management.** The Borrower shall:

(a) maintain at all times an aggregate amount of cash of the Borrower equal to the Minimum Liquidity Amount in deposit accounts, disbursement accounts, investment accounts (and other similar accounts) and lockboxes with a bank or financial institution within the U.S. that has executed and delivered to the Administrative Agent an account control agreement, in form and substance reasonably acceptable to the Administrative Agent (each such deposit account, disbursement account, investment account (or similar account) and lockbox, a "Controlled Account"); each such Controlled Account shall be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and the Borrower shall have granted a Lien to the Administrative Agent, for the benefit of the Secured Parties, over such Controlled Accounts; and

(b) deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other rights and interests into Controlled Accounts.

**8.16 Post-Closing Obligations.**

(a) **Controlled Accounts.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion) (the "Account Control Agreement Completion Date"), the Administrative Agent shall have received evidence that (i) all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts of the Borrower located within the U.S. are Controlled Accounts and (ii) such Controlled Accounts are subject to one or more account control agreements, in favor of, and satisfactory in form and substance to, the Administrative Agent that (A) ensures, to the extent necessary under applicable law, the perfection of a first priority security interest in favor of the Administrative Agent on such Controlled Account, (B) provides that, upon written notice from the Administrative Agent, such bank or financial institution shall comply with instructions originated by the Administrative Agent directing disposition of the funds in such Controlled Account without further consent by the Borrower, and (C) may not be terminated without the prior written consent of the Administrative Agent.

(b) **Financial Covenant Compliance.** On the Account Control Agreement Completion Date, the Administrative Agent shall have received written evidence reasonably satisfactory to it that, as of the Account Control Agreement Completion Date, the Borrower is in compliance with Section 10.01 and Section 8.15(a).

(c) **Insurance.** Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), all such insurance policies required to be maintained by the Borrower pursuant to the Loan Documents shall name the Administrative Agent (for its benefit and the benefit of the Lenders) as loss payee or additional insured, as applicable, and provide that no cancellation of the policies will be made without at least ten (10) days prior written notice to the Administrative Agent and the Administrative Agent shall have received certified copies of such insurance policies (or binders in respect thereof).

(d) **Stockholder Rights and Other Waivers.** Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Administrative Agent shall have received evidence of Borrower's receipt of the waiver by its Subsidiaries and/or the requisite stockholders of its Subsidiaries of any option, right of first refusal, or rights under any stockholders or similar agreement that would prohibit, impair, delay or otherwise affect the pledge of the Pledged Collateral under the Security Agreement, the sale or disposition thereof pursuant thereto or the exercise by the Administrative Agent of rights and remedies thereunder.

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**8.17 Capital Raise Covenant.** By each of (i) December 31, 2024, (ii) December 31, 2025 and (iii) December 31, 2026 (each, a "Capital Raise Measurement Date"), Borrower shall have received Net Proceeds from Capital Raises during the 365-day period preceding such Capital Raise Measurement Date (any of the foregoing time periods a "Capital Raise Measurement Period"), after deducting any and all required prepayments of principal and payments of interest and other amounts in accordance with Section 3.03 of this Agreement in connection with such Capital Raises, in an aggregate amount equal to or greater than the greater of (i) \$20,000,000, and (ii) 50% of the equity financings modeled in the Board-approved annual budget for such calendar year delivered pursuant to Section 8.01(d) of this Agreement (such greater-of amount with respect to any Capital Raise Measurement Period, the "Required Capital Raise Amount" and the entire foregoing covenant, the "Capital Raise Covenant"); provided, that the Capital Raise Covenant shall no longer be tested on any Capital Raise Measurement Date on which the outstanding principal amount of the Loans is less than or equal to \$10,000,000.

**8.18 Minimum Stake in JMC.** On each date that the Borrower files (i) an Annual Report on Form 10-K with the SEC (or, if earlier, the date by which the Borrower is required to deliver annual financial statements pursuant to Section 8.01(b)), and (ii) a Quarterly Report on Form 10-Q with the SEC (or, if earlier, the date by which the Borrower is required to deliver quarterly financial statements pursuant to Section 8.01(a)), the Equity Interests held by the Borrower in JMC shall (A) exceed 25% of all Equity Interests of JMC on a fully-diluted basis, or (B) have a market value determined based on the average closing price for the trailing thirty (30) day period ending on such date in excess of \$22,500,000 (the "Minimum JMC Stake Covenant"); provided, that the Minimum JMC Stake Covenant shall no longer be tested (x) on any such date on which the outstanding principal amount of the Loans is less than or equal to \$10,000,000 or (y) on and after the sale of all of the Equity Interests in JMC held by Borrower.

**Section 9. NEGATIVE COVENANTS**

The Borrower covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made), including the Yield Protection Premium, if applicable, have been indefeasibly paid in full in cash:

**9.01 Indebtedness.** The Borrower will not, and will not permit any of its Private Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or

indirectly, except: (a) the Obligations; (b) Indebtedness existing on the date hereof and set forth on Schedule 7.13(a) and Permitted Refinancings thereof; (c) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of the Borrower's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP; (d) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the ordinary course of business; (e) Indebtedness of any Subsidiary permitted under Section 9.05(f); (f) other Indebtedness in an aggregate outstanding principal amount not to exceed \$5,000,000 (or the Equivalent Amount in other currencies). 9.02 Liens. The Borrower will not, and will not permit any of its Private Subsidiaries to, create, incur, assume or permit to exist any Lien on any property now owned by it or such Private Subsidiary, except: (a) Liens securing the Obligations; (b) any Lien on any property or asset of the Borrower or any of its Subsidiaries existing on the date hereof and set forth on Schedule 7.13(b) and renewals and extensions thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien; provided that (i) no such Lien (including any renewal or extension thereof) shall extend to any other property or asset of the Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and renewals, extensions and replacements thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien that do not increase the outstanding principal amount thereof; (c) Liens imposed by any Law arising in the ordinary course of business, including (but not limited to) carriers' liens, warehousemen's, landlords', and mechanics' liens, liens relating to leasehold improvements and other similar Liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP; (d) pledges or deposits made in the Ordinary Course in connection with bids, contract leases, appeal bonds, workers' compensation, unemployment insurance or other similar social security legislation; (e) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made; (f) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any Law and Liens consisting of zoning or building restrictions, easements, licenses, restrictions on the use of real property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the real property subject thereto or interfere with the ordinary conduct of the business of any of the Borrower or any of its Subsidiaries; and (g) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to all applicable Laws; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any Law, which, in the aggregate for clauses (i), (ii) and (iii), are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Borrower or its Subsidiaries; (h) bankers liens, rights of setoff and similar Liens incurred on deposits made in the Ordinary Course; (i) Liens on accounts receivable of JMC securing Indebtedness permitted under Section 9.01(e); (j) Any judgment lien or lien arising from decrees or attachments not constituting an Event of Default; (k) Liens arising from precautionary UCC financing statement filings regarding operating leases of personal property and consignment arrangements entered into in the Ordinary Course in an Arm's-Length Transaction; (l) Liens in connection with the financing of insurance premiums; (m) non-exclusive licenses under Intellectual Property granted in the Ordinary Course in an Arm's-Length Transaction; and (n) other Liens, which secure obligations in an aggregate amount not to exceed \$2,500,000 (or the Equivalent Amount in other currencies) at any time outstanding. Notwithstanding anything in this Agreement to the contrary, the Borrower shall not create, incur, assume or permit to exist any Lien on any Equity Interests owned by it in any other Person, except such as are set forth on Schedule 9.02. 9.03 Fundamental Changes and Acquisitions. The Borrower will not, and will not permit any of its Private Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any Equity Interests (other than common Equity Interests), or (iv) other than Permitted Acquisitions, make any Acquisition or otherwise acquire any business or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except: (a) the merger, amalgamation or consolidation of (i) any Subsidiary with or into the Borrower; provided that with respect to any such transaction involving the Borrower, the Borrower must be the surviving or successor entity of such transaction or (ii) any Subsidiary with or into any other Subsidiary; (b) the sale, lease, transfer or other disposition by any Subsidiary of any or all of its property (upon voluntary liquidation or otherwise) to the Borrower or any other Subsidiary; (c) the sale, transfer or other disposition of the Equity Interests of any Subsidiary (1) to the Borrower, and (2) in accordance with Section 9.09; (d) [reserved]; and (e) in connection with any Monetization Event. 9.04 Lines of Business. The Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the date hereof by such Persons or a business reasonably related, incidental or complementary thereto or reasonable extensions thereof. 9.05 Investments. The Borrower will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except: (a) Investments outstanding on the date hereof and identified in Schedule 9.05 and

any renewals, amendments and replacements thereof that do not increase the amount thereof of any such Investment or require that any additional Investment be made (unless otherwise permitted hereunder);

(b) operating deposit accounts with banks (or similar deposit-taking institutions) that, in the case maintained by the Borrower, are Controlled Accounts;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the Ordinary Course in an Arm's-Length Transaction;

(d) Permitted Cash Equivalent Investments that, in the case maintained by the Borrower, are in Controlled Accounts;

(e) Investments by the Borrower in connection with a Permitted Acquisition;

(f) Investments (i) by the Borrower (x) in any Subsidiary in the form of advances, loans or other extensions of credit, in each case, in the ordinary course of business consistent with past practice, (y) in any Public Subsidiary in the form of capital contributions, or (z) in any Private Subsidiary in the form of capital contributions in an amount not to exceed \$20,000,000 in the aggregate; provided, in each case, that at the time of any such Investment, (A) the Borrower shall have, on a Pro Forma Basis and after giving effect to any cash interest payments on Indebtedness and dividend payments on preferred equity payable by the Borrower in the ninety (90) days following such Investment, at least \$25,000,000 in cash in one or more Controlled Accounts that are free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent and (B) such Investments shall be pledged to the Administrative Agent, and provided, further, that, notwithstanding any of the foregoing or any other provision hereof, any Indebtedness owed to the Borrower by any Subsidiary (or accrued Management Services Agreement fees owed to the Borrower by any Subsidiary) that is incurred in compliance with this Agreement may be subsequently converted into such Subsidiary's common stock in connection with a bona fide, third party common equity financing of such Subsidiary, or (ii) by a Subsidiary in any other Subsidiary;

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(g) Investments consisting of prepaid expenses, negotiable instruments held for collection or deposit, security deposits with utilities, landlords and other like Persons and deposits in connection with workers' compensation and similar deposits, in each case, made in the Ordinary Course;

(h) employee loans, travel advances and guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by applicable Laws) which in the aggregate shall not exceed \$1,000,000 outstanding at any time (or the Equivalent Amount in other currencies);

(i) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(j) the increase in value of any Investment otherwise permitted pursuant to this Section 9.05;

(k) other Investments (other than Investments by the Borrower in any Subsidiary) in an aggregate amount not to exceed \$2,500,000 (or the Equivalent Amount in other currencies);

(l) Investments permitted under Section 9.03; and

(m) Investments of any Person in existence at the time such Person becomes a Subsidiary <sup>3/4</sup> provided such Investment was not made in connection with or in anticipation of such Person becoming a Subsidiary and any modification, replacement, renewal or extension thereof.

9.06 Restricted Payments. The Borrower will not, and will not permit any of its Private Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; provided that the following Restricted Payments shall be permitted so long as no Event of Default has occurred and is continuing or could reasonably be expected to occur or result from such Restricted Payment:

(a) dividends with respect to the Borrower's Equity Interests payable solely in shares of its Qualified Equity Interests (or the equivalent thereof);

(b) the Borrower's purchase, redemption, retirement, or other acquisition of shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests;

(c) dividends or other distributions paid by any Subsidiary to the Borrower and dividends paid by any Subsidiary ratably (or less than ratably) to each other holder of Equity Interests of such Subsidiary (including, without limitation, as part of, or immediately following, a Monetization Event);

(d) any purchase, redemption, retirement or other acquisition of Equity Interests of the Borrower held by officers, directors and employees or former officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of Borrower and its Subsidiaries not to exceed \$1,000,000 (or the Equivalent Amount in other currencies) in any fiscal year;

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(e) cashless exercises of options and warrants;

(f) cash payments made by the Borrower to redeem, purchase, repurchase or retire its obligations under warrants issued by it (in the nature of cash payments in lieu of fractional shares) in accordance with the terms thereof;

(g) dividends with respect to shares of the Borrower's 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock outstanding as of the date hereof pursuant to the terms thereof as in effect as of the date hereof;

(h) cash payments made to redeem, purchase, repurchase or retire any preferred Equity Interest in Cyprium outstanding as of the date hereof in connection with a Cyprium Monetization Event; provided that any such payments shall be made concurrently with the making of the mandatory prepayment for such Cyprium Monetization Event pursuant to Section 3.03(b);

(i) cash payments made to redeem, purchase, repurchase or retire any preferred Equity Interest in Cyprium outstanding as of the date hereof prior to a Cyprium Monetization Event in an aggregate amount not to exceed \$2,000,000; and

(j) other Restricted Payments in an aggregate amount not to exceed \$1,000,000 (or the Equivalent Amount in other currencies) in any fiscal year.

Notwithstanding anything in this Agreement to the contrary, (i) the Borrower shall not declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment in the form of Equity Interests owned by the Borrower in any other Person, (ii) any cash payments made to redeem, purchase, repurchase or retire any Equity Interest in Cyprium shall only be made pursuant to clauses (h) and (i) above (and not any other clause of this Section 9.06), and (iii) the Borrower may extend the mandatory exchange date of any preferred Equity Interest in Cyprium and may exchange any outstanding preferred Equity Interest in Cyprium for the Borrower's 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock in accordance with the terms of such preferred Equity Interest as in effect on the date hereof.

9.07 Payments of Indebtedness. The Borrower will not, and will not permit any of its Private Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, and (ii) scheduled payments of other Indebtedness to the extent permitted to be incurred pursuant to Section 9.01.

9.08 Change in Fiscal Year. The Borrower will not, and will

not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Borrower. 9.09 Sales of Assets, Etc. The Borrower will not, and will not permit any of its Private Subsidiaries to, sell, lease or sublease (as lessor or sub-lessor), sale and leaseback, assign, convey, exclusively license (including in terms of geography or field of use), transfer, or otherwise dispose of any of its businesses, assets or property of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired (including accounts receivable and Equity Interests of Subsidiaries), or forgive, release or compromise any amount owed to the Borrower or any of its Subsidiaries, in each case, in one transaction or series of transactions (any thereof, an "Asset Sale"), except: (a) sales, transfers and other dispositions of receivables in connection with the compromise, settlement or collection thereof in the Ordinary Course; (b) sales of inventory or licenses of Intellectual Property in the Ordinary Course in an Arm's-Length Transaction; (c) the forgiveness, release or compromise of any amount owed to the Borrower or any of its Subsidiaries in the Ordinary Course; (d) dispositions (including by way of abandonment or cancellation) of any equipment and other tangible property that is obsolete or worn out or no longer used or useful in the Business disposed of in the Ordinary Course in an Arm's-Length Transaction; (e) dispositions resulting from Casualty Events; (f) in connection with any transaction permitted under Section 9.03 or 9.05; (g) dispositions identified in Schedule 9.09(a); (h) any Special Monetization Event; and (i) so long as no Event of Default has occurred and is continuing, (1) other Asset Sales with a fair market value not in excess of \$5,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year, and (2) other Asset Sales by Borrower with a fair market value in excess of \$5,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year and as to which Borrower has complied with the mandatory prepayment provisions of Section 3.03(b), so long as the consideration for any such Asset Sale is at least equal to the fair market value of the assets being sold and the Borrower has sufficient cash on hand to comply with the mandatory prepayment provisions of Section 3.03(b). Notwithstanding anything in this Agreement to the contrary, the Borrower shall not sell or otherwise dispose of any Equity Interests owned by it in another Person unless the consideration for such sale or disposition is at least equal to the fair market value of such Equity Interests being sold. 9.10 Transactions with Affiliates. The Borrower will not, and will not permit any of its Private Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction to sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, unless such arrangement or transaction (i) is an Arm's-Length Transaction that is of the kind which would be entered into by a prudent Person in the position of the Borrower with another Person that is not an Affiliate, (ii) is permitted under Section 9.01, 9.03, 9.05, 9.06, 9.07 or 9.09, (iii) constitutes customary compensation and indemnification of, and other employment arrangements with, directors, officers, and employees of the Borrower or its Subsidiaries in the ordinary course of business, (iv) constitutes payment of customary fees, reimbursement of expenses, and payment of indemnification to officers and directors and customary payment of insurance premiums on behalf of officers and directors by the Borrower or its Subsidiaries, in each case, in the ordinary course of business or (v) are the transactions set forth on Schedule 7.18. Notwithstanding the foregoing or any other provision hereof, the Borrower may, without the Lenders' or Administrative Agent's prior written consent, but with notice to the Administrative Agent, terminate its Founders Agreement or Management Services Agreement with any Private Subsidiary in connection with the offering or potential offering of common stock by such Private Subsidiary. -67- 9.11 Restrictive Agreements. The Borrower will not, and will not permit any of its Private Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents, (ii) Restrictive Agreements listed on Schedule 7.15 or (iii) limitations associated with Permitted Liens. 9.12 Modifications and Terminations of Organic Documents. The Borrower will not, and will not permit any of its Private Subsidiaries to, waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document in any way or manner materially adverse to the interests of the Lenders in their capacities as Lenders hereunder. 9.13 Sales and Leasebacks. The Borrower will not, and will not permit any of its Private Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which such Person has sold or transferred or is to sell or transfer to any other Person and (ii) which the Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred. 9.14 Hazardous Material. The Borrower will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. If the Administrative Agent at any time has a reasonable basis to believe that there is any material violation by the Borrower of any Environmental Law or the presence or release of any Hazardous Material which could result in material Environmental Liability, the Borrower shall, and shall cause each Subsidiary to, (i) cause the performance of such environmental audits and testing, and preparation of such environmental reports, at the Borrower's sole cost and expense, as the Administrative Agent may from time to time reasonably request with respect to any parcel of real property subject to a Security Document that is a mortgage, deed of trust or similar instrument, which shall be conducted by Persons reasonably acceptable to the Administrative Agent and shall be in form and substance reasonably acceptable to the Administrative Agent, and (ii) permit the Administrative Agent or its representatives to have access to all such real property for the purpose of conducting, at the Borrower's sole cost and expense, such environmental audits and testing as the Administrative Agent shall reasonably deem appropriate. 9.15 Accounting Changes. The Borrower will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP. -68- 9.16 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (i) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that could, in the aggregate, reasonably be expected to result in a



Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan. 9.17 Restriction of Amendments to Certain Documents. The Borrower will not, nor will it permit any of its Private Subsidiaries to, amend or otherwise modify, or waive any rights under, any other Contract if, in any case, such amendment, modification or waiver could reasonably be expected to be materially adverse to, a Lien on any Collateral securing the Obligations. 9.18 Sanctions; Anti-Corruption Use of Proceeds. (a) Neither the Borrower or any of its Subsidiaries or their respective agents shall (i) conduct any business or engage in any transaction or dealing with any Sanctioned Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth any Sanctions, the Patriot Act or any other Anti-Terrorism Law. (b) The Borrower will not, directly or, to the knowledge of the Borrower, indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) for the purpose of funding any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of country- or territory-wide Sanctions, in violation of Sanctions or (B) in any other manner that would result in a violation of Sanctions by any party to this Agreement. 9.19 Closing Date Equity Interests. The Borrower will not, at any time, cease to directly own the Equity Interests that it owns as of the date hereof as set forth on Schedule 9.19 (the "Closing Date Equity Interests"); provided, however, that the Borrower may sell or otherwise dispose of such Closing Date Equity Interests in a transaction permitted under Section 9.09 so long as the consideration for such sale or disposition is at least equal to the fair market value of the Closing Date Equity Interests being sold and the Borrower has sufficient cash on hand to comply with the mandatory prepayment provisions of Section 3.03. 9.20 Margin Stock. The Borrower shall not, nor shall it permit any of its Subsidiaries to, purchase or carry Margin Stock, with the exception of the Equity Interests held by the Borrower in Avenue Therapeutics, Inc., Checkpoint Therapeutics, Inc., Journey Medical Corporation, Mustang Bio, Inc. or any Private Subsidiary that becomes a Public Subsidiary from time to time. -69- Section 10. FINANCIAL COVENANTS 10.01 Minimum Liquidity. The Borrower shall at all times maintain the Minimum Liquidity Amount in cash and, after the Account Control Agreement Completion Date, in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent. 10.02 Minimum Net Sales. Beginning with the fiscal quarter of the Borrower ending on September 30, 2024 and as of the last day of each fiscal quarter thereafter, in each case for so long as the Borrower holds any Equity Interests in JMC, the Net Sales of JMC for the twelve (12) consecutive month period ending on the last day of such fiscal quarter, shall not be less than the Minimum Net Sales Amount (the "Minimum Net Sales Covenant"). Section 11. EVENTS OF DEFAULT 11.01 Events of Default. Each of the following events shall constitute an Event of Default: (a) Principal or Interest Payment Default. The Borrower shall fail to pay any principal of or interest on the Loan, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise. (b) Other Payment Defaults. The Borrower shall fail to pay any Obligation (other than an amount referred to in Section 11.01(a)) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days. (c) Representations and Warranties. Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier. (d) Certain Covenants. The Borrower shall fail to observe or perform any covenant, condition or agreement contained in 8.02, 8.03 (with respect to the Borrower's existence), 8.10, 8.11, 8.13, 8.15, 8.16, Section 9 or Section 10. (e) Other Covenants. The Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 11.01(a), (b) or (d)) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days. (f) Payment Default on Other Indebtedness. The Borrower or any of its Private Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness. (g) Other Defaults on Other Indebtedness. (i) Any material breach of, or event of default or similar event under, any Contract governing any Material Indebtedness shall occur and such breach or event of default or similar event shall continue unremedied, uncured or unwaived after the expiration of any grace or cure period thereunder, or (ii) any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 11.01(g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness. -70- (h) Insolvency, Bankruptcy, Etc. (i) The Borrower or any of its Material Subsidiaries becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors. A

(ii) The Borrower or any of its Material Subsidiaries commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so). (iii) The Borrower or any of its Material Subsidiaries institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding. (iv) The Borrower or any of its Material Subsidiaries applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property. (v) Any petition is filed, application made or other proceeding instituted against or in respect of the Borrower or any of its Material Subsidiaries: (A) seeking to adjudicate it as insolvent; (B) seeking a receiving order against it; (C) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or (D) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of forty-five (45) days after the institution thereof; provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against the Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; provided, further, that if the Borrower or Material Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply. (vi) Any other event occurs which, under the Laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in this Section 11.01(h). (i) Judgments. One or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 (or the Equivalent Amount in other currencies) (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) shall be rendered against the Borrower or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of forty-five (45) calendar days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment. (j) ERISA. An ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount in excess of \$5,000,000 (or the Equivalent Amount in other currencies). (k) Change of Control. A Change of Control shall have occurred. (l) [Reserved]. (m) Impairment of Security, Etc. If any of the following events occurs: (i) Any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens) except due to the action or inaction of the Administrative Agent, (ii) except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason cease to be in full force and effect or (iii) the Borrower shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability of any such Lien or any Loan Document. -72- 11.02 Remedies. (a) Defaults Other Than Bankruptcy Defaults. Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in Section 11.01(h)), and at any time thereafter during the continuance of such event, the Administrative Agent may, by notice to the Borrower, declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, including any applicable Yield Protection Premium, shall become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. (b) Bankruptcy Defaults. In case of an Event of Default described in Section 11.01(h), the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, including any applicable Yield Protection Premium, shall automatically become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. 11.03 [Reserved]. 11.04 Minimum Net Sales Covenant Cure. (a) Notwithstanding anything to the contrary contained in Section 11.02, in the event the Borrower fails to comply with the requirements of the Minimum Net Sales Covenant, during the period from the end of the relevant fiscal quarter until the expiration of the tenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to Section 8.01(a) or 8.01(b), the Borrower shall have the right to make a Net Sales Cure Payment (the Minimum Net Sales Cure Right); provided, that the Borrower may exercise the Minimum Net Sales Cure Right on a maximum of two (2) occasions while the Obligations remain outstanding. Upon the Administrative Agent's receipt of the applicable Net Sales Cure Payment, the Borrower shall then be in compliance with the requirements of the Minimum Net Sales Covenant and the Borrower shall be deemed to have satisfied the requirements of the Minimum Net Sales Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Net Sales Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement. Any Net Sales Cure Payment shall be applied to the prepayment of the Loans. -73- A

(b) Upon the Administrative Agent's receipt of a notice from the Borrower that it intends to exercise the Minimum Net Sales Cure Right (a "Notice of Intent to Cure Net Sales Covenant"), until the tenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to Section 8.01(a) or 8.01(b) to which such Notice of Intent to Cure Net Sales Covenant relates, neither the Administrative Agent nor any Lender shall exercise the right to accelerate payment of the Loans or terminate the Commitments and neither the Administrative Agent nor any other Lender shall exercise any right to foreclose on or take possession of the Collateral solely on the basis of an allegation of an Event of Default having occurred and being continuing under Section 11.01(d) due to failure by the Borrower to comply with the requirements of the Minimum Net Sales Covenant for the applicable period but no Lender shall be required to extend any credit pursuant to its Commitment during such period. If within such ten Business Day period, the Oaktree Lender declines the exercise by the Borrower of the Minimum Net Sales Cure Right by written notice to the Administrative Agent and the Borrower to that effect, then the Borrower shall be deemed to have satisfied the requirements of the Minimum Net Sales Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Net Sales Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

11.05 Payment of Yield Protection Premium. Notwithstanding anything in this Agreement to the contrary, the Yield Protection Premium shall automatically be due and payable at any time the Obligations become due and payable prior to the Maturity Date in accordance with the terms hereof as though such Indebtedness was voluntarily prepaid and shall constitute part of the Obligations, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Borrower in accordance with Section 11.02(a), or automatically, in accordance with Section 11.02(b)), by operation of law or otherwise (including, without limitation, on account of any bankruptcy filing), in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such acceleration, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lenders as a result thereof. Any Yield Protection Premium payable pursuant to this Agreement shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, acceleration, redemption, repayment or prepayment and the Borrower agrees that such Yield Protection Premium is reasonable under the circumstances currently existing. The Yield Protection Premium shall also become due and payable under this Agreement in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means or the Obligations are restated pursuant to Section 1124 of the Bankruptcy Code. If the Yield Protection Premium becomes due and payable pursuant to this Agreement, such Yield Protection Premium shall be deemed to be principal of the Loans and Obligations under this Agreement and interest shall accrue on the full principal amount of the Loans (including such Yield Protection Premium) from and after the applicable triggering event. In the event the Yield Protection Premium is determined not to be due and payable by order of any court of competent jurisdiction, including by operation of the Bankruptcy Code, despite such a triggering event having occurred, the Yield Protection Premium shall nonetheless constitute Obligations under this Agreement for all purposes hereunder. The Borrower hereby waives the provisions of any present or future statute or law that prohibits or may prohibit the collection of the yield protection premium and any defense to payment, whether such defense may be based in public policy, ambiguity, or otherwise. The Borrower, the Administrative Agent and the Lenders acknowledge and agree that any Yield Protection Premium due and payable in accordance with this Agreement shall not constitute unmatured interest, whether under Section 5.02(b)(3) of the Bankruptcy Code or otherwise. The Borrower further acknowledges and agrees, and waives any argument to the contrary, that payment of such amount does not constitute a penalty or an otherwise unenforceable or invalid obligation. The Borrower expressly agrees that (i) the Yield Protection Premium is reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) the Yield Protection Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Yield Protection Premium, (iv) the Borrower shall not challenge or question, or support any other Person in challenging or questioning, the validity or enforceability of the Yield Protection Premium or any similar or comparable prepayment fee under the circumstances described herein, and shall be estopped hereafter from claiming differently than as agreed to in this Section 11.05, (v) their agreement to pay the Yield Protection Premium is a material inducement to the Lenders to make the Loans, and (vi) the Yield Protection Premium represents a good faith, reasonable estimate and calculation of the lost profits, losses or other damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such event. The Borrower expressly acknowledges that its agreement to pay the payment of the Yield Protection Premium to the Lenders as herein described is a material inducement to Lenders to enter into this Agreement.

-74- Section 12. THE ADMINISTRATIVE AGENT

12.01 Appointment and Duties. Subject in all cases to clause (c) below:

(a) Appointment of the Administrative Agent. Each of the Lenders hereby irrevocably appoints Oaktree Fund Administration, LLC (together with any successor Administrative Agent pursuant to Section 12.09) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from the Borrower or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto. Except as expressly set forth herein, the provisions of this Section 12 are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any Affiliate thereof shall have rights as a third-party beneficiary of any such provisions.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of Section 12.01(a), the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in Section 11.01(h) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 11.01(h) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for

purposes of acquiring, holding, enforcing and perfecting all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by the Borrower with, and cash and Permitted Cash Equivalents Investments held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

75. (c) Limited Duties. The Lenders and the Borrower hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in Section 12.09, may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 12.11), with duties that are entirely administrative in nature, notwithstanding the use of the defined term "the Administrative Agent", the terms "agent", "administrative agent" and "collateral agent" and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any duty or obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), in each case, regardless of whether a Default has occurred and is continuing, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this clause (c). Without in any way limiting the foregoing, the Administrative Agent shall not, except as expressly set forth in this Agreement and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

12.02 Binding Effect. Each Lender agrees that (i) any action taken by the Administrative Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

76. 12.03 Use of Discretion. (a) No Action without Instructions. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to clause (b) below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to written instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders). (b) Right Not to Follow Certain Instructions. Notwithstanding Section 12.03(a) or any other term or provision of this Section 12, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Party thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Loan Document, Law or the best interests of the Administrative Agent or any of its Affiliates or Related Parties, including, for the avoidance of doubt, any action that may be in violation of the automatic stay in connection with any Insolvency Proceeding.

12.04 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). The Administrative Agent and any such Person may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Any such Person and its Related Parties shall benefit from this Section 12 to the extent provided by the Administrative Agent; provided, however, that the exculpatory provisions of this Section 12 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and of any such sub-agent, and shall apply to their respective activities in connection with their activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

12.05 Reliance and Liability. (a) The Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, the Borrower) and (ii) rely and act upon any notice, request, certificate, consent, statement, instrument, document or other writing (including and electronic message, Internet or intranet website posting or other distribution), telephone message or conversation or oral conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan.

77. (b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Borrower hereby waive and shall not

assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the fraudulent conduct or behavior of the Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent: **Â**

(i) **Â** shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of, or with the consent of, the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in Section **Â** 13.04) or for the actions or omissions of any of its Related Parties selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent); **Â**

(ii) **Â** shall not be responsible to any Secured Party for the (a) **Â** validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (b) **Â** due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document; **Â**

(iii) **Â** makes no warranty or representation, and shall not be responsible, to any Secured Party for, and shall not have any duty to ascertain or inquire into, any statement, document, information, certificate, report, representation or warranty made or furnished by or on behalf of any Related Party, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents, including, for the avoidance of doubt, the satisfaction of any condition set forth in Section **Â** 6 of this Agreement or elsewhere herein (other than to confirm receipt of items expressly required to be delivered to the Administrative Agent); and **Â**

(iv) **Â** shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document or whether any condition set forth in any Loan Document is satisfied or waived, including, without limiting the generality of the foregoing, as to the financial condition of the Borrower or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled **Â** "notice of default" (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders); **Â** -78- **Â** **Â** and, for each of the items set forth in clauses (i) **Â** through (iv) **Â** above, each Lender and the Borrower hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent based thereon. **Â**

**12.06** **Â** Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, accept deposits from, act as the financial advisor for or in any other advisory capacity for, or engage in any kind of business with, the Borrower or Affiliate thereof as though it were not acting as the Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms **Â** "Lender", **Â** "Majority Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively. **Â**

**12.07** **Â** Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Parties or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Related Parties, conducted its own independent investigation of the financial condition and affairs of the Borrower and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. **Â**

**12.08** **Â** Expenses; Indemnities. **Â**

(a) **Â** Each Lender agrees to reimburse the Administrative Agent and each of its Related Parties (to the extent not reimbursed by the Borrower) promptly upon demand for such Lender's **Â** Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, the Borrower) that may be incurred by the Administrative Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document. **Â**

(b) **Â** Each Lender further agrees to indemnify the Administrative Agent (or any sub-agent thereof) and any Related Parties of the Administrative Agent (or any such sub-agent) (to the extent not indefeasibly paid by the Borrower), from and against such Lender's **Â** aggregate Proportionate Share of the liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent (or any sub-agent thereof) or, as the case may be, such Related Parties of the Administrative Agent (or any sub-agent thereof), as determined by a court of competent jurisdiction in a final non-appealable judgment or order. **Â** -79- **Â** **Â**

**12.09** **Â** Resignation of the Administrative Agent. **Â**

(a) **Â** At any time upon not less than 30 days **Â** prior written notice, the Administrative Agent may resign as the **Â** "the Administrative Agent" hereunder, in whole or in part (in the sole and absolute discretion of the Administrative Agent). If the Administrative Agent delivers any such notice, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be (i) **Â** a Lender holding at least thirty percent (30%) of the outstanding principal amount of the Loans or any Affiliate thereof or (ii) **Â** any other financial institution consented to by the Borrower (provided that the consent of the Borrower

shall not be required to the extent an Event of Default has occurred and is continuing). If a successor Administrative Agent has not been appointed on or before the effectiveness of the resignation of the resigning Administrative Agent (or such earlier date as shall be agreed by the Majority Lenders) (the "Resignation Effective Date"), then the resigning Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor Administrative Agent, notwithstanding whether the Majority Lenders have appointed a successor or the Borrower has consented to such successor. Whether or not a successor has been appointed, such resignation shall become effective on the Resignation Effective Date. Â

(b) "Effective from the Resignation Effective Date, (i) the resigning Administrative Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the resigning Administrative Agent and its Related Parties shall no longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Administrative Agent was, or because the Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents or (y) any continuing duties such resigning Administrative Agent will continue to perform, and (iv) subject to its rights under Section 12.04, the resigning Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Administrative Agent under the Loan Documents. Â -80-Â Â 12.10 "Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs the Administrative Agent to release any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by the Borrower in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), and (ii) all of the Collateral, upon (x) termination of the Commitments and (y) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made). Â Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 12.10. Â 12.11 "Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this Section 12 and the decisions and actions of the Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by Section 12.08 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (ii) each of the Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document. Â 12.12 "Agent May File Proofs of Claim. In case of the pendency of any Insolvency Proceeding or any other judicial proceeding relating to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention or such proceeding or otherwise: Â

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 13.03) allowed in such judicial proceeding; and Â -81-Â Â

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; Â and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under Section 13.03. Â Section 13. MISCELLANEOUS Â

13.01 "No Waiver. No failure on the part of the Administrative Agent or the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. Â

13.02 "Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be



confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication). A

13.03 **Expenses, Indemnification, Etc.** (a) **Expenses.** The Borrower agrees to pay or reimburse (i) the Administrative Agent and the Lenders and their respective Affiliates for all of their reasonable and documented out of pocket costs and expenses (including the reasonable and documented out of pocket fees, expenses, charges and disbursements of Sullivan & Cromwell LLP, counsel to the Lenders, the fees (if necessary) of local counsel for both of the Administrative Agent and the Lenders in each relevant material jurisdiction, and any sales, goods and services or other similar taxes applicable thereto, and reasonable and documented printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs (including, without limitation, costs of the administration of this Agreement and the other Loan Documents) and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) each of the Administrative Agent and the Lenders for all of their documented out of pocket costs and expenses (including the fees and expenses of any legal counsel) in connection with the enforcement, exercise or protection of their rights in connection with this Agreement and the other Loan Documents, including their rights under this Section 13.03, or in connection with the Loans made hereunder, including such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans. -82- A

(b) **Indemnification.** The Borrower hereby agrees to indemnify the Administrative Agent (and any sub-agent thereof), the Lenders and their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an **Indemnified Party**) from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind including reasonable and documented out of pocket fees and disbursements of any counsel for each Indemnified Party, joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to (i) this Agreement or any of the other Loan Documents or the Transactions, (ii) any use made or proposed to be made with the proceeds of the Loans, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, whether or not such investigation, litigation or proceeding is brought by the Borrower, any of its Subsidiaries, shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in Section 6 are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. The Borrower shall not assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. The Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a **Borrower Party**. No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. This Section shall not apply to Taxes other than Taxes relating to a non-Tax Claim or Loss governed by this Section 13.03(b). A

13.04 **Amendments, Etc.** Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document (except for the Warrant, which may be amended, waived or supplemented in accordance with the terms thereof) may be modified or supplemented only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders; provided that: A

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender; -83- A

(b) the consent of all of the Lenders shall be required to: (i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Document if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or Commitment, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal (it being understood that the waiver of any prepayment of Loans shall not constitute an extension of any date fixed for payment of principal), interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans; provided, for the avoidance of doubt, that any waiver or amendment relating to an Event of Default or Default arising out of breach or prospective breach of the Minimum Net Sales Covenant shall only require the consent of the Majority Lenders; (ii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release all or substantially all of the Collateral subject thereto other than pursuant to the terms hereof or thereof; or (iii) amend this Section 13.04 or the definition of **Majority Lenders**. A

13.05 **Successors and Assigns.** A

(a) **General.** The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder (except in connection with an event permitted under Section 9.03) without the prior written consent of the Administrative Agent. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the provisions of Section 13.05(b), (ii) by way of participation in accordance with the provisions of Section 13.05(e), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 13.05(f). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 13.05(e) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. -84- A

(b) **Assignments by Lender.** Any Lender may at any time assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the

time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to the Borrower, any Affiliate of the Borrower, any employees or directors of the Borrower at any time and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent. The consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to an Eligible Transferee; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received written notice thereof. Subject to the recording thereof by the Lender pursuant to Section 13.05(d), from and after the recordation date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of Section 5 and Section 13.03. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this Section 13.05(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 13.05(e). The parties to each such Assignment and Assumption shall execute and deliver to the Administrative Agent, for the Administrative Agent's acceptance, an Assignment and Assumption, together with (i) a processing and recordation fee of \$3,500, and (ii) all "know your customer" documentation and Patriot Act documentation requested by the Administrative Agent. (c) Amendments to Loan Documents. Each of the Administrative Agent, the Lenders and the Borrower agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Administrative Agent, the Lenders and the Borrower, as shall reasonably be necessary to implement and give effect to any assignment made under this Section 13.05. (d) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice. (e) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Eligible Transferee (other than a natural person or the Borrower or any of its Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to Section 13.05(f), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01 or 5.03 (subject to the requirements and limitations therein, including the requirements under Section 5.03(f) (it being understood that the documentation required under Section 5.03(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.05(b); provided that such Participant (a) agrees to be subject to the provisions of Section 5.04 as if it were an assignee under Section 13.05(b) and (b) shall not be entitled to receive any greater payment under Section 5.01 or 5.03, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.04(b) with respect to any Participant. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 4.03(a) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. (f) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Section 5.01 or 5.03 than such Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. (g) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to

secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. -86- Survival. The obligations of the Borrower under Sections 5.01, 5.02, 5.03, 13.03, 13.05, 13.06, 13.09, 13.10, 13.11, 13.12, 13.13 and 13.14 shall survive the repayment of the Obligations and the termination of the Commitments and, in the case of the Lenders' assignment of any interest in the Commitments or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be Lenders hereunder. In addition, each representation and warranty made, or deemed to be made by a Borrowing Notice, herein or pursuant hereto shall survive the making of such representation and warranty. 13.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement. 13.08 Counterparts, Effectiveness. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower, the Administrative Agent and the Lender shall have been received by the Administrative Agent. 13.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York. 13.10 Jurisdiction, Service of Process and Venue. (a) Submission to Jurisdiction. Each party hereby irremovably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, against such other party in any way relating to this Agreement or any Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. (b) Waiver of Venue, Etc. Each party hereto irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such party is or may be subject, by suit upon judgment. -87- 13.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. 13.12 Waiver of Immunity. To the extent that the Borrower may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents. 13.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. THE BORROWER ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. 13.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof. 13.15 No Fiduciary Relationship. The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties. -88- 13.16 Confidentiality. All information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses (the "Information") shall be deemed non-public information for purposes of this Section 13.16 unless marked "Public." Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning Borrower or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws. The Administrative Agent and each Lender agree to keep confidential all non-public information provided to them by the Borrower pursuant to this Agreement in accordance with its customary procedures for handling material non-public information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) to the Administrative Agent, any other Lender, any Affiliate of a Lender or any Eligible Transferee or other assignee permitted under Section 13.05(b), (ii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its "Related Parties"), (iii) upon the

request or demand of any Governmental Authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iv) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Law, (v) if requested or required to do so in connection with any litigation or similar proceeding, (vi) that has been publicly disclosed (other than as a result of a disclosure in violation of this Section 13.16), (vii) to the extent necessary in connection with the exercise of any remedy hereunder or under any other Loan Document, (viii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (ix) to any other party hereto; provided that, in the case of disclosure pursuant to clause (iii), (iv) and (v) above, the Administrative Agent or applicable Lender, as applicable, shall promptly provide notice to the Borrower to the extent reasonable and not prohibited by Law or any applicable Governmental Authority, so that Borrower may seek a protective order. 13.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable Law (collectively, "charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Administrative Agent and the Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate. 13.18 Judgment Currency. (a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given. -89- (b) The obligations of the Borrower in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower. 13.19 USA PATRIOT Act. The Administrative Agent and the Lenders hereby notify the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), they are required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Person to identify the Borrower in accordance with the Patriot Act. 13.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected 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 the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected 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 (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority. [Signature Pages Follow] -90- IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written. BORROWER: FORTRESS BIOTECH, INC. By: /s/ Lindsay A. Rosenwald, M.D. Name: Lindsay A. Rosenwald, M.D. Title: Chairman, President and Chief Executive Officer Address for Notices: Fortress Biotech, Inc. 1111 Kane Concourse, Suite 301 Bay Harbor Islands, FL 33154 Attn: Chief Financial Officer Phone: \*\*\* Email: \*\*\* [Signature Page to Credit Agreement] ADMINISTRATIVE AGENT: OAKTREE FUND ADMINISTRATION, LLC By: Oaktree Capital Management, L.P. Its: Managing Member By: /s/ Jessica Dombroff Name: Jessica Dombroff Title: Senior Vice President By: /s/ Mary Gallegly Name: Mary Gallegly Title: Managing Director Address for Notices: Oaktree Fund Administration, LLC 333 S. Grand Avenue, 28th Fl. Los Angeles, CA 90071 Attn: Rahul Anand Attn: Oaktree Agency Email: \*\*\* With a copy to: Oaktree Capital Management, L.P. 333 S. Grand Avenue, 28th Fl. Los Angeles, CA 90071 Attn: Rahul Anand Email: \*\*\* With a copy (which shall not constitute notice) to: Sullivan & Cromwell LLP 125 Broad Street New York, NY 10004 Attn: Ari Blaut Email: \*\*\* [Signature Page to Credit Agreement] LENDER: OAKTREE AZ STRATEGIC LENDING FUND, L.P. By: Oaktree AZ Strategic Lending Fund GP, L.P. Its: General Partner By: Oaktree Fund GP IIA, LLC Its: General Partner By: Oaktree Fund GP II, L.P. Its: Managing Member By: /s/

Jessica Dombroff    Name: Jessica Dombroff    Title: Authorized Signatory    By: /s/ Mary Gallegly    Name: Mary Gallegly    Title: Authorized Signatory    Address for Notices: Oaktree Fund Administration, LLC 333 S. Grand Avenue, 28th Fl. Los Angeles, CA 90071 Attn: Rahul Anand Attn: Oaktree Agency Email: \*\*\*    With a copy to: Oaktree Capital Management, L.P. 333 S. Grand Avenue, 28th Fl. Los Angeles, CA 90071 Attn: Rahul Anand Email: \*\*\*    With a copy (which shall not constitute notice) to: Sullivan & Cromwell LLP 125 Broad Street New York, NY 10004 Attn: Ari Blaut Email: \*\*\*    [Signature Page to Credit Agreement]    LENDER:    OAKTREE LOAN ACQUISITION FUND, L.P.    By: Oaktree Fund GP IIA, LLC    Its: General Partner    By: Oaktree Fund GP II, L.P.    Its: Managing Member    By: /s/ Jessica Dombroff    Name: Jessica Dombroff    Title: Authorized Signatory    By: /s/ Mary Gallegly    Name: Mary Gallegly    Title: Authorized Signatory    Address for Notices: Oaktree Fund Administration, LLC 333 S. Grand Avenue, 28th Fl. Los Angeles, CA 90071 Attn: Rahul Anand Attn: Oaktree Agency Email: \*\*\*    With a copy to: Oaktree Capital Management, L.P. 333 S. Grand Avenue, 28th Fl. Los Angeles, CA 90071 Attn: Rahul Anand Email: \*\*\*    With a copy (which shall not constitute notice) to: Sullivan & Cromwell LLP 125 Broad Street New York, NY 10004 Attn: Ari Blaut Email: \*\*\*    [Signature Page to Credit Agreement]    LENDER:    OAKTREE LSL FUND DELAWARE HOLDINGS EURRC, L.P.    By: Oaktree Life Sciences Lending Fund GP, L.P.    Its: General Partner    By: Oaktree Life Sciences Lending Fund GP Ltd.    Its: General Partner    By: Oaktree Capital Management, L.P.    Its: Director    By: /s/ Jessica Dombroff    Name: Jessica Dombroff    Title: Senior Vice President    By: /s/ Mary Gallegly    Name: Mary Gallegly    Title: Managing Director    Address for Notices: Oaktree Fund Administration, LLC 333 S. Grand Avenue, 28th Fl. Los Angeles, CA 90071 Attn: Rahul Anand Attn: Oaktree Agency Email: \*\*\*    With a copy to: Oaktree Capital Management, L.P. 333 S. Grand Avenue, 28th Fl. Los Angeles, CA 90071 Attn: Rahul Anand Email: \*\*\*    With a copy (which shall not constitute notice) to: Sullivan & Cromwell LLP 125 Broad Street New York, NY 10004 Attn: Ari Blaut Email: \*\*\*    [Signature Page to Credit Agreement]    EXHIBIT A    FORM OF NOTE    [intentionally omitted]    EXHIBIT B    FORM OF BORROWING NOTICE    [intentionally omitted]    EXHIBIT C    EXHIBIT C-1    FORM OF U.S. TAX COMPLIANCE CERTIFICATE    [intentionally omitted]    EXHIBIT C-2    FORM OF U.S. TAX COMPLIANCE CERTIFICATE    [intentionally omitted]    EXHIBIT C-3    FORM OF U.S. TAX COMPLIANCE CERTIFICATE    [intentionally omitted]    EXHIBIT C-4    FORM OF U.S. TAX COMPLIANCE CERTIFICATE    [intentionally omitted]    EXHIBIT D    FORM OF COMPLIANCE CERTIFICATE    [intentionally omitted]    EXHIBIT E    FORM OF ASSIGNMENT AND ASSUMPTION    [intentionally omitted]    EXHIBIT F    FORM OF WARRANT    [intentionally omitted]    EXHIBIT G    FORM OF SOLVENCY CERTIFICATE [\_\_\_\_], 2024    [intentionally omitted]    EXHIBIT H    FORM OF FUNDING DATE CERTIFICATE    [intentionally omitted]    EX-23.2 5 tm2425082d1\_ex23-2.htm EXHIBIT 23.2    Exhibit 23.2    Consent of Independent Registered Public Accounting Firm    We consent to the use of our report dated March 28, 2024, with respect to the consolidated financial statements of Fortress Biotech, Inc. and subsidiaries, incorporated herein by reference, and to the reference to our firm under the heading "Experts" in the prospectus.    /s/ KPMG LLP    New York, New York September 27, 2024    EX-FILING FEES 6 tm2425082d1\_ex-filingfees.htm EX-FILING FEES    Exhibit 107    CALCULATION OF FILING FEE TABLES    FORM S-1 (Form Type)    FORTRESS BIOTECH, INC. (Exact Name of Registrant as Specified in its Charter)    Table 1: Newly Registered Securities    Security Type    Security Class    Title    Fee Calculation Rule    (1) Amount Registered    (2) Proposed Maximum Offering Price Per Unit    (1) Maximum Aggregate Offering Price    (1) Fee Rate    Amount of Registration Fee    (2) Equity Common stock, par value \$0.001 per share    Rule 457(c)    6,189,786    \$1.41    \$8,727,598.26    \$0.00014760    \$1,288.19    Total Offering Amounts    \$8,727,598.26    \$1,288.19    Total Fee Offsets       Net Fee Due    \$1,288.19    (1) Pursuant to Rule 457(c) under the Securities Act, and solely for the purpose of calculating the registration fee, the proposed maximum offering price per share is the average of the high and low prices reported for the registrant's Common Stock quoted on The Nasdaq Capital Market LLC on September 24, 2024.    (2) Pursuant to Rule 416(a) under the Securities Act, this registration statement also covers an indeterminate number of additional shares as may be issuable as a result of stock splits, stock dividends or similar transactions.    GRAPHIC 7 tm2425082d1\_ex5-1img001.jpg GRAPHIC begin 644 tm2425082d1\_ex5-1img001.jpg M\_JC\_X 02D9)1@ ! 0\$ 8 !@ #\_VP!# @&!@<&!0@'!P<)"0@\*#!0-# L+ M#!D2\$P4'1H?'AT:'!P@)"XG(" (L(QP<\*#7J#A(6&AXB)BI\*3E)66EYB9FJ\*CI\*6FIZBIJK\*SM+6VM[BYNL+&#Q,7& MQC)RM+3U-76UJC9VN'BX^3EYN? 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E8;3BH++4\_%WC21H[.l6TB@5?,> M-C\$, ^Y&6R<'@<5Z1K\ R M0\_P'O:3 T\$UQ?PJ\_X)=2\_ZZ) (TX8CFH3JN\*Y MHM6T7453"(F)A0C.7+)-O5]/,R[G4O%?@N\_MQJ-X;NVE.?F\$QDGYN/3\ZY3XK?>VE \_[G\EIVN>)=1TZPT M32-)4" [NK6([ \L,X SQR0>30X.O&E4C%5:C\*4N56MK=Z]\$ M0&'XD0 R"7?CJH,) 0UL>#?%=WJ]U<:9JD02^@!;Q!/^<5E+I/Q M"7]X-23=UVF53^F,5G>#7NV^(DYOEW>)1, /F[.M7.G"I2G?E;2O[NYG M3J5\*5>FESI2=FI:I^GF3WOB'Q'XD\17&E:-/JGAC=@-A"G:IQN9NOY>M)?Z7 MXU\ \_OK:B=9>YCBY<="Y-H]2KC!%) \ \_D>=3\_ZXR \ HU:] \1#/AG5?^O. M; \_T\_U-:JJ%6-&,5RZ=>[E8>@30G7G.7->5M7I:VS !OB&3Q#H[V2M\*MS" \_MER%> W&00.W \_ :O%O#4\$ESX:U6%" \FLFQBCJ24EQ7IGPK\_P'09J \_#7W M\_P!J]X \&'PIID VMTEOJ:JA)% MJ5G"\ [1HL31QKEL98YQWZBHM/^(<^1;63Z"EP=L6[S2FYNG38<5Z+17; %Q M=-4ZD:.VVK1YTL%)5G5I3<>;? 1\SR>^BD/Q95\_+?;]LB^;"1:]5FC6:&2) MONNI4\_0BGT5G7Q#J\NEN56-L-A50<;\;SN>1:9?7GP\UF[@O;)YH9P%5P=H<

M\*3AE.#GKT]ZO:U\11JNESZ?8Z?\*DMROE;F8\$X/!')(X &O37C21=LB\*X]& M&:K3/IVEP-=3M:VD2\_>E?;&H^I-  
=+QE\*1QQR^O"+I4JMH.^EKO M7S..T[PM>P #B]T]X]M[=9G\ON"-I" 7Y?UK#.\^-7\,6+.:3?Z=\*6B=B.=K+ MGG!!'K74-  
{4 !23^4=A5P/8^ MGTI?6G:2KPNL. ;4WJ974I< M#)XP \*Z3QKX:N[CPUIL-A&UPVGJ(RB#YF7!:D#OT'%=-  
J>M:+XO3E964,I4C((/!%AM:P"=#U 9)MI/\_ 037&?"V-XI'4=Z  
M,N9\$ZC3E8UTNB^+ # B%MFEZK;W\$G7R\E7\_[Y;! 2M:YN8+2!Y[F.:&%!EI)'  
M"JOU]KFC5<\*4J+6]OP.JKA&1"J"]%<6MW."\*;<;R6VF;\$9L/G SV6JOB+2 MM3C\_.\$?UVPMFN/LMK""15)\*E?F&0.  
<') \*MR3XI>"HIO\*;7(RV<96&1E [Z M"X\_6NCTS5].UFW^T.;?07<7=H7#8]CZ'ZUT0Q4Z4(1Y=K[];F%?  
\*G\* 3NVUY\$K;&>WE610V <9!/."/SJU6>[JNK5"?\$EU MC^,NE.Q 53:DD]AOKHPWQW\F=V!7[V\_9,]!C^\$'@Q+,0-ILCR;  
<=&\_KF3>3Z\ M'&?PQ[5YYX&27PC9I] @N)&M)'D@8,?O@(70D#C(P.?\$M0OM-L6L]JTA:=729V#;1D@AB>,?C7FWA  
M/PA;^+O&VJ:5>7?] ^EK6I)1DO> MM:VATUIQA47OM62TL86G>+=2@^!5VJSLLT-V-/AE!^98R%;&?H67V&/2MCX<  
M?#>+P\_J?A.UU;6+5[NXN]S\*C2LBQJ(& I&<@9YSUJ'X@>[\$+P=\\\*4TZSDEE# MZDDLDDF,LQ5AT'08  
XKN AG.EQ.\M&.:Y"PE#[%6(\ ^HG.T'\*&EV8U:EJ+ MG2TO)GE'Q.\*V?@35M(U/PZTUIYK.0HD+>4Z;2""XD# M,?7 8 ?  
E7G7ABW;P7\;O[%M9Y6M'D,#!CRZ-'N7.."02OY5] 5X/?-Y [1Z& M/YL740./]F!0?Y&L:Y2YE)WT.3#59U.>,W=69#:6:?\$?  
XQ:A#]SR-9VQE"Q MHV/W<;;57/8\$G)QZFNSV6?"KPLGAC4+C3K VEW;V[S1R],YR54G!#\$C!QBO,  
MM\$\*0>\*OB5J^CWEU):[9KAPT:@DLLG3GVS^5=Y\_PH72\_ ^@U>?] ^EK6;460>M  
ML%\*:482BN=QLEI8Q?"WBS4[+X+ZZT<[&:QE6"VD)YB20].#[98CTS[4WX=?" M\_2?%AP:OJES=[I]71(X650  
#C))!).+!/UEX,^\$&L65G--.9IH9)))< M>X/Q , !=@5N?I(O\_)U: \ 7>7 -"J93M!RAI=D5\*MJ4JE+2\OT.G\>&[  
M#PKI"Z9IWWF\$.TA:5@6]8JR /8?0"M>BBN)MMW9Y,I.3N]PHHHI""BBB@ HH MHH \*^?/BS:4/BI:60?  
RS<1V\6\_&=NYB,X &OH.O/O\$WPWFU\_P ;V?B%=32% M+ +L\$FY" MV\ ^>\*>^ 6M?P#\G\-.BVM:O??:]58,  
\$\*)NZDL>68^O'4]>M>CT4G6DU M;84L5-Q<4DK[V5CS+Q3\)]S]&LRZWX>U1],U"5B[KDJ]I8]2&7E2>IZUBGX??% M  
QA/^\$Q7 ]-1N, GLS7L]%"KS2M^@1Q=1)+1^J3\OBC976G?"33;2^N6N;N M\*>%9YF4C]VQ/.%=2O;J M,\$UZ?  
X[(\*XQV/KID=VM]JPG67S&3>. 1C&1ZUH^&M(;0/#ECI33"9K6(1F0+ MM#>^\*M5;4[=;FT<3RT;\*S=W=6/[,X7>  
(\_\$NM)?^>-]76:\*/&(86R6&>5& %0 M?3\_Z]87QFM5N/B%I-FI\$:R6,0('W099!TKWZN \8\_#F;Q3XLL:-34DMUM8H  
MXS\$T18MM=GSG( \_O8ITZWOWEL.ABG[52].R2=CGTV\_ %RP@%A:Z];2VR HDC, MC-  
M\_WF3=^O%:G@7X87&A:U\_PD&NZA]LU3YBH1BR@L,%F9N6;!/Y]Z]+HK-UI M-6T5S"6\*FXN\*25]  
[(\X\_7\_"Q=:UE]U[A1114&04444 ?\_V0\$! end GRAPHIC 8 tm2425082d1\_s1img001.jpg GRAPHIC begin 644  
tm2425082d1\_s1img001.jpg M\_]C\_X 02D9)1@ ! 0\$ 8 !@ #\_VP!# @&!@<&!0@!P<)"0@\*#!0-# L+  
M#!D2\$P4'1H?'AT:'IP@!'XG("L(QP<\*# 2\Q 2! (A? Q\$! \0 M'P 04! 0\$! 0\$ \$" P0%!@<("0H+\_0 M1 @\$# P(\$ P4% M! 0  
%) 0(# 01!1(A,4\$&U\$%A!R)Q%#\*1D:\$((T\*QP152T? D,V)R@D\*  
M%A<8&1HE)B7J#A(6&AXB)BI\*3E)66EYB9FJ\*CI\*6FIZBIJK\*SM+6VM[BYNL+#Q,7& MQ\C)RM+3U-  
76U]C9VN'BX^3EYN?HZ>KQ\O/T]?;W^/GZ\_ \0 'P\$ P\$! 0\$! M 0\$! 0 \$" P0%!@<("0H+\_0 M1\$ @ \$"! 0#! <%! 0 0)W \$"  
M Q\$\$!2\$Q!A)!40=A<1,B,H\$(%\$\*1H;'!'2,S4O 58G+1"A8D-.\$E\1<8&1HF M)R@I\*C4V-S@Y.D-  
\$149'2\$E\*4U155E=865IC9&5F9VAI:G-T=79W>^EZ@H.\$  
MA8:'B(F\*DI.4E9:7F)F:HJ.DI.:GJ\*FJLK.TM;:WN+FZPL/\$Q<;'R,G\*TM/4 MU=;7V-G:YN/DY>;GZ.GJ\O/T]?;W^/GZ\_ ]H # ,!  
(1 Q\$ /P#W^BBB@ HH MHH \*\*\*\* "BBB@ HHHH \*\*\*\* "BBB@ HHHH \*\*\*\* &/(\$Y-\*SVI'0."" 0>H M-4O,-BP64\_N&.%  
< PGT- % =33(%Z)9X%07-U%;1AF;[W"C^?\04D".Y\$LPP MW9?[M %NBD[4M !1110 4444 %%%% !1110 4444 %%%%  
!1110 4444 %%%% M% !1110 4444 %%%% !1110 4444 %%%% !1110 QW5>IJEJE[;VEFS7'S\*W MR+&!DN3V  
[U'K6IVVF6F^XRS\_=L<2\_>=CT K+TGTGCNH[ \_6.9&X@4\_=@!]?7 MWH C@:72KB&?5 ?)D^2%^H@)Z\*?  
KTS73!QA<=^^>M07S6XM'6X ,<@VE<9WY M[ =ZP(YO#T<=]N.G2,%@D)R8">BL?3W\_ "@1U8/'-+42.' 88((R"/2I:IA  
M1110 4444 %%%% !1110 4444 %%%% !1110 4444 %%%% !1110 4444 %%%% !1110 4444 %%%% !1110 4444 %%%% 04  
!Z5D:YK=MHMKYD^7D;B\*).6D;T%1>?(\$5MH%IYD MA+SN=L,\*M(WIBLS0M\$N[J\&MZW\UX1F&\$\B\$=OQH =I-C<-  
>I]^M# 2I.(4 M/W8 >WUK=U&XM[:S9KC!5\_E\$>,ER>@ [FH]7O[33K)WNSE6^58P,M(?0#N:R  
M+!9XKR\*]U==H;BW4G(M)]F]SZTQ#[=YM/NH9=4R8G^6%SR(?8^\_O6W=QV\]H MT5RBO\*#-  
I4\A@:CU\*:T2P<7@#1.-NPC)?/8#N:P;\*6?1+B\$:GN^QR?+![QS] MG)Z^Q]^F: (H[Z\Y(W4=M?%Y=(E;\$4YY,)/0-  
[5U\;K(BNCIE89# Y!JO2#]W\$.OU/M6-X7\ -7-W>#7=!=!>Y<[HHW'W/D\*\_XT#':99SR7J:IK2\_Z1)Q!%\_#! M]?6M?  
5KNSMK!C=@,DGR\*F.9&/0 >IINMZA9Z;I[27@W!OE2(S>\_Z57AD&TJ1USV%1:I)9K82\_ ;5#0N-NP\EB>@  
[GTKFK22;0;VW;5UD^P M.=MM(YW>03T#^YZ9H FM]0N?#-U%:ZH6;39CMM[EN?\* /96KIKNTMM4LGM[A5  
MDAE7GO\ E27=I;ZC9O;W\$:RPRKAE/.0>XKE+> \G\&WJ6.H.TFDROMM[@^>4> MRM0!1@N[SP%]J0M+S?-  
HTS8CEZ^57H\$%S'?29F\_ =L.=E 'IP.:6JMC>PWUG'YK!(\(^%I]0N1K>M!F+MNCCDYW'U/M5)\$MECPIX9GOKH:  
[K6YYG;=\$ MC\_S/M74^/(\$-IX?L#\*VZ5AMBA7JY[5\$XC\26?AVRW.5>=U\_1\_>' ^%8?AW MP\_=ZI?  
#7M=&Z1N88&Z1CW%(%KP\_H5U?W@UW71NN6Y@C:I\$.W%;FNZW:Z'9>= M\A  
[N<10K]Z1NP%,UWQ!:>['+S)CNE;B.%>6<]ABLK0=&NKGZ\ \_M[6P&N6Y@A; MI"O^-(9/HVCW-W=#6-: ^:Z8?  
N8>HA'M[UI:Y<6%OI4QU':T##;MZESV"CUS4 MNJZK:Z/I^EW%4=6/8 =S6/I&FW6K72ZQJR \$D8[\$^] &?I3SV5  
MY:OK@=87XLFDY\$9[! 1L=ZZ^YM(+RV>"XC62&0;6!YR#27UC%?  
6A%.O;\*TUK3S!, \$E@E7@CG\17\$6E[>>!--273[V\M+I,K8BEZ^70!0 M@NM1 ^'^K\_9KC?-IDK<'MCU'O[5Z987]O?  
VJ75M(08V&0P\_K52\_L++7]+,4FR M6"0;E<'.WW'O7F-SJ?P\_P!;,A:6RE.2.SCU'N\*8KGKP8&EJCINHVVIVD=U  
M;2JZ..N>1[&KV:DH\*\*\*\* "BBB@ HHHH \*\*\*\* "BBB@ HHHH \*\*\*\* "BBB@ H MHHH \*KW<4LT#I#(8G(P) [,L44 <5:?  
#VSAU-,VZNIKMP=Q\$@X)KKS'A"\$& M., >E3447%8Y.'P3; VR=30;F6\FW;E61> >W%=.0=N ""\*EHHN%CFH/"41U  
MLZK?7\$EW,/N\*X^5/I70[3Q[>E/S2BBXS!F\I=ZTFHWL[W"Q]7]\*\_K2-.FTJQ%JU)U) MDT!&@CO9I[8\B.0?=>^E6]9T2TU  
MNQ:UNDR#]U\%)JYFZ\TGQ=I6MWAM;\*5WE"[N8R/YT\_A\$M'\A S#+>\_ OFI[/0M+TRX M,]I9Q0R[<;E7G%+0-  
2W=WMO8P&>Z66\*=69L5RMQ\2="AD\*(\TH'!\*(<5S]V M9\_"BY[2,NG6S\$-@X&T'K]:[RS\Z39PK%8Q8[[ER3]:-  
\$JZ7XQT;6)!% M;W060\_P2 J3^=;\_4<-9(G5 R, ".5V?\_ BFA\_ \0\_M\_&+)"NQFG^\*=(U258[2\_M]1I&&0C?\*3^>=2:QXBL-  
#\$1OY&C\$APN\$) E7\$^/M\L='M(-0TZ,6TRR!1LX'U\_MKL+.QL]>T2PGU&U6=\$\$K8D&<'%%D:-E ?\$P]S\_I,G\_?IO\  
"E/Q\$V]?M,G M' 3%O\\*S/&\_A\_2M\,S7%I8Q0RJZ\_@P>6%7O#7AK1KSPY87%QI\,DKQ\_LQ7  
MDFGI86MS7M\_ \$VFW6CS:G#\*QMH<[F\*'C'MBLO\_A8OAW/-S(/^V+?X58\0Z=:Z M;X-  
U\*&S@2&/RF.U!@9K\*!;1I]YX:26XLX99"Y&YER:+(3;+Z?\$/PZ\@3[6X M)]F-@/Y5T-G?6VHP":TG66( \_Q\*>E49\_#&C3QF-  
M.@PWHN#^%<9X\*1M-9ZEI MD,I:V4-@9XX(H'?9;V9XY=H;A">/PJF/B+X=\_Y^I/^ 3?X5SG  
MBJ"\*Y^)&GP3(KQR\*H93W'I79CPCH.\ D%V\_?-( "OQ"VR2\*B7\$A9B /W3 M=SCTKHI,J\*"W-Q\*X2\$#  
<68XP\*S1X2T)6##3+<\$('WI7, \$JYD2'3K!7:." M3]X>V!@8\_6C<9?  
N/B1H=O,8XWFFQU9\$)7]:TM)\6:3K+B.UNAYIY\MJWX9J\_M33-  
!TJUL(HX;.%EV#YRN=WOFN:V7^>W0P:CH=H5NT<92+C(ZY\_2@6K.^)"@D MG '7)Z5S&I>=/= \$TV5H3,T\B]5B&  
<4GB:<NK?P1-.RM%L'MNDY\_ \$U2)9<^R>/L<7EG6W!\$6N0Z9=#698Y+@YV&+L,5T&\* M8W?-3H/H>: \_##F?  
4MW+9SUKTL-FT^X8J\_Q\_ 3BO0[+6] M/OHA+!>0.I02#(^HIM"3[F@X&PYZ5YK\.@HU\_5EB/[LHY8;JVO%GC.TL;&  
M2TLI1/>2KL B.[9GW'>E\ \_Z]+I>DO<7\*;;BY.X@]0/2@-SG?%LEY#\0]>2PC M#W2HGEJ>A.\*TO[5]>#\_ F%PG\_  
+Y\_QJ#5\_P#DJUACT7)"O2\*- U/&]7OM1O= M7M(O%\*26]L&SLC7@\_E7KUJD:6T:Q?ZL\*-OTKAOFB\_V';R'&



[illegible]

M2]J00+;Z7)>Z:MNFBZY+;6]O\*6\$&Z62X8N/T=^ )7PO\ AW^T#\.=<\>+ #3 MO\$OA;QMIL@:-  
HHYK:7;%G2=7TNX(G@@N;.,PS J)G#\$9SM):/XH #3P1\9 \_M.L> \_'FAZ9XN\(^\*-.>UNM-N&ANS=6EX\$FL-  
7T1&\$P=X9&CU&"4227=LX LY M[>(")OR\ \?%#QQ\_P3D^).C \_\*^/VL:KXI\_9E\=.:LVF? !3XWWPE,'@35Q \_^%GA'@?  
XJ\_ %3\_ ( )2 M?%V#X1?&IM:;9 \_LA^ .M5CL \_WQ\*C>>ZB^ ^U[=7)CTN"\F+B.W2:W-NET7MA M2K>2D\*;5'[ ]>%?  
&FB^+ ]%TWQ\_XPU?PUJD\$ \_W8ZO8.MY;.:E%>0I<6XLWSI MQ"R1R\*9A(LOS': @!/(Q^+?P?  
^"[1GPYO?!\\_CK2])3:~\$XKTJN2]9F@8-(\ M?)3M2T@LMS!^UFKI\*KQ99E57#@G%?>GX8^\*?QH\_X)'?&.P^%?  
Q.AUSQ \_^RUX MNU\$V\_@G7[:62<>'8[RX:.%[B64BUTY;"T:(3V,UL\Q; ;112JRYK6%.%167Q6  
MU35M>O3OUM8Q;J7=DK7=O>6U]/PL?TV6\C21@L58@ ;DSM;C[PR3P>HY/]J8 M<@'U KS;X;?\$/PM\2?!>A^ \_  
FMZ;XB\:-W:6USIFJV4A\$,T4D\$4R0RPEWEM M+KRI%RWE9WMW.R0,PPW=6=[JJRJY;QHOFQORT[[?P/&?  
RQSV].U6JS-0:-D\$; ;.RSQ1)R[!/O\$]<# M'.>.=.O( \$N+I(P[M\$[QQM\NIAO[R=BQ%P3)UPS+I&67@@#S\_ -OC\_@H'  
MX%\_ 9'\,I&D20>) \_C3XAMKFR\^&;&Y-U<.:UZ&6VN;E%F"V\_P!G9D,=NZK( MY0!#G@<]\_P %!?\\_@HAX0\_9:-\7?  
A+PG)=1 \_M3PIX:U]9)M3\8:@)CJ\*Y/ITT\*S:3X>MGE%UI>U]9;4PL,!9J[\*- M\*\$;2G97UMO?  
KMY\_UH<%>O\*5XQYG:ZVLM&UW\O^ =]^ ^P)^Q\_XV^ .OC6+ ]M+ ]K MV:ZUG7=;U+ ^VO  
OA/7[=)PRSDW]G+=:3>V]TB: +#'^<):.:5\*PBB(CDN!<74; M7!\_ 6]/K/]KGX8?LB?"^?  
QEXONUOM8:W%AX.!Z2SW&M^\*M4NBMGI=I91(VZ( M1731I<3W4=R/\*4 \_>8\_ ;\$ \_; )^&'[/P[\_  
+OU.:PO \_&>LV,T'P]!\!>4 M.J:YA5MA\_9T2#;;"P"=E,3^4%FA54A4\$[E^ ^?V.V3?B5^TS\1-- ;/\ VP[9  
MKR> ]JY^\$7PAU3SEL/"6E%!=Z9=7NGW!G66+['];O!' +\*+P.BF:>1]Q.EKMN  
MZ2N[7=M/N\_KRZY\*HM+J5[\*\_N]=/N>E\_LD?LL?%OX]^/K3]LO]LR![OQAJC? M: A7\([XC4-  
\$^'^C2I]KLWNX762VMY4MY80BH4E2:++ ,V-A^ ^/VH/VE\_AG^R M[\. )?&?CB[-W>ZC+%;>\$/  
NELTOB;QEK\$@6TTS2='TV!A-<6[WSQ/=W;P2PE M"TK; ,K\_C' \_D :S^%O])'PW7Q'XUOGN-=N5EM!/7@/3&0>) \_%>KL?  
LEI9: ?IT M"J!%#>E8]\EO)&(0,AB"U?(['\*[/Q.^./CNW \_0\_ ;\$LED\;3K\_ &E'\A9 MJ<:76F?#/PC./.>2YM9? ,@MM6NHI8S-  
'(9'@F23RDC\M0.=K5NZW?7S>W^9W M\*\$FDJ]-4GOW2?ZG=?LW\_L?%\$CXN^ ,. ]:G\_ .XM6/Q O[:>?X6\_ "6[8/I?PBL;  
MUVOK?5&M& ]H\_BRTLY\$L5UG)N[=8C%9FWB9(Q]2?M0^ (/@SX>^ #7BV;X[BUO M \_M\_926D>CSJESJ.M:W<,6T/2/"  
<)(N[SQ=>WJQ7\!2\*[NK"9ML+QQ\*S#IOC M=>^>] \_L^:UX MK^\*^./AA-^V" ^J6O@C7[/S\_V6M3;EI],TB\_MUCAT?\  
X6O&X7^PO&(THVMG MI>H:E"/;V[WO)&K%C^N^WQ!^&WA7XH>\$]> \ \$> .M'M=:'\^ (K.2PUK3K]4U(R  
M6ES"9HYI! ,)V%]9ZBRSP7T3M/9RH%M)HX5" &'XJ"?KPO\5OA[KO@;QSHMGJF M@:Q:7\*WMO,BSSQWSN9-  
)U/3KTJ98;G1YF22"=U;8L8VQ@J#7YQ\_ "SXY^.?V/ MOB+H\_P"S+^U%JLEW,O\$MPOVF\_K]H6YFN+O2=2LF?  
&G>! \_%=>9\;?;Q!ID\*VV MFIJMT(+>[EC:22)S(9 <?[/@Y]>7WF%JX,^\*WC'\_ ( )]\_ \$G0O@; ]>M6U7Q/^  
MSCXWO\_L'P6^ ,FH)+>IX.U)YO(L ! \_C'4%\*36ZQ6XAL+28"R\$;1@S/-@D\_HS\ M4OA9\.?VA?AKK7@CQIIFG>  
(/"\_BS31]C2\*6VUN""DAW6FM6%V8IK>6]LBZ3 MB65;J2-EWV[1]&KWQ7^%O@;XU\_ #  
[Q%\$X\>Z)I\_B#PUXDLFCO=T:7\$5\$YA+!V0RJH#\_ #\@O\_GQ4^ )^ P3%^\*?A\_X\$?'C4=5\;?L\_MF^ .]1% C\ )OC;/B?  
5KCX>:E<2^3I?A[QBEO) ;:S-M]GM8]5D6.%PIF8.#BCG\_MCY\_<\_P#,,27EJYG^ /C1\2O^"87Q5TWX!\_M!WNL^ ,/V6?  
%]=;V?PB^ ,=V)[[ \_M\_A#[NZE\$.GZ+K>H322-;Q):&" I\$4VD-+(06/ZP\_ "X-?"3]K3X0ZMX, \66  
M^D^+ /!WB\_2EO=\$UBQN;>.:VOIK<3Z3JVE7\$<,[#0\_%O@GQ1HS7ME<6DL% ^L4QA58-9TS4RMQ:BXMKB19  
MTDAM\M'R][CFOQ3^%OQ9^+O\_2P^+UM^S[>FU?QK^RYXPU"\*T^"Q%#L]I\_MX2DNY\_)L(I;^4E[=8[7[.LL&U=FTJ-  
NT8TI580LVW==ETO?I\_6\_DR3P?P#3\_M\_CS\_,\$BOCRGPK^)"ZW\0/V=?%&I-\$NUBDM[9;\_ZNV1?\$5O=2L;33KNWM&2  
MZOM.E@F=I#)#"L6 !\_2]\+OB?X(^\*GA;1\_ '7PZUZT6^ ^/;\$%E;7>F:KIK9CN  
MDFMH[F2.\B.7TZMTD43Q714M\*1\$5OE\*COQN^"WPC\_Y^#D\_A7Q!!IGB\_P= MXDTMM6\^\*(+F&2YTV>.\$?8M8T2[-  
U\*BS-><3Q3M)-&VQH@[ \_U\_.X.^) M7[0O\_! (G]H6[^ ^WC\$WWCCX,>\*]5\$C1I);6?B?3+F[<]KWANQ=T&F:E8V;K<  
MZA )GAN":2."V@C(C&U6\$\*JNFKM7UTWUOLWUVZ=3-X]S:M/2ZV[:?S>1\_7% %M?13B-  
HB664\*538RR!&X2LK\$1E2#RH('7GBKPZ>ON.AKQ7X.?&'P%: !V@\_M?\$+X=^('Q#H7B2UBN+&ZC81WI9[9+F?  
3M3M\$#G2K\_3]\_DW=K,I87\$SOS=.VNQTPJ1J)6% %%% !129P"3VS^0I<@\$\$=. \\_3/J,4F[=WZ\*X#J\*; \\_ ^S^M'  
MS\_[ZT7\G]W\_1V\U]\_ '5YY\1M!UWQ!X8UC1\_"VMOX7US4[&ZL[:Q\*NG3\_M:DV\F"Y5E:>\*"&XA?SHMVY&)\*  
CE"!W^ ]LXP.N\_ ^-\*0K8)8@CT=EP?3]/,EM+<\_ \$KP'\_,\$=O=A\7K/XO\ Q<^+ 'B[XU:HVI+KFIZ?X  
M@TJ:."+4=;CN#=#PS7)DNVSI]M=,S6EO%!'#"\$%01L@Q7["7&DE-\*NK+2D>P>: MREL; >06HB@TZ6-  
/+MYHX+=HI4@M]H\$<-O,MN(U50C)Q75LJ[B?EWL\_ ^\$+[0\_M>!E@1SSG(ZD),.,\*26&58A1N5N0JG( ! )7&FGPOIHW\ C  
M%T(O7377[VVW\ S\E=%\_X)=>%]9\_ "N?VA?C; \2?\$'QIUP:I\_ VC^'=T.-?#\_MVARQW3W-  
K8; ;! ,!8V+L%A,+PK((D+\*JY0?J+-"T>FR6UMYFGR012(FVS'E  
MPW,JE;2XN!ML<<3E7\N!K&H&Q2\$5:Z8A"3N7.>J[4\*AAU89!./F ! !'0\_9"/"@=N,BJ^L-])?=\_P1>PCY?  
U\C(S=\$\_X)ZZ1]O[1L MO[1OQR>ZQ:O\$UC-++X2\Z\H\X5&"265X7TR\*XE/F)"Q1OGF\UW164)  
MR@\_1@67[F]2JMY(B#(@>\*40Q!/+D@20J8<>:86>3]YC+NO!U24R1QLR?W9  
M12A);.Y4MOYZ[L>V>:D0[1QCGG/ P!88 ^@\_K)UI7>JW]^9M%IZ+HDONT\_0\_M^"O%?[%%A\4/V@=+^\_  
OQ@=\=:Q\0]!\'R"[^&\_P\_ ]1L!X8;.:IN+/W,0EB\$7RB1R\\_\*Q7+!CB0\*C\*AC8\_F-<\$"-\_M@#NZUO\_Y\*EPQQG#@@  
\$9"JY95!QAL\*#R>0<\$P\_NP\*54#: NT!5\_P\_H'\_M\_XXK52T6DMET8[KNOO\*TZLL\_"!2V2A8@9PY.\@8VC?SD!<<\  
<8\ ^./P)! M?'KX>:Y\ \_B'H,6H>&M:LS9F5(\$N+S0+VV? ?I&LZ(RH;BQU" T<1R"XC+[@BB\_M56RS'Z"C: '\_35?#?BBUG  
MMKJVELREM?<@\*\$3[XI\_M@7;N.6.>IWD\ YX!PJCKG;CKQCC! ?R?W?\\$H^&V4/V4M>\_9?\\_WO@9?BCXD\_M?  
>!8[S>&-!UC3\_ ]SX8MH\QV^FV6J&ZMHYM-CA\$;\_9;1FN/+ \$B/"VCU? \M: !\_9X\ ?M?(#G5/AC\3=%@U;2=6MYFM-  
2AM1+? \AW5XU'DW]H29TBE2898" M.2,L6"@ (R\_2'EJ<8)"[0NW:A\3^XWS=NOH?GU^QI^R)XK\_&3M+N\_ "-M\8]?\  
B1\ \_MWD>YL/#GB+3]/(V7SH5GATNZ=8F73V<[O^"LIV@QB) '\$J'?[3?]\*OPP\_ :K^ M'&H>  
\_B%HYN)+A%.@>\*4L\$GUGUPU>1J-L^Q783[3#\_S\_&2/,4-'I=MK,23O!P\_F#G"L9\_ ]1G( ( QZ<4Q'R\_%V !>F\_ , #\_M"X48Z8  
'0\_"E5JQFM\*]M;QMK;U"U'E'V; ]YI^\*FO2^GONKT"J\6F? ,%!\&\_ M%>>OIVH4L>> ,?CFG%KD3Z\*/Y\*S\_)F^ ^H^BDR?  
0\_I\_C3"[XPQ]/SH&C)(X!!3UIYK^6WX#\_!CX4\_'C\_@JC^UAX-+&G  
MA#2O&'ANR\5\_\$V\_ATS49)&MXKS^V]19KI5L! :W"SLV69))I\$5CC9VKMP4(34\_MIU;\D7K97>  
[Z+5G'C'DXN,\*6DY^\*^]E]^MOQ/U27\_ (\*)?L\*5V?%R\_=-HVO\_M\_ ,('X \\_G7'RM\OAAU^88/RLR\,1@GV3X%?M\_?LV?M(>-  
Y?A])(O&UYXD\2\_M)HUWJ\_V63PWK^FHD5H["1I7O;")DCV#?^ ^]C@E\_!#(C?(N,O\_38\_8AD\_D7]\_MGSP-(K@.LDB7\*R.K#  
<'<.2^ ]@=S;N=Q.>%\_MO!7B.XTIK"75M-LY9)\$L\_!TMVJB1RV]H(<\*XRA;[U3\_M6+E+&VCMGMQ([1M\*XFAN]1\^<\_  
[@Z3;-\*#T;XN!KN0RKN4[7"JK+AAD\$5^ ;7Q1OO'?\_!5+ \_M]MG5?@;I>O:GI7[.?POU^ZM-  
9M[&9]:VFV: !J%Q;7VHS1#SHH]5OKRU']G) M+&]! :RB":SN'7SC^X\_P\\_80\_93\>'+/0='^#?A.["6]LM[?YI%G>:CJ%Q  
M'!&DT]\Q@CB\$UQ(C2W"Q01#S6<\*JC" T15&C44:DDI2]Y)-/26JOM9V:]Z&\_ MLY63]W5)Z-/=)\_K]YA?  
S\_@H7^RK^T1>0Z7V?BKIB^ (WCA>3PWXB\W0M1M5\_M=05,DMU\$;>X>?(\$\\$&>(OC-  
^SIH%\$S\OBYX"TV\4Z5HO@^>^T^S\ M47^A1I?)IT%I;NTGVJ]"SKIUO#/:!QM;LBP;N&NQ;/\ \_@E3^UAJW[1WP2E\.\_M^,  
[\WQ#<^%VHQZ/J^I3S^9=>)\_@M5LK765WR2.MW/+&ES?EF; ,\*X2\*#(\*I\_M0P\VVW%-MM[Q?]=;ZZ]M^ASSG4A>^WJG\_  
%H?0GQL\_P""@?[,O].OC>Y\ ?%/\_MQ]=ZIXIM;&UU.XTR/POXEUA4I:WHWQN);'36@= \_#GS(II8V7\*#V,X\N/\_6!\_M\_804E?\  
A;<[X.-W\_")>\*TW8XW;#I!\*9Z[225S@DD9K\U?VQ/ WA;X@\_ \ %B/\_M@OX(\8:-8ZUX:\1Z%X,T?7-  
)O&>\*WU^TO=5IE:5<.^PH%<@<84DNKDAA^PC\_M? \ \$Y\_P!BUOF'/O@A"WS;\$BNW1">=B%M11BJ])%+8)

!)JXATZ=W\_Y\_5' M>W?NNOS-WX4?MP?LS\_ '+4K/2/AC6?#&O: J5E)?6?AJ:273M7E17&"1>F'R  
MY&0C\_0WMQ\_!#JF1/#TWQH\5R>#X?%\$UQ;Z.)-(UZ^DG MGM\*ZU>-8E#M=S33\_9E6XV/[>1F?9\$A\*A?V\!?"#X M3?  
MA?L]\_3QE^T%X"T\_Q\_JC>"/#>LQIXE\$QGLJ1U6PM1/,6TMLYN'9S).Y;  
M#7!=U54\*QBJF!PE.,9SE.TES.T&WJKZ+3JWOTLSJ15(U=(WNM)=6U6CUN^J? MJ>8VW\_!7?JA,E)/^%P7:M)--  
&UN/!/BR:.\$Q.P8RB/1P%!(.U,2,8)[F67\_@ MKK\PH-SCXP78V8:6)O!GBT3,DG,4D8\_LD;5P065@Q\_.,@BOC3\_@J1^QI^S5\  
M\$\_V0\_&GCGX8\_"PWX.6VVU^~K5-7TM+GJ1&FK>/(K/2KX(US<3XW03R.F<\_O MMK2"1 8S!/? L1?L( \_LG? \$G)EGX'?  
\$'QG&?#&M^+?#\$'@G2-3UO5KG[;YNIW MMU;VT-Q-(\*MT%)F8M.XC\$:B=V\*A8\1#KB\[-5\$Y\L4H\_[Z]+: EW,I1K\*I  
M[.RYFW;WE:U]-?FC[8\*\_MJ]? ;QO%/&'Q^\_,>+[C4?AIX(&IG7/\$\*^'\_ \$HB MMAI:())V:U\_L<3\_Z]MA0,2@&UFW'=7SI'\_P  
%@\_V\$&9\_^+U[&D<-O+C\_(0O MQ@SR"Y56C="NBD\*N&!\*D%#@#C=GKK?M??!'X7? S]@+ ]H[PG\\*? ".G>#/#\G@  
M#Q)=S:;I1G%O=-SSP2R74J32RAYF8G+8 ( )RI)S7R9\_P2>\_9H^\_OQ5\_9)T#Q  
M7X\_ ^\$WA'Q5XCG\4:O;W&L:E8PS7+VMO\*JPQ.4ND(CB7Y=A56&1A?E(\$\*C"5- MU5%^NCLWII\UU\B\*GMJ4U3FDI-  
75I)K[ISZPTI\_@KA^PEJ>K6^BP\_&<6J]U<\D:;CISS2SH?2(4+\*6E20289T\*#<#B? \\_@F+: M7\_P2\_ ;Y\_:\*\_9P\\_-<:O\\_-  
=\$M0\$UQ9Z3!<7\$=T MYN\$)D7<=\$6+RPK;XIPIU8RE#:-[J2Y7HVM+WTNFELOD:SJ5\*23EV6S3Z+M8\_7'M\_XU\_MJ)?  
LU\_LZ>;,;X>\_%KQU>^/'\$UAIU\_#;KX:2:HKVEW5,9\BC\_X\*?'L\$./^%R7+A"5#KX\*6JK@'\_8\*VEL0&'."#60#\_ (AV^#  
[#6;"65BD]NTI+QS11;79 MB1M;8X!!( !Z?L+#+\_P \$V?V( \_P!YCX!^"@-S8&=43 SP"C7#N@ XVNS,G 9F  
M() +E3A!)RJZ^S?T"A5G4^KW:7ZL^M?^~N7[#+>HWMAlFE\_%B]O]0U\*[MK"T MMX\_! BM/-O+VZ2WM8@S:20.7  
'\_V>?@MHFJWZAKP=10%KMXBO(KB&U2=&O="TPZ/<3&Y'F1^3J.&## M6DCA=E<8)//&%H\_=[O=-  
=32;JPUDE\I)GTGXO\ ^"RW[&'A'7KC0;/QAXI\ M/:22+J&K>\$?#5[JFAV961T96N+C^SW.QEP3:\_X=H\_=3SH5D/T3\  
/V]\_V8 M?VD;N'3\_(7\_!2T?4/\$5Q;S7#^&=1-YIFLI-' +M: V>H6=FHD#%E,;3S!'& MP32!=[4?@E^QG^RYX\$^'/A;1?  
#WPL\:'I]\_JA:28O\$.N6\$6N3:NESIUN6ZBM[>XN;J4VD-O\$T[W#Q(+2&(,TL]R MP)3R@JE@4;!520Q!ROYU?&S\_ (\*I?  
LA?!#5[[PYJGC?5?&?B+2W\O4M)\\_Z1\_M\_ ;US:\$R-%^ \5KJU3,3@K\*!1E3M;'(Y;]M\_XO?\$/P;\_P3T\>;BRU/PUX\U  
M/PEX\*TW6HGD5;S3KW4]3TG2-?!\$#\_I%!!=W\$VX.VVX;<[R0@HWBW\_!,[D3] MGB^\_9J\&\_%'Q'X\_\\_\$KX@>.[/5=4/7>+<-  
&S\N2\_M0RF83EY 'CE@C8([JC\*"4=&Y7<5%J6CNU>RT=FKKH]T5]8EM:6GZ:=-\_(^B M/@\_  
,%7OV/OC#K%EX;TWXBW\_A/7=0NH[\*QM/&VBSZ ;J]D?8NG')<3"\*Z1\_MR(7?  
[1;/B56\*NZ%6KJ]M/N5NH5G21'BD'G+.DR7-M;D'JY;7\$6\$E&[&] "C M)A@OS#;^1\_[=? !.WX0?\$KX,>]=^&?  
PNTOPW!7?".DMKG@K4!/I!9W.J:W M97>VWTB\*"SF6\*\$Q\* &BCM7W@,KQI^['T'\_P39;XS6O[\*7@;0OCUX;U?PMXZ\ M-  
7&M+?1IVNW\*W6IW6AVJ07%\*/K,##H9HT<\$QB\$!-KN1\*;J\*FZ<%%.\_+!23 M5K-  
1BGKU03\_X&ITI/[K9/[TG^I]^39,4^[@;P0#> /7K\_G/I7C&A+^U1<\_ M\%+V\X?V2[GP=:/H?  
&GQ+:\\_X2RY:..Q.GMKNHD.\$AM[283;,\$LUW+&&)& M')\_KHN1N@G7<\$&QOF?H,Y.3TXSP,<\_C7\XG[&#R1?%(?  
@\*>/\_XK^Z)]@Y6Y52V.I 4\$]%'2ON#] MFZW\_&Q;'X0?\$V/[K2Z+7WCRXN;@>\$[KP':B)\N@SO#?H-%#L0 -(  
5&5;RR5R.5R\$&<=,Y.<5BZC!\$%G\$BJ?M(D@23:J\_M\*#(8E<3/\$J2L&\$2JWSC(+@8!4+SMW;?=O\ V=\$825"4';F=[:Z:WZ\_-  
'\UO\ MP0CD^V: \_T9=ZJ7OM;N\$TIM1,\#0:J)'FW3\_&D K,H-P7>Z0L9/.W!T"0<\_ MTMP"&L7]Q,D(0+' U[H#SQ)/-!'=I\_  
SP10EE9?Z\* M\_AQ^T; \&/B/H2: \_X-^(W@C6-)EMHI0T'B70;6^L7\$\*M/!K%K=:LL^GW<+-LN M+.6%9;259(9F+1L:>  
(P:J5(5(S;2C%M7L[VC=+T;?R6G8Y<-4G!M5Y1LFTDI M&>T<65^9KN1G#1\*L=JSRPDIL6XD8R"0\$ M1K\_-  
K\_P1ABLK+J!)?K+0\_#DA3PQ9Z;=R:;VZCR[?3QXELXD(:17Q<&\*])C' M'R)&I1L/O^XO^"@/\_!2'X9?""X9^)/A[\-  
/\$%IXU^,/CK3)O#FAV/A&YBUBU MT4ZM'):2W&H:UI]PUJ=1CB?RK6SA!9)'=:0(I?\_%P""0/[7B/X+?!3Q!1  
MO'5B^F\_ \$'XP:S::ZL\$S;-!JEMHWDV5W#I]W'(!-%\$Z10O>0L2WVH3E7B79&M  
M4I\*GH^EUWVNOT+J1==OV=G=B=NU \_=[JGP\_P4,1\_ \$OPC\_P %3\_AYK\_P:\VG MB;XD:/H?  
@BY\*:#=0R3VVH7\$.B1R'.X1;B!VBW2%0L\$]N=H W<<\_1(\_R\_X+ M)6T>9OV4/"LS( K\*AT5&W\*,-  
E+CQFLR'.P6""256)ITO\$QBD\ P#KG";)X?TKPAX;TSPRA/V6>C?:.1%Y2HFGVRI/ M9;512H/E%1I8>6%"DD;S^&?  
!/?0M+\_ .&>\_AUKT!%E\$JL'Q\$ETM-6BMR=7 MM;2\_L9YA;Z?=1V@:V,LNV2X(>422 ERW6OVF^!;S-\?  
AOY\_ ^N7P5H#2<%3Y ML6DV<9!4]!G.Y< @],=\*UQ:-%6\$8PO=1BFFK\*ZBD\_P 5V\_S>^%IRI-N=E=MW  
M3N]6VOS/SW\_X+,P\*?V\$O'+EF+'Q5-\U/(P?^\*TTSIGIG)SZU]#? \!F.?^&\* M/V=UR&V+M\*'H' MVTA5\_=R\*  
(@ZJA>,OMWHO4\*H&:].EAG2G?G;NDHN2MT=UU716,,0\_5HSC=J\_M\*LVU9\_=?4^4?BO\ M%?(%E)\!::O=ZE^S\_X)\.:5-  
8QP77B#P==^'= ?UK3HY M;JY6YEMXV7R/&CVJF0J( ZG\_C\ M?W=/\_P""\*K)M8'Q;8IKVN>)/VB[O4  
M&A^)6G:]81V5QH^D:I)I9N;RUN%B=3.-0%L)V%]=6^7E6&-EEC>+^A.:S65' M28)L\$:O<1RJK13QR0W,;+,%B0\$D.Y!  
W MC VG^<7\_@EO-!I\_\ P4\_:JT; M3))ELB\$CB26T;Z\*T43\_D^6!91JJN&'E22K@%D\N;06\$G[\*Z>] MVK7;O?  
KWOY6^94(R=14ZUKRUC9VCVOVT:TZ. 8\U\_X\*53?\$9\_\@IK)(Q( MIM\$3XEVA AKPC\_P (A<:D;BVL/[ :DN'6&"]Q"S7-  
H\$=(5@N892,\$SGFOKH:)\_ MP6\_5,+X@^!);S';K^=2&(YPC3LZ8/1'9G7[I8D\$GYS\_;BU33]&\_X\*Y\_LZZWK  
M&LV]CH^C/X/O);O[O59-M+6RBA:-K@B2U:Q+Y,Y6,Y\_=A01CY[?J];J MFS:-WQR^%?^?X9D9;KAAPP=9+I)%?  
(^975'5@0RJ<@.8A.%&E\*=O>I0EI9 MO6\$M96>I%'RG)+L2M)27ZYJZ\_!3/?^"ML/Q6\Q\O\_&\_6?@\_-.I]1>V\4  
M+X>N[Q]3CM(T+H)]T<[Q1S.-YN+6X!)).%!Z?4G[/;[&?@#]LSX:V\_A7QZ+=W M.@^)-&OY=: \'^8FD==,U![&]LWC8&-  
S+I\KW:WLBQ1VTSW=G92K)'&DD\$GL M@\_:? 9WFG6.S^-\_PN+W\$@967QOX>"&ZQ:;UM?(&K12->+A@JJ"#  
(^UB%SL' MY!\_ \%+?C1\*H;9\_#FK+/\_Z37-U9Z4D\_M^M6>NV\=E-'B:>\_M1=L97(C60(G[D?#C]H;X1?%SPMHOB3P-  
XZ\+ZMI&JV\5 MT]S-JEFTMGSM/:R0LQCVHRP0LIC12BC/Y6? \8KXW?\_N\_P#V M<=6^&]GKOAGQ#\7O\$.N:  
/!NB:6JCK>JQM\_")J(RBB2\*?2G MDQNV0YV+VOQX\?M&??"\_@F!^SYKWPO\1>+\_ /XM^&EK8:GXML?#9WZA)X:  
MO]\*3/-=H%M0+9F>/?7Z+?L9\_MJ\_#"JHOX0^#M2C\ M<:/%XXTS3]/T\_P 4>='>U:VTC6\$U\*&R@AO;L)-  
+%;ZM%+=++(DWD;[D[G(C) M4,W=)GY/WW[>\_4N\_95N[&'J'X& M#Q1X.TN[B;5/\$MGI2Q75QIY'DA;F\_BU"  
[LT#1#S)9#%( F\$N9WZG]QOV3?VC\_M\_!O[5OPGT3XI^"(SIUC=RW.EZUHUR&N;S1]7AM88Y+""Z2183%L?EF8P,)F  
MC\R/9&X0>;\_M@\_'#X"?#WX&%)\_B-XM\7]E?>+>\_2[3P\_=7=M=3WFLWUK+ #\_M:S6EDRW4L3"XD62);?,  
<:IY:@#:1\0\_ \$-?#B71?V?O&^O7=K8(6AOF5W<1A)8W&Q(N<8N,I)R=DW>35]F[R:M M;HW:W="YXK2TM-  
/A[:=( \_=:2))5=&Y7I4@/A]2OCGX;?L3?XK6?7X@\_  
MM\$%^;76%^(\_Q"N\_ \$<^NW\$VIOQ6) X2.^GO;X6]H]D/)999W\H"=TCSM\*N.^\* MRJ0]#U KE-G"5^GWC(@1%\$&!#"-  
0Q#,"% (+#@D'J1P3R\*K26QD=BP5T.?W M3##&\_B\ M7?"6CW <0Z5H/B&\*T2V)D8B-S;VL<=X=I"2W%S [SD,[X9C7[=  
[1\_D+\_ (56 MFB0\*3M1@'8- >> \MM.TV^O;AU&OZ[X>@W6\_M[6J+-LNB@4N%VG#+G?"O]]?PI\O\_B=?"2[\+^\_  
\_AGXWL-)7Q-8>'?B#8^'K M>\USPS;[>XN].FT?Q/J=L\B7)!\$RRW%N(!O5IU;SJG^OGU\_\*\$2]F[/9.RZZ\_M+1?@D5?  
%O[\$WP5\;\_M'>\_%\_VIMX\_B7>P>Y!:(7))\*\_7V+\_B, \$(%>3:-K2%5!8C@L0H53R9?+B92\_Q\IIMK#@R\*Y7\*MY-  
\%OBWH7QI\!3\1/"4%W#H M6K3:A (M0VFZ6>TE\H)&T:Q+MSN+[HSG(48QE@WY.([Z=W?MYGG[4'I]W  
MPH:\_P##.G>!?B\NLSZ#H>K/KUA%H6JRZ7.MXUN]LAE>.\*\_A;RHY-RK%\$!1\*\_MH()3]W7T'X4T#3O!WAS1\_#.F"5=  
(T32[;2M.6>5Y[A+&V@CAMUDG?+RND;.\*\_M9) 9'P6D9W+,?+\_C9\&/\SLN=4L](V:5HUI-J?B'Q#XBUN\_MLM.T31-/T]  
(HH+DW%[=E;AC?6XMX\$W.ZE'<\_ /NA\_MK/#XK\Z!8O@A\2/@C  
MIOQ%UFQT3P9XC\87'A&^TV]U/5J]XLM.TK4X\#WB/5KO0KWJ UO\*-3AMR7( M1H+=PP\_8O=^K\_)]\_:\_9^>^?[\_3\_-  
M2^%GQ,2JN?JN;AH^I7D6E7"6-^M MSHFJ0:M;".XEM.R+^\*K?PCX3U[3-%&]SI7B35+L/%86^G&]%)C?  
JMY/&3;3WUC9S- M"R>PM9B\*.;T;6= N\*Y)>7WGTU\7OAOX6^?PX\7\_# #Q?'>W'ACQMI-QHVL  
MKIUQ':W.=KV/PM^&4 M=W: ^%.[XN]0C\_M;58[O4'FU"4S3123V]K91>1&S;85%L)5C \$DTK9D/:\_#+Q

MKJGC\_0/[7U+X>>./AM)YDT;Z+XUM]'@U"8\*2%F:71M4U6U"N0=[0M/#G/DS2 MQX=O-/CG^T1X<^!WNH6FFM?  
RHD MGB/6\_#UO-%#';W):59@)(U61=H4ELJMI\*T>W70T]G#K\|\ @^TL74Q< 284 M1F-3O.U0Z;BV\_!O]B/X\*?  
OXJ>+ C3X\$LM6B\9^-X=1 MM=2CKZ%\+\_C+J\_P 0 MM:U+2;CX- %CP!96\$2;?  
\$\_C>S\\$\_QZ=>R@/@\5GX:\:^(KQ&7#)^(8]I(&<" MO<+W5;#2M-O]2OYH=.L-/L[N[NY;L,  
(;.VM8[B1KJ8'RBL:I97+MNV/L"1P-+ ';\@ \*P P\*]8N\_VZ;J[MI?%\_A+]G MCXR^,O@CIXU&]U7XIZ79^&4MIK\*QO'M)]2T?  
2;GQ'%?W>CVQ7[6;]XE:ZL=L MPMK5F\*I]N?#OQ[H'Q'\%^&\_'7A>\74?#7BC1AK>D7J1>4TU@ BJTD:SW\*1RR  
MEPZ(L\JJ@\*B24;96;J5)QC&>T4HI7NK))?DBX4XPOW\_P#!/S3C M\_P""+ [%%C/:A#I?  
Q&6]L=0T[5+65O&D+E;C2ITN;,MNT0F1\$>-0^M(ZCY MG#\$M7W]X\_P#@QV\_ (H>  
KKX=^/?"UEXI\)\WEBEC\_ '#POX% ^)WPI^\$NLV.O2^)\_ B[=:[!X6ET\_3 MX[S2XSX=TF35M1&HW'VR)H-D,\$S\*2@\_1=V&  
W&+QA\9=\*\$\$\_3X9\_#'#6;+5Y M=>^\*U\_KEEX<:SMH\$M4\_X1\_1[W5=0::22\D8HB6T9C(V;HI"Q'0T\_:36BV6VO  
MR7Y\$N#N[6M=VU\V?F3?\_ /!\$G]GJ?5KR]\\*\_ \$/XO^!K\*]69UTW1-5MH+\*VCN M'9\_L^"&O6WC3^SM<^)'BZQ;9  
M9:GX^OH;ZTL&642K=);RV NS.D@#!S>OSUP\_,?U!BA\*D-D](9'9=^Z+=([G M :3A@68#+%!"!DG!Z"M!HU;DY! ^4\';  
[A3E,CL2IZ#K1[2?]-%>SA\_GIU^XY M34O"VG:[HM]H.L6-E?Z-J.GS.;>Z3)"ITNZLYPP;)K7'EO&H8"\$L&95CB9B7  
M4LWY/\_\$\_C\_@B\_ ^S!XV\67WBCPUJ7C?X9R:OW]?<+1114EA1110\_5!\$S^+%M\;(N'PG\0WC\7%-%(LI)-  
"UN&>W:34=4L(@TX+ M"59E9BQ.& XKD?@U%? \A']N?PU97/Q57]I&7QA\+J9TZ7QW;V.F0W'PULM+  
M@BDMM/O+W2-6NX)\$UJ[C>\_,.Z2F<&-T9'RS?I[X^ ^#PS^\*\*60\?>\$M+ \3R:9 M#?0Z;<:I%]HGL\$U""XMKD6I6R@A  
5\*KM-?P3\#/A-\.+BZO? \_ M@3P[X9U&\_BM[>]U/2=,M+/4+NUM+MKRWMI[J"]>\*.V,>>)7A\_5Y&<;Z#)PE M?I]YZ-  
M&O".EV^B>&=,M]\$T>V:[>+3K"\*&.UWWDIFE9D:) MV+\*S\$(=P(7& >>:#5;'YY?MJR3>%/BS^R;\4\_\$K3W\_PJ\ ?  
%2\B\7V;?;-). M6\_ \ %MA>>' -#UBZL07L)8=(U[5[. GO;ZUF5#8Q30F\_1G//?% O' \_@WXB? MJR^\$OP\]0Z%XY^)?Q.\:?  
#6Q^&VB^\$]375+B: M\_%-OMUM9;,S0:+:Z']EO+ MD;/M:DH%0&19'\* IKK\_A'0?  
\$^D:AH6N6%OJ.E:K:2V5\_97=O;74\$\,L3Q@^7 M=03QQ2Q.PN()(EC:.XCBD'W M>4>!?  
V7\_@1\,J3EUOP%\=".\:S))%+'J=E M\$]S=V;PAO+ -@VIO?1V85G>3;!&@+R/D;3M\_9.\$KJ]/O/5?#-M+#H>AP7%XU\_/  
M:Z;91M>H03(PM8DD\PL/F#, "W(W8QNYKX; ;P:5;O]E6-"%,G[5OPK@+F!9%  
MPJY>S@,&1@D3\*=DKJ%)..N./T\$@MX[=0D0VKQD \* Q\_P6(" @GJ0@5<]% P M\*YWQ)X+\, ^+CHY\1:5;:H= UO3?  
\$6CFY19/L&LZ5.UQ9WT&00LT;NRD\Y1B! MM/S4&JV-  
%Y8D'F0\*%=G=7=8XPS[F.YF<1[RY/S%@1DC+:Q\*,8)PV[D@G/Y#C\_.:X#Q[( \\_AS\4+?3K3X@^%-)\76NDZA/J>F6^N  
M6L5]%8W=S;?997MEF1O\*#0Y&%Z9(!V\_+0!X9"=O-,U?5I=2\_:\$]1MK>QO-,M[G\$T<< MUA:C[-9F16+7-G;EH;(E66  
K"J\* M&W2\*"&UB9MQ2UMXHTMX\$ 5(XE1\$541548H\_+?)MKPUKGBQ]K3]B#0?#/BB MZ%ZQJ.I\_&A;7Q186-  
M>WNE&3X9ZS:QRC3KF2TCN3-<7,[H7D(DDCA\*G:&#\ MUXN^'/C\_ ,\_ME\_L>2>-?C/KGQ-74]3^,\*:?#K'@K3=  
(ATYG^'%[;EO,M+J\ M,!FN(Y/\*#QC#'\_ 7(Q7ZI:QX%\\*:]KNA>)M7T2PU#7\_#\$MW-X?U6\M+: [O-(> M^L]JRNOL\$MU#.,;  
<30W