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

Form 10-Q

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

For the quarterly period ended June 30, 2017

Or

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

For the transition period from __________ to __________.

Commission file number: 000-50865

MannKind Corporation
(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**13-3607736** **(I.R.S. Employer Identification No.)**
25134 Rye Canyon Loop Suite 300 **Valencia, California** **(Address of principal executive offices)**	**91355** **(Zip Code)**

(661) 775-5300
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☐
		Emerging growth company	☐

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

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

As of August 1, 2017, there were 104,682,717 shares of the registrant's common stock, $0.01 par value per share, outstanding.

MANNKIND CORPORATION

Form 10-Q

For the Quarterly Period Ended June 30, 2017

TABLE OF CONTENTS

PART 1: FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS
MANNKIND CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(In thousands, except par value and share data)

	June 30, 2017	December 31, 2016
ASSETS		
Current assets:		
Cash and cash equivalents	$ 43,384	$ 22,895
Accounts receivable, net	1,312	302
Receivable from Sanofi	—	30,557
Inventory	3,172	2,331
Asset held for sale	—	16,730
Deferred costs from commercial product sales	500	309
Prepaid expenses and other current assets	2,563	4,364
Total current assets	50,931	77,488
Property and equipment—net	27,920	28,927
Other assets	523	648
Total assets	$ 79,374	$ 107,063
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 6,541	$ 3,263
Accrued expenses and other current liabilities	9,076	7,937
Facility financing obligation	57,484	71,339
Deferred revenue—net	2,592	3,419
Deferred payments from collaboration—current	250	1,000
Recognized loss on purchase commitments—current	9,926	5,093
Total current liabilities	85,869	92,051
Note payable to principal stockholder	79,666	49,521
Accrued interest—note payable to principal stockholder	—	9,281
Senior convertible notes	27,649	27,635
Recognized loss on purchase commitments—long term	99,001	95,942
Deferred payments from collaboration—long term	625	—
Warrant liability	605	7,381
Milestone rights liability and other liabilities	7,202	8,845
Total liabilities	300,617	290,656
Commitments and contingencies (Note 11)		
Stockholders' deficit:		
Undesignated preferred stock, $0.01 par value—10,000,000 shares authorized; no shares issued or outstanding at June 30, 2017 and December 31, 2016	—	—
Common stock, $0.01 par value—140,000,000 shares authorized, 104,615,982 and 95,680,831 shares issued and outstanding at June 30, 2017 and December 31, 2016, respectively	1,046	957
Additional paid-in capital	2,566,960	2,553,039
Accumulated other comprehensive loss	(21)	(24)
Accumulated deficit	(2,789,228)	(2,737,565)
Total stockholders' deficit	(221,243)	(183,593)
Total liabilities and stockholders' deficit	$ 79,374	$ 107,063

See notes to condensed consolidated financial statements.

MANNKIND CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except per share data)

	Three Months Ended June 30, 2017	Three Months Ended June 30, 2016	Six Months Ended June 30, 2017	Six Months Ended June 30, 2016
Revenues:				
Net revenue—commercial product sales	$ 1,548	$ —	$ 2,745	$ —
Net revenue—collaboration	63	—	125	—
Revenue—other	552	—	2,302	—
Total revenues	2,163	—	5,172	—
Expenses:				
Cost of goods sold	5,086	4,045	7,635	9,213
Research and development	3,123	4,310	6,251	9,440
Selling, general and administrative	18,566	11,110	33,956	18,460
Property and equipment impairment	111	—	111	—
(Gain) loss on foreign currency translation	6,848	(341)	8,392	2,023
Total expenses	33,734	19,124	56,345	39,136
Loss from operations	(31,571)	(19,124)	(51,173)	(39,136)
Other income (expense):				
Change in fair value of warrant liability	147	(5,306)	6,776	(5,306)
Interest income	58	26	114	41
Interest expense on notes	(2,422)	(4,181)	(5,128)	(8,401)
Interest expense on note payable to principal stockholder	(721)	(721)	(1,435)	(1,443)
Loss on extinguishment of debt	(830)	—	(830)	—
Other income	—	(653)	13	(586)
Total other expense	(3,768)	(10,835)	(490)	(15,695)
Loss before benefit for income taxes	(35,339)	(29,959)	(51,663)	(54,831)
Income tax benefit	—	—	—	—
Net loss	$ (35,339)	$ (29,959)	$ (51,663)	$ (54,831)
Net loss per share—basic and diluted	$ (0.35)	$ (0.33)	$ (0.53)	$ (0.62)
Shares used to compute basic and diluted net loss per share	99,864	91,061	97,816	88,416

See notes to condensed consolidated financial statements.

MANNKIND CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(Unaudited)
(In thousands)

	Three Months Ended June 30, 2017	Three Months Ended June 30, 2016	Six Months Ended June 30, 2017	Six Months Ended June 30, 2016
Net loss	$ (35,339)	$ (29,959)	$ (51,663)	$ (54,831)
Other comprehensive loss:				
Cumulative translation gain (loss)	3	(2)	3	(1)
Comprehensive loss	$ (35,336)	$ (29,961)	$ (51,660)	$ (54,832)

See notes to condensed consolidated financial statements.

MANNKIND CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Six months ended June 30, 2017	Six months ended June 30, 2016
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (51,663)	$ (54,831)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation, amortization and accretion	1,787	2,058
Stock-based compensation expense	2,516	2,628
Loss on extinguishment of debt	830	—
Gain on disposal of property and equipment	(24)	—
Loss on foreign currency translation	8,392	2,023
Interest incurred through borrowings under Sanofi Loan Facility	—	2,604
Interest on note payable to principal stockholder	1,435	1,443
Warrant issuance cost	—	653
Change in fair value of warrant liability	(6,776)	5,306
Other, net	114	717
Changes in operating assets and liabilities:		
Accounts receivable, net	(1,010)	23
Receivable from Sanofi	30,557	—
Inventory	(841)	(2,866)
Deferred costs from commercial product sales	(191)	—
Prepaid expenses and other current assets	1,800	2,595
Other assets	125	(238)
Accounts payable	3,357	(12,532)
Accrued expenses and other current liabilities	(483)	2,663
Deferred payments from collaboration	(125)	9,379
Deferred revenue—net	(827)	—
Recognized loss on purchase commitments	(500)	(3,892)
Net cash used in operating activities	(11,527)	(42,267)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	—	(1,144)
Net proceeds from sale of asset held for sale	16,651	—
Proceeds from sale of property and equipment	24	17
Net cash provided by (used in) investing activities	16,675	(1,127)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock	—	734
Proceeds from direct placement	—	50,000
Issuance cost associated with direct placement	—	(2,678)
Borrowings on note payable to principal stockholder	19,429	—
Principal payments on facility financing obligation	(4,000)	—
Payment of employment taxes related to vested restricted stock units	(88)	(3)
Net cash provided by financing activities	15,341	48,053
NET INCREASE IN CASH AND CASH EQUIVALENTS	20,489	4,659
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	22,895	59,074
CASH AND CASH EQUIVALENTS, END OF PERIOD	$ 43,384	$ 63,733
SUPPLEMENTAL CASH FLOWS DISCLOSURES:		
Interest paid in cash, net of amounts capitalized	$ 4,141	$ 4,608
NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Repayment of facility financing obligation through issuance of common stock	$ 11,000	$ —
Capitalization of interest on note payable to principal stockholder	$ 10,716	$ —
Reclassification of deferred payments from collaboration to Sanofi Loan Facility and loss share obligation	$ —	$ 5,003
Reclassification of deferred costs from loss on purchase commitment to deferred costs from collaboration	$ —	$ 9,202

See notes to condensed consolidated financial statements.

MANNKIND CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Description of Business and Significant Accounting Policies

The accompanying unaudited condensed consolidated financial statements of MannKind Corporation and its subsidiaries ("MannKind," the "Company," "we" or "us"), have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (the "SEC"). Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. The information included in this quarterly report on Form 10-Q should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's annual report on Form 10-K for the fiscal year ended December 31, 2016 filed with the SEC on March 16, 2017 (the "Annual Report").

In the opinion of management, all adjustments, consisting only of normal, recurring adjustments, considered necessary for a fair presentation of the results of these interim periods have been included. The results of operations for the three and six months ended June 30, 2017 may not be indicative of the results that may be expected for the full year.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates or assumptions. Management considers many factors in selecting appropriate financial accounting policies, and in developing the estimates and assumptions that are used in the preparation of the financial statements. Management must apply significant judgment in this process. The more significant estimates reflected in these accompanying condensed consolidated financial statements include revenue recognition, assessing long-lived assets and deferred product costs for impairment, accrued expenses, inventory recoverability, valuation of the facility financing obligation, loss on purchase commitments, warrant liability, milestone rights, stock-based compensation and the determination of the provision for income taxes and corresponding deferred tax assets and liabilities and any valuation allowance recorded against net deferred tax assets. The estimation process often may yield a range of potentially reasonable estimates of the ultimate future outcomes and management must select an amount that falls within that range of reasonable estimates. This process may result in actual results differing materially from those estimated amounts used in the preparation of the financial statements.

Business — MannKind is a biopharmaceutical company focused on the discovery, development and commercialization of therapeutic products for diseases such as diabetes. The Company's only approved product, Afrezza (insulin human [rDNA origin]) inhalation powder, is a rapid-acting inhaled insulin that was approved by the U.S. Food and Drug Administration (the "FDA") on June 27, 2014 to improve glycemic control in adult patients with diabetes.

On August 11, 2014, the Company executed a license and collaboration agreement (the "Sanofi License Agreement") with Sanofi-Aventis Deutschland GmbH, which subsequently assigned its rights and obligations under the agreement to Sanofi-Aventis U.S. LLC ("Sanofi"), pursuant to which Sanofi was responsible for global commercial, regulatory and development activities for Afrezza.

On January 4, 2016, the Company received written notification from Sanofi of its election to terminate in its entirety the Sanofi License Agreement. The effective date of termination was April 4, 2016, which was when the Company assumed responsibility for worldwide development and commercialization of Afrezza. Under the terms of the transition agreement, Sanofi continued to fulfill orders for Afrezza in the United States until the Company began distributing MannKind-branded Afrezza product to major wholesalers in late July 2016. The Company began recognizing commercial product sales revenue when MannKind-branded Afrezza was dispensed from pharmacies to patients in August 2016.

On November 9, 2016, the Company entered into a settlement agreement with Sanofi (the "Settlement Agreement"). Under the terms of the Settlement Agreement, the promissory note between the Company and Aventisub LLC ("Aventisub"), a Sanofi affiliate, was terminated with Aventisub agreeing to fully forgive the outstanding loan balance of $72.0 million. Sanofi also purchased $10.2 million of insulin from the Company in December 2016 under an existing insulin put option and made a cash payment of $30.6 million to the Company in early January 2017 as acceleration and in replacement of all other payments that Sanofi would otherwise have been required to make in the future pursuant to the insulin put option, without the Company being required to deliver any insulin for such payment. The Company was also relieved of its obligation to pay Sanofi $0.5 million in previously uncharged costs pursuant to the Sanofi License Agreement. The Company and Sanofi also agreed to a general release of potential claims against each other.

During their initial transition of the commercial responsibilities from Sanofi in the second half of 2016, the Company utilized a contract sales organization to promote Afrezza while the Company focused its internal resources on establishing a channel strategy, entering into distribution agreements and developing co-pay assistance programs, a voucher program, data agreements and payor relationships. In early 2017, the Company recruited its own sales force to promote Afrezza to endocrinologists and certain high-prescribing primary care physicians. In the future, the Company may seek to supplement its sales force through a co-promotion arrangement – an agreement with a third party that has an underutilized primary care sales force, which can be used to promote Afrezza to greater number of primary care physicians. The Company's current strategy for future commercialization of Afrezza outside of the United States, subject to receipt of the necessary foreign regulatory approvals, is to seek and establish partnerships in foreign jurisdictions where there are appropriate commercial opportunities.

The Company has never been profitable or generated positive cash flow from cumulative operations to date. Historically, the Company has reported negative cash flow from operations other than for the nine months ended September 30, 2014, for the year ended December 31, 2014, and for the three months ended March 31, 2015 and 2017 as a result of non-recurring payments from Sanofi. As of June 30, 2017, the Company had an accumulated deficit of $2.8 billion.

At June 30, 2017, the Company's capital resources consisted of cash and cash equivalents of $43.4 million. The Company expects to continue to incur significant expenditures to support commercial manufacturing and sales and marketing of Afrezza and the development of product candidates in the Company's pipeline. The facility agreement (the "Facility Agreement") with Deerfield Private Design Fund II, L.P. ("Deerfield Private Design Fund") and Deerfield Private Design International II, L.P. (collectively, "Deerfield") that resulted in the issuance of 9.75% Senior Convertible Notes due 2019 ("2019 notes") and the First Amendment to Facility Agreement and Registration Rights Agreement (the "First Amendment") that resulted in the issuance of an additional tranche of 8.75% Senior Convertible Notes due 2019 ("Tranche B notes") (see Note 6 — Borrowings) requires the Company to maintain at least $25.0 million in cash and cash equivalents or available borrowings under the loan arrangement, dated as of October 2, 2007, between the Company and The Mann Group LLC ("The Mann Group") (as amended, restated, or otherwise modified as of the date hereof, "The Mann Group Loan Arrangement"), as of the last day of each fiscal quarter. On June 29, 2017, the Company entered into an Exchange and Third Amendment to Facility Agreement (the "Third Amendment") with Deerfield which, among other things, amended such financial covenant to provide that, if certain conditions are met, then the obligation to maintain at least $25.0 million in cash as of the end of each quarter will be reduced to $10.0 million as of August 31, 2017, September 30, 2017, October 31, 2017 and December 31, 2017 (see Note 6 — Borrowings).

On June 27, 2017, the Company borrowed the remaining $30.1 million principal amount available under The Mann Group Loan Arrangement, of which $19.4 million was received in cash and the remaining amount of $10.7 million representing accrued and unpaid interest as of June 30, 2017 was capitalized into borrowed principal (see Note 5 — Related-Party Arrangements). As a result, no additional funds remain available for borrowing under The Mann Group Loan Arrangement. On March 1, 2017, following stockholder approval, the Company's board of directors approved a reverse stock split ratio of 1-for-5. On March 1, 2017, the Company filed with the Secretary of State of the State of Delaware a Certificate of Amendment of the Company's Amended and Restated Certificate of Incorporation (the "Charter Amendment") to effect the 1-for-5 reverse stock split of the Company's outstanding common stock (the "Reverse Stock Split") and to reduce the authorized number of shares of the Company's common stock from 700,000,000 to 140,000,000 shares. The Company's common stock began trading on the NASDAQ Global Market on a split-adjusted basis when the market opened on March 3, 2017. As a result, all common stock share amounts included in these condensed consolidated financial statements have been retroactively reduced by a factor of five, and all common stock per share amounts have been increased by a factor of five, with the exception of the Company's common stock par value.

On April 18, 2017, the Company entered into an Exchange Agreement with Deerfield resulting in the cash repayment of $4.0 million under the Tranche B notes and the conversion of $1.0 million and $5.0 million of the Tranche B notes and the 2019 notes, respectively, into shares of common stock. On June 29, 2017, the Company entered into the Third Amendment with Deerfield resulting in the conversion of $5.0 million of the 2019 notes into shares of common stock and deferment of the payment of $10.0 million of principal amount of the 2019 notes due July 18, 2017 to August 31, 2017, with an option for the Company to elect to further defer the payment of such principal amount from August 31, 2017 to October 31, 2017 upon the Company's delivery on August 31, 2017 of a written certification to Deerfield that certain conditions have been met (see Note 6 — Borrowings).

The Company will need to raise additional capital, whether through a sale of equity or debt securities, a strategic business collaboration with another company, the establishment of other funding facilities, licensing arrangements, asset sales or other means, in order to continue the development and commercialization of Afrezza and other product candidates and to support its other ongoing activities. The Company cannot provide assurances that such additional capital will be available on acceptable terms or at all. These factors raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Reclassifications — Certain amounts from previous periods have been reclassified to conform to the 2017 presentation. Specifically, on the condensed consolidated statements of operations, product manufacturing has been renamed to costs of goods sold. In addition, the Company reclassified (gain) loss on foreign currency translation from the previously reported classification of product manufacturing to (gain) loss on foreign currency translation and also reclassified change in fair value of warrant liability from the previously reported classification of other income to change in fair value of warrant liability in the accompanying condensed consolidated statements of operations.

Correction of an Immaterial Error — Subsequent to the issuance of the Company's financial statements for the year ended December 31, 2016 on Form 10-K and prior to the filing of financial statements for the first quarter of 2017 on Form 10-Q, the Company determined that the common stock par value as of December 31, 2016 should not have been adjusted for the impact of the reverse stock split on March 3, 2017 as described above. Management evaluated the materiality of the errors from a quantitative and qualitative perspective and concluded that this adjustment was not material to the Company's financial position as of March 31, 2017 or December 31, 2016 and that there was no impact to the results of operations for any periods presented. Since the revisions were not material, no amendments to previously filed reports were required. The Company has elected to revise the historical consolidated financial information presented herein to reflect the correction of this error for the prior period presented and to conform to the current year presentation.

(In thousands)	2016 as Previously Presented	Adjustments	2016 as Adjusted
Common stock	$ 4,784	$ (3,827)	$ 957
Additional paid-in capital	$2,549,212	$ 3,827	$2,553,039

Revenue Recognition — Revenue is recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence that an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured. When the accounting requirements for revenue recognition are not met, the Company defers the recognition of revenue by recording deferred revenue on the condensed consolidated balance sheets until such time that all criteria are met. To date, the Company has had revenue from commercial sales of Afrezza, collaborations, and from the sale of intellectual property and bulk insulin sales, which are described more fully below.

Revenue Recognition – Net Revenue – Commercial Product Sales – Between July 1, 2016 and December 15, 2016, the Company sold Afrezza to Integrated Commercialization Solutions Direct (ICS) and title and risk of loss transferred to ICS upon shipment. After December 15, 2016, ICS became a third party logistics provider and stopped taking title and risk of loss upon shipment of Afrezza to ICS. The Company sells Afrezza in the United States to wholesale pharmaceutical distributors through ICS, and ultimately to retail pharmacies, which are collectively referred to as "customers". The Company provides the right of return to its wholesale distributors and, through them, to its retail pharmacy customers for unopened product for a period beginning six months prior to and ending twelve months after its expiration date. Once the product has been prescribed and dispensed to the patient, any right of return ceases to exist.

Given the Company's limited sales history for Afrezza, the Company cannot reliably estimate expected returns of the product at the time of shipment into the distribution channel. Accordingly, the Company defers recognition of revenue on Afrezza product shipments until the right of return no longer exists, which occurs at the earlier of the time Afrezza is dispensed from pharmacies to patients or expiration of the right of return. Deferred revenue is presented net of deferred product sales discounts which are further described in *Gross-to-Net Adjustments* below. The Company recognizes revenue based on Afrezza patient prescriptions dispensed as estimated by syndicated data provided by a third party. The Company also analyzes additional data points to ensure that such third-party data is reasonable, including data related to inventory movements within the channel and ongoing prescription demand.

For the three and six months ended June 30, 2017, net revenue from commercial product sales consisted of $1.5 million and $2.7 million of net sales of Afrezza dispensed to patients, respectively. As of June 30, 2017 and December 31, 2016, the ending balances for net deferred revenue, were $2.6 million and $3.4 million, on its condensed consolidated balance sheets of which $1.0 million and $0.8 million are gross-to-net revenue adjustments, respectively. The difference, as compared with December 31, 2016, represented deferred revenue from bulk insulin sales of approximately $1.7 million, which is described more fully under the heading *Revenue Recognition – Revenue – Other* below. For the three and six months ended June 30, 2017, shipments to three wholesale distributors represented 93% of total shipments.

Gross-to-net Adjustments – Estimated gross-to-net adjustments for Afrezza include wholesaler distribution fees, prompt pay discounts, estimated rebates and chargebacks and patient discount and co-pay assistance programs, and are based on estimated amounts owed or to be claimed on the related sales. These estimates take into consideration the terms of the Company's agreements with its customers and the levels of inventory within the distribution and retail channels that may result in future rebates or discounts taken. In certain cases, such as patient support programs, the Company recognizes the cost of patient discounts as a reduction of revenue based on estimated utilization. If actual future results vary, the Company may need to adjust these estimates, which could have an effect on product revenue in the period of adjustment. The Company records product sales deductions in the condensed consolidated statements of operations at the time product revenue is recognized. Gross-to-net adjustments were approximately $1.1 million and $1.5 million, which represents 41% and 36% of gross revenue from product sales for the three and six months ended June 30, 2017, respectively. Gross-to-net items that are unpaid at the end of each period are presented in accrued expense and other current liabilities.

Wholesaler Distribution Fees – The Company pays distribution fees to certain wholesale distributors based on contractually determined rates. The Company accrues the distribution fees on shipment to the respective wholesale distributors and recognizes the distribution fees as a reduction of revenue in the same period the related revenue is recognized.

Prompt Pay Discounts – The Company offers cash discounts to its customers, generally 2% of the sales price, as an incentive for prompt payment. The Company accounts for cash discounts by reducing accounts receivable and deferred revenue by the prompt pay discount amount (at the time of shipment to the wholesale distributor). The Company recognizes the discount as a reduction of revenue in the same period the related revenue is recognized.

Rebates and Chargebacks – The Company participates in federal and state government-managed Medicare and Medicaid programs and, as such, is required to provide rebates under these programs. The Company continues to pursue participation in certain other qualifying federal and state government programs whereby discounts and rebates are provided to participating entities. Rebates provided through these other qualifying programs are included in the Medicaid and Medicare rebate accrual. Chargebacks are discounts that occur when contracted customers purchase directly from an intermediary wholesale purchaser. Contracted customers, which currently consist primarily of Federal government entities purchasing off the Federal Supply Schedule, generally purchase the product at its contracted price, plus a mark-up from the wholesaler. The wholesaler, in-turn, charges back to the Company the difference between the price initially paid by the wholesaler and the contracted price paid to the wholesaler by the customer.

The Company accounts for these rebates and chargebacks by establishing an accrual based on contractual discount rates, expected utilization under each contract and an estimate of the amount of inventory in the distribution channel that will become subject to such rebates and chargebacks based on historical payor data provided by a third-party vendor along with additional data including forecasted participation rates. From that data, as well as input received from the commercial team, an estimated participation rate for each program is determined and applied at the rate for those sales. Any new information regarding changes in the programs' regulations and guidelines or any changes in the Company's government price reporting calculations that would impact the amount of the rebates will also be taken into account in determining or modifying the appropriate reserve. The time period between the date the product is sold into the channel and the date such rebates may be paid can be up to approximately six to nine months. As such, continuous monitoring of these estimates will be performed on a periodic basis, and if necessary, adjusted to reflect new facts and circumstances. Rebates and chargebacks are recognized as a reduction of gross revenue in the period the related revenue is recognized.

Other Rebates and Discounts – The Company has entered into agreements with certain third-party payors and with pharmacy benefit managers that act as an intermediary with certain third-party payors in the fulfillment of prescriptions. Under these agreements, the Company has agreed to provide certain contracted discounts to ease access to reimbursement for Afrezza patients including, but not limited to, the removal of prior authorization or step edit requirements or modifying the reimbursement tier under the payor's formulary. The Company accounts for these charges by establishing an accrual based on the contracted discount rates and, with input received from management, estimated participation rates.

Patient Discount and Co-Pay Assistance Programs – The Company offers discount card programs to patients for Afrezza in which patients receive discounts on their prescriptions or a reduction in their co-pay amounts that are reimbursed by the Company. The Company estimates the total amount that will be redeemed based on levels of inventory in the distribution and retail channels and recognizes the discount as a reduction of gross revenue in the same period the related revenue is recognized.

Deferred Costs from Commercial Product Sales — Deferred costs from commercial product sales represents the cost of product (including labor, overhead and shipping costs to the third party logistics provider) shipped to wholesale distributors, but not dispensed by retail pharmacies to patients. If the Company estimates that inventory that has been shipped to wholesale distributors will be returned for credit because there is a risk of product expiry, deferred costs of commercial product sales is reduced and cost of goods sold is increased for the cost of such inventory.

Revenue Recognition – Net Revenue – Collaborations – The Company enters into collaborations under which the Company must perform certain obligations and receives periodic payments. The Company evaluates the collaborations under the multiple element revenue recognition accounting guidance. Revenue arrangements with multiple elements are divided into separate units of accounting if certain criteria are met, including whether the delivered elements have stand-alone value to the customer. When deliverables are separable, consideration received is allocated to the separate units of accounting based on the relative selling price of each deliverable and the appropriate revenue recognition principles are applied to each unit. The assessment of multiple element arrangements requires judgment in order to determine the appropriate units of accounting and the points in time that, or periods over which, revenue should be recognized. The terms of and the accounting for the Company's collaborations are described more fully in Note 7 — Collaboration Arrangements.

Revenue Recognition — Revenue — Other consists of revenue from bulk insulin sales and the sale of intellectual property to Shanghai Fosun Pharmaceutical Industrial Development Co. Ltd. ("Fosun"), which is accounted for under the multiple-deliverable revenue recognition guidance and more fully described in Note 8— Sale of Intellectual Property. Revenue from bulk insulin sales are recognized after delivery and customer acceptance of the bulk insulin. When the accounting requirements for revenue recognition of bulk insulin sales are not met, the Company defers recognition of revenue until such time that all criteria are met. The ending balance in deferred revenue related to bulk insulin sales was approximately $1.7 million as of December 31, 2016. There was no deferred revenue related to bulk insulin sales as of June 30, 2017.

Cost of Goods Sold — Cost of goods sold includes the costs related to Afrezza product dispensed by pharmacies to patients as well as under-absorbed labor and overhead and inventory write-offs, which are recorded as expenses in the period in which they are incurred, rather than as a portion of the inventory cost.

Accounts Receivable and Allowances — Accounts receivable are recorded at the invoiced amount and are not interest bearing. The Company maintains an allowance for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments. The Company makes ongoing assumptions relating to the collectability of its accounts receivable in its calculation of the allowance for doubtful accounts. If the Company estimates that inventory that has been shipped to wholesale distributors will be returned for credit because there is risk of product expiration, the Company reduces deferred revenue and increases the allowance for returns for such inventory. As of June 30, 2017, there was $0.2 million in allowance for returns. As of December 31, 2016, there was no allowance for returns. As of June 30, 2017 and December 31, 2016, there was no allowance for doubtful accounts. As of June 30, 2017 and December 31, 2016, the Company has three wholesale distributors representing approximately 93% and 95% of gross accounts receivable, respectively.

Inventories — Inventories are stated at the lower of cost or net realizable value. The Company determines the cost of inventory using the first-in, first-out, or FIFO, method. The Company capitalizes inventory costs associated with the Company's products based on management's judgment that future economic benefits are expected to be realized; otherwise, such costs are expensed as cost of goods sold. The Company periodically analyzes its inventory levels to identify inventory that may expire or has a cost basis in excess of its estimated net realizable value and writes down such inventories, as appropriate. In addition, the Company's products are subject to strict quality control and monitoring which the Company performs throughout the manufacturing process. If certain batches or units of product no longer meet quality specifications or may become obsolete or are forecasted to become obsolete due to expiration, the Company will record a charge to write down such unmarketable inventory to its estimated net realizable value.

Recognized Loss on Purchase Commitments — The Company assesses whether losses on long term purchase commitments should be accrued. Losses that are expected to arise from firm, non-cancellable, commitments for the future purchases are recognized unless recoverable. When making the assessment, the Company also considers whether it is able to renegotiate with its vendors. The recognized loss on purchase commitments is reduced as inventory items are purchased. No new contracts were identified in 2017 or 2016 that required a new loss on purchase commitment accrual.

Fair Value of Financial Instruments — The carrying amounts reported in the accompanying condensed consolidated financial statements for cash, accounts receivable, accounts payable and accrued expenses and other current liabilities (excluding the milestone rights liability) approximate their fair value due to their relatively short maturities. The fair value of the cash equivalents, note payable to principal stockholder (also referred to as The Mann Group Loan Arrangement), senior convertible notes, the facility financing obligation, the milestone rights liability and the warrant liability are disclosed in Note 9 — Fair Value of Financial Instruments.

Stock-Based Compensation — Share-based payments to employees, including grants of stock options, restricted stock units, performance-based awards and the compensatory elements of employee stock purchase plans, are recognized in the condensed consolidated statements of operations based upon the fair value of the awards at the grant date, subject to an estimated forfeiture rate. The Company uses the Black-Scholes option valuation model to estimate the grant date fair value of employee stock options and the compensatory elements of employee stock purchase plans. Restricted stock units are valued based on the market price on the grant date. The Company evaluates stock awards with performance conditions as to the probability that the performance conditions will be met and estimates the date at which the performance conditions will be met in order to properly recognize stock-based compensation expense over the requisite service period.

Warrants — The Company has issued warrants to purchase shares of its common stock. The Company accounts for its warrants as either equity or liabilities based upon the characteristics and provisions of each instrument and evaluation of sufficient authorized shares available to satisfy the obligations. Warrants classified as derivative liabilities are recorded on the Company's condensed consolidated balance sheets at their fair value on the date of issuance and are revalued at each subsequent balance sheet date, with fair value changes recognized in the condensed consolidated statements of operations. The Company estimates the fair value of its derivative liabilities using a third party valuation analysis that utilizes a Monte Carlo pricing valuation model and assumptions that are based on the individual characteristics of the warrants or instruments on the valuation date, as well as expected volatility, expected life, yield, and risk-free interest rate. Warrants classified as equity are recorded within additional paid-in capital at the issuance date and are not re-measured in subsequent periods, unless the underlying assumptions change to trigger liability accounting.

Net Loss Per Share of Common Stock — Basic net loss per share excludes dilution for potentially dilutive securities and is computed by dividing net loss by the weighted average number of common shares outstanding during the period. Diluted net loss per share reflects the potential dilution under the treasury method that could occur if securities or other contracts to issue common stock were exercised or converted into common stock. For periods where the Company has presented a net loss, potentially dilutive securities are excluded from the computation of diluted net loss per share as they would be anti-dilutive.

The computation of basic and diluted net loss per share for the three and six months ended June 30, 2017 and 2016 excludes the common stock equivalents of the following potentially dilutive securities because their inclusion would be anti-dilutive:

	Six Months Ended June 30,	
	2017	**2016**
Restricted stock units	1,193,100	910,751
Senior convertible notes	814,561	814,561
Warrants	9,740,597	9,740,597
Stock options	7,972,175	5,643,966
	19,720,433	17,109,875

Recently Issued Accounting Standards – From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB") or other standard setting bodies that are adopted by the Company as of the specified effective date. Unless otherwise discussed, the Company believes that the impact of recently issued standards that are not yet effective will not have a material impact on the Company's condensed consolidated financial position or results of operations upon adoption.

In May 2014, the FASB issued Accounting Standards Update (ASU) No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, which requires an entity to recognize the amount of revenue when promised goods or services to customers. The standard requires a company to recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration it expects to be entitled to receive in exchange for those goods or services. In August 2015, the FASB issued ASU 2015-14, *Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date*, which delayed the effective date of the new standard from January 1, 2017 to January 1, 2018. The FASB also agreed to allow entities to choose to adopt the standard as of the original effective date. In March 2016, the FASB issued additional ASU's which clarified certain aspects of the new guidance.

The Company will adopt the new guidance for the year beginning January 1, 2018. The Company has the option to either apply the new guidance retrospectively for all prior reporting periods presented (full retrospective) or retrospectively with the cumulative effect of initially applying the guidance recognized at the date of initial application (modified retrospective). The Company currently anticipates it will apply the new guidance using the modified retrospective approach with the cumulative effect of initial application recognized as of January 1, 2018. The Company plans to continue analyzing the potential impacts of the application throughout 2017 and, depending on factors that may impact the results, could elect to apply the new guidance on a full retrospective basis.

Currently, for commercial sales of Afrezza, the Company has limited sales and returns history, and as such is unable to reliably estimate expected returns of the product at the time of shipment into the distribution channel. Accordingly, the Company defers recognition of revenue on Afrezza product shipments until the right of return no longer exists, which occurs at the earliest of the time Afrezza is dispensed from pharmacies to patients or expiration of the right of return. The Company recognizes revenue based on Afrezza patient prescriptions dispensed, a sell-through model, as estimated by syndicated data provided by a third party. The Company also analyzes additional data points to ensure that such third-party data is reasonable, including data related to inventory movements within the channel and ongoing prescription demand.

Upon adoption of the new guidance, the Company expects that it will move from its current sell-through model to a sell-to model for revenue related to commercial sales of Afrezza and will record revenue at the time title and risk of loss passes to its distributors (generally at shipment or delivery to the distributors) along with an estimate of potential returns as variable consideration. The Company also anticipates that its ability to estimate potential returns will improve with an additional six months of sales history that it will have obtained by January 1, 2018.

Additionally, the Company has historically entered into collaborative agreements with third-parties under which periodic payments have been received. Revenue recognition for certain payments received have been deferred until the price is fixed and determinable. Further, revenue for certain payments to be received in the future has been prohibited from recognition until received. The Company expects that some of these amounts will be considered variable consideration and may be able to be recognized earlier under the new guidance.

The financial impact upon the adoption will be dependent upon a number of factors, including the amount of revenue that has been deferred under the sell-through model for Afrezza, the amount of the revenue deferred under collaborative arrangements and the Company's estimate of variable consideration at the date of adoption. At this time, the Company has not completed its evaluation of the inputs, assumptions and methodologies that will be used to recognize revenue related to variable consideration under the new guidance.

In January 2016, the FASB issued ASU No. 2016-01, *Financial Instruments — Overall (Subtopic 825-10)*: *Recognition and Measurement of Financial Assets and Financial Liabilities*. The update is intended to improve the recognition and measurement of financial instruments. The update is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. The Company is evaluating the impact the adoption of ASU No. 2016-01 will have on its condensed consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 84*2). The new standard requires that all lessees recognize the assets and liabilities that arise from operating leases on the balance sheet and disclose qualitative and quantitative information about its leasing arrangements. A lessee should recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The new standard will be effective on January 1, 2019. The Company is evaluating the impact the adoption of ASU No. 2016-02 will have on its condensed consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*. The new standard seeks to reduce diversity in practice related to the classification of certain transactions in the statement of cash flows. For public business entities, the amendments in this standard are effective for annual periods beginning after December 15, 2017, and interim periods within those annual periods. The Company is evaluating the impact the adoption will have on its condensed consolidated financial statements.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash.* This ASU requires that the reconciliation of the beginning-of-period and end-of-period amounts shown in the statement of cash flows include cash and restricted cash equivalents. ASU 2016-08 is effective for fiscal years beginning after December 15, 2018, including interim periods within those periods, using a retrospective transition method to each period presented. The Company has evaluated the effect that this guidance will have on its condensed consolidated financial statements and related disclosures and has determined it will not result in a material impact.

In January 2017, the FASB issued ASU No. 2017-01, *Business Combinations (Topic 805): Clarifying the Definition of a Business.* The ASU clarifies the definition of a business with the objective of adding guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. ASU 2017-01 is effective for fiscal years beginning after December 15, 2017, including interim periods within those periods. Early adoption is permitted. The Company early adopted ASU 2017-01 on April 1, 2017 and has determined it will not result in a material impact on the Company's condensed consolidated financial statements and related disclosures.

In May 2017, the FASB issued ASU No. 2017-09, *Compensation – Stock Compensation (Topic 718): Scope of Modification Accounting.* This ASU reduces both diversity in practice and cost and complexity when applying *ASC 718* to a change in the terms or conditions of a share-based payment award. *ASU 2017-09* is effective for fiscal years beginning after December 15, 2017, including interim periods within those periods. Early adoption is permitted. The Company is evaluating the impact the adoption will have on its condensed consolidated financial statements.

In July 2017, the FASB issued ASU No. 2017-11, *Earnings per Share (Topic 260) and Derivatives and Hedging (Topic 815): Accounting for Certain Financial Instruments with Down Round Provisions.* This ASU addresses the complexity and cost of accounting for certain financial instruments with down round features that require fair value measurement of the entire instrument or conversion option and requires entities that present earnings per share in accordance with Topic 260 to recognize the effect of the down round feature when it is triggered. ASU 2017-11 is effective for fiscal years beginning after December 15, 2018, including interim periods within those periods. The Company is evaluating the impact the adoption will have on its condensed consolidated financial statements.

2. Inventory

Inventory consists of the following (in thousands):

	June 30, 2017	December 31, 2016
Raw materials	$ 431	$ —
Work-in-process	2,391	2,120
Finished goods	350	211
Total inventory	$ 3,172	$ 2,331

Work-in-process and finished goods as of June 30, 2017 and December 31, 2016 include conversion costs but not materials cost because the materials used in its production were previously written off. During the three and six months ended June 30, 2017, the Company recorded a write-down of inventory of approximately $1.5 million for inventory that was forecasted to become obsolete due to expiration which is recorded in costs of goods sold in the accompanying condensed consolidated statements of operations.

3. Property and Equipment

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

	Estimated Useful Life (Years)	June 30, 2017	December 31, 2016
Land	—	$ 875	$ 875
Buildings	39-40	17,389	17,389
Building improvements	5-40	34,957	34,957
Machinery and equipment	3-15	62,992	62,992
Furniture, fixtures and office equipment	5-10	3,556	3,556
Computer equipment and software	3	8,531	8,531
Construction in progress	—	91	202
		128,391	128,502
Less accumulated depreciation		(100,471)	(99,575)
Total property and equipment, net		$ 27,920	$ 28,927

Depreciation expense related to property and equipment for the three and six months ended June 30, 2017 and 2016 was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Depreciation expense	$ 450	$ 589	$ 896	$ 1,179

Management evaluated certain equipment that was not yet in service and determined that since the equipment was not being used and there was no current estimated date for installation and therefore no future cash flows associated with the equipment, a write-down of construction in progress of approximately $0.1 million was recorded during the three and six months ended June 30, 2017. The Company did not record any impairment charges for the three and six months ended June 30, 2016.

On January 6, 2017, the Company and Rexford Industrial Realty, L.P. ("Rexford") entered into an Agreement of Purchase and Sale and Joint Escrow Instructions (the "Purchase Agreement"), pursuant to which the Company agreed to sell and Rexford agreed to purchase certain parcels of real estate owned by the Company in Valencia, California and certain related improvements, personal property, equipment, supplies and fixtures (collectively, the "Property") for $17.3 million. The sale and purchase of the Property for $17.3 million pursuant to the terms of the Purchase Agreement, as amended, was completed on February 17, 2017. Net proceeds were $16.7 million after deducting broker's commission and other fees of approximately $0.6 million paid by the Company. Net proceeds received approximated the carrying value of the asset held for sale.

4. Accrued Expenses and Other Current Liabilities

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

	June 30, 2017	December 31, 2016
Salary and related expenses	$ 3,729	$ 3,814
Current portion of milestone rights liability	1,643	—
Professional fees	968	875
Discounts and allowances for commercial product sales	1,036	754
Sales and marketing services	218	144
Restructuring	362	1,376
Accrued interest	624	619
Other	496	355
Accrued expenses and other current liabilities	$ 9,076	$ 7,937

5. Related-Party Arrangements

In October 2007, the Company entered into The Mann Group Loan Arrangement, which has been amended from time to time. On October 31, 2013, the promissory note underlying The Mann Group Loan Arrangement was amended to, among other things, extend the maturity date of the loan to January 5, 2020, extend the date through which the Company can borrow under The Mann Group Loan Arrangement to December 31, 2019, increase the aggregate borrowing amount under The Mann Group Loan Arrangement from $350.0 million to $370.0 million and provide that repayments or cancellations of principal under The Mann Group Loan Arrangement will not be available for reborrowing.

On June 27, 2017, the Company entered into an agreement with The Mann Group, pursuant to which the parties agreed to, among other things, (i) capitalize $10.7 million of accrued and unpaid interest as of June 30, 2017, resulting in such amount being classified as outstanding principal under The Mann Group Loan Arrangement; (ii) advance to the Company approximately $19.4 million of cash, the remaining amount available for borrowing by the Company under The Mann Group Loan Arrangement after the foregoing capitalization of accrued and unpaid interest; and (iii) defer all interest payable on the outstanding principal until July 1, 2018, unless such payments are otherwise permitted under the subordination agreement with Deerfield, and subject to further deferral pursuant to the terms of the subordination agreement with Deerfield which terms are more fully disclosed below.

Interest, at a fixed rate of 5.84%, is due and payable quarterly in arrears on the first day of each calendar quarter for the preceding quarter, or at such other time as the Company and The Mann Group mutually agree. The Mann Group can require the Company to prepay up to $200.0 million in advances that have been outstanding for at least 12 months, less approximately $105.0 million aggregate principal amount that has been cancelled in connection with two common stock purchase agreements. If The Mann Group exercises this right, the Company will have 90 days after The Mann Group provides written notice, or the number of days to maturity of the note if less than 90 days, to prepay such advances. However, pursuant to a letter agreement entered into in August 2010, The Mann Group has agreed to not require the Company to prepay amounts outstanding under the amended and restated promissory note if the prepayment would require the Company to use its working capital resources. In addition, The Mann Group entered into a subordination agreement with Deerfield pursuant to which The Mann Group agreed with Deerfield not to demand or accept any payment under The Mann Group Loan Arrangement until the Company's payment obligations to Deerfield under the Facility Agreement have been satisfied in full. Subject to the foregoing, in the event of a default under The Mann Group Loan Arrangement, all unpaid principal and interest either becomes immediately due and payable or may be accelerated at The Mann Group's option, and the interest rate will increase to the one-year LIBOR calculated on the date of the initial advance or in effect on the date of default, whichever is greater, plus 5% per annum. All borrowings under The Mann Group Loan Arrangement are unsecured. The Mann Group Loan Arrangement contains no financial covenants.

As of June 30, 2017 and December 31, 2016, the total principal amount outstanding under The Mann Group Loan Arrangement was $79.7 million and $49.5 million, respectively. As of June 30, 2017, there was no accrued or unpaid interest as a result of all unpaid accrued interest being capitalized pursuant to the June 27, 2017 agreement with The Mann Group. As of December 31, 2016, the Company had accrued and unpaid interest related to the above note of $9.3 million. Interest expense on the Company's note payable to the Company's principal stockholder for the three and six months ended June 30, 2017 and 2016 were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Interest expense on note payable to principal stockholder	$ 721	$ 721	$ 1,435	$ 1,443

In May 2015, the Company entered into a sublease agreement with the Alfred Mann Foundation for Scientific Research (the "Mann Foundation"), a California not-for-profit corporation. The lease was for approximately 12,500 square feet of office space in Valencia, California, which expired in April 2017 and has been renewed on a month-to-month basis at a rate of $20,000 per month, which is expected to expire on August 31, 2017 when the Company moves into its new corporate headquarters (see Note 11). The office space contains the Company's principal executive offices. Lease payments to the Mann Foundation for the three and six months ended June 30, 2017 and 2016 were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Lease payments	$ 60	$ 67	$ 122	$ 133

The Company has entered into indemnification agreements with each of its directors and executive officers, in addition to the indemnification provided for in its amended and restated certificate of incorporation and amended and restated bylaws (see Note 11 — Commitments and Contingencies).

6. Borrowings

Borrowings consist of the following (in thousands):

	June 30, 2017	December 31, 2016
Facility Financing Obligation (2019 Notes)		
Principal amount	$ 60,000	$ 75,000
Unamortized debt discount	(2,516)	(3,661)
Net carrying amount	$ 57,484	$ 71,339
Senior Convertible Notes (2018 Notes)		
Principal amount	$ 27,690	$ 27,690
Unamortized premium	306	426
Unaccreted debt issuance costs	(347)	(481)
Net carrying amount	$ 27,649	$ 27,635
Note payable to principal stockholder—net carrying amount	$ 79,666	$ 49,521

Facility Financing Obligation (2019 Notes) – On April 18, 2017, the Company entered into an Exchange Agreement with Deerfield pursuant to which the Company agreed to, among other things, (i) repay $4.0 million principal amount under the Tranche B notes; (ii) exchange $1.0 million principal amount under the Tranche B notes for 869,565 shares of the Company's common stock (the "Tranche B Exchange Shares"); and (iii) exchange $5 million principal amount under the 2019 notes for 4,347,826 shares of the Company's common stock (together with the "Tranche B Exchange Shares," the "April Exchange Shares"). The exchange price for the Exchange Shares was $1.15 per share.

The Company evaluated the transaction and determined that since the principal amount being repaid and exchanged under the Tranche B notes and the principal amount being exchanged under the 2019 notes represents the principal amount that would have otherwise become due and payable in May and July of 2017 under the Tranche B Notes and 2019 notes, respectively, the extinguishment of the May and July 2017 payments was not considered to be a troubled debt restructuring. Accordingly, the Company accounted for the transaction by recording a loss on extinguishment of debt of $0.3 million for the three and six months ended June 30, 2017 which was calculated as the difference between the reacquisition price and the net carrying value of the related debt. The net carrying value of the related debt includes the acceleration of the debt discount and issuance costs amounting to approximately $8,000 as a result of the transaction. The reacquisition price was calculated using the $4.0 million cash repayment and the fair value of the April Exchange Shares on April 18, 2017. The fair value of the April Exchange Shares was determined to be $1.22 per share representing the closing trading price of the Company's common stock on The NASDAQ Global Market on April 18, 2017.

On June 29, 2017, the Company entered into the Third Amendment with Deerfield, pursuant to which the Company agreed to, among other things, (i) exchange $5.0 million principal amount under the 2019 notes for 3,584,230 shares of the Company's common stock (the "June Exchange Shares") at an exchange price of $1.395 per share and (ii) amend the Facility Agreement with Deerfield, to (A) defer the payment of $10.0 million in principal amount of the 2019 notes from the original July 18, 2017 due date to August 31, 2017, with an option for the Company to elect to further defer the payment of such principal amount from August 31, 2017 to October 31, 2017 upon the Company's delivery on August 31, 2017 of a written certification to Deerfield that certain conditions have been met, including that no event of default under the Facility Agreement has occurred, Michael Castagna remains the Company's Chief Executive Officer, the Company has received the advance from The Mann Group (see Note 5 — Related-Party Arrangements), the Company has at least $10 million in cash and cash equivalents on hand, no material adverse effect on the Company has occurred, the engagement letter between the Company and Greenhill & Co., Inc. ("Greenhill") has remained in full force and effect and Greenhill has remained actively engaged in exploring capital structure and financial alternatives on behalf of the Company in accordance with such engagement letter (collectively, the "Extension Conditions"), and (B) amend the Company's financial covenant under the Facility Agreement to provide that, if the Extension Conditions remain satisfied, the obligation under the Facility Agreement to maintain at least $25 million in cash (including available borrowings under The Mann Group Loan Arrangement) as of the end of each quarter will be reduced to $10 million as of August 31, 2017, September 30, 2017, October 31, 2017 and December 31, 2017.

The Company evaluated the transaction and determined that since the principal amount being repaid and exchanged under the 2019 notes represents the principal amount that would have otherwise become due and payable under the 2019 notes, the $5.0 million prepayment was not considered to be a troubled debt restructuring. Accordingly, the Company accounted for the transaction by recording a loss on extinguishment of debt of $0.5 million for the three and six months ended June 30, 2017 which was calculated as the difference between the reacquisition price and the net carrying value of the related debt. The net carrying value of the related debt includes the acceleration of the debt discount and issuance costs amounting to approximately $0.3 million as a result of the transaction. The reacquisition price was calculated using the fair value of the June Exchange Shares on June 29, 2017. The fair value of the Exchange Shares was determined to be $1.45 per share representing the closing trading price of the Company's common stock on The NASDAQ Global Market on June 29, 2017.

As of June 30, 2017, there was $45.0 million principal amount of 2019 notes and $15.0 million principal amount of Tranche B notes outstanding. The 2019 notes accrue interest at an annual rate of 9.75% and the Tranche B notes accrue interest at an annual rate of 8.75%. Interest is paid quarterly in arrears on the last day of each March, June, September and December. The Facility Financing Obligation principal repayment schedule is comprised of annual payments which began on July 1, 2016 and end on December 9, 2019. As of June 30, 2017, future payments for the years ending December 31, 2017, 2018, and 2019 are $10.0 million, $20.0 million and $30.0 million, respectively.

In connection with the Facility Agreement, on July 1, 2013, the Company entered into a Milestone Rights Purchase Agreement (the "Milestone Agreement") with Deerfield and Horizon Santé FLML SÁRL (collectively, the "Milestone Purchasers"), which requires the Company to make contingent payments to the Milestone Purchasers, totaling up to $90.0 million, upon the Company achieving specified commercialization milestones (the "Milestone Rights"). As of June 30, 2017 and December 31, 2016, the remaining milestone rights liability balance was $8.9 million. The Company currently estimates that it will reach the next milestone in the second quarter of 2018. Accordingly, $1.6 million in value related to the next milestone payment was recorded in accrued expenses and other current liabilities as of June 30, 2017, resulting in $7.2 million and $8.9 million being recorded in milestone rights liability and other liabilities, which is non-current, in the accompanying condensed consolidated balance sheets as of June 30, 2017 and December 31, 2016, respectively.

Accretion of debt issuance cost and debt discount in connection with the Facility Agreement during the three and six months ended June 30, 2017 and 2016, which includes the acceleration of the debt discount and issuance costs related to the transactions disclosed above, are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Accretion expense—debt issuance cost	$ 24	$ 9	$ 32	$ 17
Accretion expense—debt discount	$ 686	$ 433	$ 1,133	$ 852

The Facility Agreement includes customary representations, warranties and covenants, including a restriction on the incurrence of additional indebtedness, and a financial covenant which requires the Company's cash and cash equivalents, which include available borrowings on the note payable to a principal stockholder, on the last day of each fiscal quarter to not be less than $25.0 million, or pursuant to the Third Amendment, $10.0 million as of the last day of each month through October 31, 2017 and as of December 31, 2017 if certain conditions are met. As discussed in Note 1 – Description of Business and Summary of Significant Accounting Policies, the Company will need to raise additional capital to support its current operating plans. Due to the uncertainties related to maintaining sufficient resources to comply with the aforementioned covenant, the 2019 notes and Tranche B notes have been classified as current liabilities in the accompanying condensed consolidated balance sheets as of June 30, 2017 and December 31, 2016. In the event of non-compliance, Deerfield may declare all or any portion of the 2019 notes and/or Tranche B notes to be immediately due and payable.

Milestone Rights — The Milestone Agreement includes customary representations and warranties and covenants by the Company, including restrictions on transfers of intellectual property related to Afrezza. The Milestone Rights are subject to acceleration in the event the Company transfers its intellectual property related to Afrezza in violation of the terms of the Milestone Agreement. The Company has initially recorded the Milestone Rights at their estimated fair value.

Security Agreement — In connection with the Facility Agreement, the Company and its subsidiary, MannKind LLC, entered into a Guaranty and Security Agreement (the "Security Agreement") with Deerfield and Horizon Santé FLML SÁRL (collectively, the "Purchasers"), pursuant to which the Company and MannKind LLC each granted the Purchasers a security interest in substantially all of their respective assets, including respective intellectual property, accounts, receivables, equipment, general intangibles, inventory and investment property, and all of the proceeds and products of the foregoing. The Security Agreement includes customary covenants by the Company and MannKind LLC, remedies of the Purchasers and representations and warranties by the Company and MannKind LLC. The security interests granted by the Company and MannKind LLC will terminate upon repayment of the 2019 notes and Tranche B notes, if applicable, in full. The Company's obligations under the Facility Agreement and the Milestone Agreement are also secured by the Company's facilities in Danbury, Connecticut, which has a carrying value of $27.9 million.

Embedded Derivatives — The Company identified and evaluated a number of embedded features in the notes issued under the Facility Agreement to determine if they represented embedded derivatives that are required to be separated from the notes and accounted for as freestanding instruments. In 2014, the Company analyzed the Tranche B notes and identified embedded derivatives which required separate accounting. However, all of the embedded derivatives were determined to have a *de minimis* value as of June 30, 2017 and December 31, 2016.

Issuance of new 5.75% Convertible Senior Subordinated Exchange Notes Due 2018 in Exchange for 2015 Notes — The 5.75% Convertible Senior Subordinated Exchange Notes Due 2018 (the "2018 notes") are the Company's general, unsecured, senior obligations, except that the 2018 notes were subordinated to the Sanofi loan facility prior to the extinguishment of the facility on November 9, 2016. The 2018 notes rank equally in right of payment with the Company's other unsecured senior debt. The 2018 notes bear interest at the rate of 5.75% per year on the principal amount, payable semiannually in arrears in cash on February 15 and August 15 of each year, beginning February 15, 2016, with interest accruing from August 15, 2015. The 2018 notes mature on August 15, 2018. Accrued interest related to these notes is recorded in accrued expenses and other current liabilities on the accompanying condensed consolidated balance sheets.

The 2018 notes are convertible, at the option of the holder, at any time on or prior to the close of business on the business day immediately preceding the stated maturity date, into shares of the Company's common stock at an initial conversion rate of 29 shares per $1,000 principal amount of 2018 notes, which is equal to a conversion price of approximately $34.00 per share, the same conversion price as that of the 2015 notes on the date of exchange. The conversion rate is subject to adjustment under certain circumstances described in an indenture governing the 2018 notes dated August 10, 2015 with US Bank (as successor trustee to Wells Fargo, National Association), including in connection with a make-whole fundamental change. If certain fundamental changes occur, the Company will be obligated to pay a make-whole premium on any 2018 notes converted in connection with such fundamental change by increasing the conversion rate on such 2018 notes. If the Company undergoes certain fundamental changes, except in certain circumstances, each holder of 2018 notes will have the option to require the Company to repurchase all or any portion of that holder's 2018 notes. The fundamental change repurchase price will be 100% of the principal amount of the 2018 notes to be repurchased plus accrued and unpaid interest, if any.

On or after the date that is one year following the original issue date of the 2018 notes, the Company will have the right to redeem for cash all or part of the 2018 notes if the last reported sale price of its common stock exceeds 130% of the conversion price then in effect for 20 or more trading days during the 30 consecutive trading day period ending on the trading day immediately prior to the date of the redemption notice. The redemption price will equal the sum of 100% of the principal amount of the 2018 notes to be redeemed, plus accrued and unpaid interest. Under the terms of the indenture, the conversion option can be net-share settled and the maximum number of shares that could be required to be delivered under the indenture, including the make-whole shares, is fixed and less than the number of authorized and unissued shares less the maximum number of shares that could be required to be delivered during the term of the 2018 notes under existing commitments. Applying the Company's sequencing policy, the Company performed an analysis at the time of the offering of the 2018 notes and each reporting date since and has concluded that the number of available authorized shares at the time of the offering and each subsequent reporting date was sufficient to deliver the number of shares that could be required to be delivered during the term of the 2018 notes under existing commitments.

The 2018 notes provide that upon an acceleration of certain indebtedness, including the 2019 notes and the Tranche B notes issued to Deerfield pursuant to the Facility Agreement, the holders may elect to accelerate the Company's repayment obligations under the notes if such acceleration is not cured, waived, rescinded or annulled. There can be no assurance that the holders would not choose to exercise these rights in the event such events were to occur.

The Company incurred approximately $0.8 million in issuance costs, which are recorded as an offset to the 2018 notes, in the accompanying condensed consolidated balance sheets. These costs are being accreted to interest expense using the effective interest method over the term of the 2018 notes.

Amortization of the premium and accretion of debt issuance costs related to the 2018 notes for the three and six months ended June 30, 2017 and 2016 are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Amortization of debt premium	$ 61	$ 58	$ 120	$ 115
Accretion expense—debt issuance cost	$ 68	$ 63	$ 134	$ 126

7. Collaboration Arrangements

Receptor Collaboration and License Agreement — On January 20, 2016, the Company entered into a Collaboration and License Agreement (the "CLA") with Receptor Life Sciences, Inc. ("Receptor") pursuant to which the Company performed initial formulation studies on compounds identified by Receptor and Receptor obtained the option to acquire an exclusive license to develop, manufacture and commercialize certain products that use the Company's technology to deliver the compounds via oral inhalation.

The Company received $0.4 million in nonrefundable payments in 2016 prior to Receptor exercising the option. On December 30, 2016, following successful completion of the studies, Receptor exercised its option and paid the Company a $1.0 million nonrefundable option exercise and license fee. Under the CLA, the Company may receive the following additional payments:

- Nonrefundable milestone payments upon the completion of certain technology transfer activities and the achievement of specified sales targets;
- Royalties upon Receptor's and its sublicensees' sale of the product; and
- Milestones upon total worldwide sales reaching certain agreed upon levels.

The Company evaluated the accounting for the payments received in 2016 under the multiple element accounting guidance and determined that the $0.4 million in payments received prior to Receptor exercising its option are separable from the other elements of the agreement and represented payments to offset costs incurred. Therefore, those payments reduced the Company's research and development expense in 2016. The $1.0 million license fee received in 2016 does not have standalone value from the follow-on transfer of technology. Therefore, the license fee was recorded in deferred payments from collaboration as of December 31, 2016 and will be recognized in net revenue — collaboration over four years. Recognized revenue related to this license agreement amounted to $0.1 million for the three and six months ended June 30, 2017. See Note 1 — Description of Business and Summary of Significant Accounting Policies for additional information on the Company's accounting for multiple element arrangements.

On March 15, 2017, the Company entered into a Manufacturing and Supply Agreement with Receptor pursuant to which the Company will provide certain raw materials to Receptor. On March 16, 2017, the Company agreed to provide certain additional research and formulation consulting services to Receptor.

Sanofi License Agreement and Sanofi Supply Agreement — On August 11, 2014, the Company executed the Sanofi License Agreement, pursuant to which Sanofi was responsible for global commercial, regulatory and development activities for Afrezza. The Company manufactured Afrezza at its manufacturing facility in Danbury, Connecticut to supply Sanofi's demand for the product pursuant to a supply agreement dated August 11, 2014 (the "Sanofi Supply Agreement").

During the term of the Sanofi License Agreement, worldwide profits and losses were determined based on the difference between the net sales of Afrezza and the costs and expenses incurred by the Company and Sanofi that were specifically attributable or related to the development, regulatory filings, manufacturing, or commercialization of Afrezza. These profits and losses were shared 65% by Sanofi and 35% by the Company. On January 4, 2016, the Company received a 90-day notification from Sanofi of its election to terminate in its entirety the Sanofi License Agreement. The effective date of termination was April 4, 2016. On April 5, 2016, the Company assumed responsibility for the worldwide development and commercialization of Afrezza from Sanofi. Under the terms of the transition agreement, Sanofi continued to fulfill orders for Afrezza in the United States until the Company began distributing MannKind-branded Afrezza product to major wholesalers during the week of July 25, 2016.

The Company analyzed the agreements entered into with Sanofi at their inception and determined that prior to December 31, 2015, because the Company did not have the ability to estimate the amount of costs that would potentially be incurred under the loss share provision related to the Sanofi License Agreement and the Sanofi Supply Agreement, the Company recorded the $150.0 million up-front payment and the two milestone payments of $25.0 million each as deferred payments from collaboration. In addition, as of December 31, 2015, the Company had recorded $17.5 million in Afrezza product shipments to Sanofi as deferred sales from collaboration and recorded $13.5 million as deferred costs from collaboration. Deferred costs from collaboration represented the costs of product manufactured and shipped to Sanofi, as well as certain direct costs associated with a firm purchase commitment entered into in connection with the collaboration with Sanofi.

During the three months ended September 30, 2016, Sanofi provided information to the Company to enable it to reasonably estimate the remaining costs under the Sanofi License Agreement and the Sanofi Supply Agreement. Accordingly, the fixed or determinable fee requirement for revenue recognition was met and there were no future obligations to Sanofi. Therefore, the Company recognized $172.0 million of net revenue — collaboration for the year ended December 31, 2016. The revenue recognized includes the upfront payment of $150.0 million and the two milestone payments of $25.0 million each, net of $64.9 million of net loss share with Sanofi, as well as $17.5 million in sales of Afrezza and $19.4 million from sales of bulk insulin, both to Sanofi. These payments and sales were made pursuant to the contractual terms of the agreements with Sanofi.

Sanofi Loan Facility — On September 23, 2014, the Company entered into a senior secured revolving promissory note and a guaranty and security agreement (collectively, the "Sanofi Loan Facility") with an affiliate of Sanofi, which provided the Company with a secured loan facility of up to $175.0 million to fund the Company's share of net losses under the Sanofi License Agreement.

Advances under the Sanofi Loan Facility bore interest at a rate of 8.5% per annum and were payable in-kind and compounded quarterly and added to the outstanding principal balance under the Sanofi Loan Facility. The Company was required to make mandatory prepayments on the outstanding loans under the Sanofi Loan Facility from its share of any profits (as defined in the Sanofi License Agreement) under the Sanofi License Agreement within 30 days of receipt of its share of any such profits.

The Company's total portion of the loss sharing was $57.7 million for the year ended December 31, 2015, of which $44.5 million was borrowed under the Sanofi Loan Facility as of December 31, 2015. Subsequent to December 31, 2015, the Company borrowed $17.9 million under the Sanofi Loan Facility to finance the portion of the Company's loss for the quarters ended December 31, 2015 and March 31, 2016. The total amount owed to Sanofi at September 30, 2016 was $71.2 million, which included $5.8 million of paid-in-kind interest.

On November 9, 2016, the Company entered into a settlement agreement with Sanofi (the "Settlement Agreement"). Under the terms of the Settlement Agreement, the promissory note between the Company and Aventisub LLC, a Sanofi affiliate, was terminated, with Aventisub agreeing to forgive the full outstanding loan balance of $72.0 million. Sanofi also agreed to purchase $10.2 million of insulin from the Company in December 2016 under an existing insulin put option as well as make a cash payment of $30.6 million to the Company in early January 2017 as acceleration and in replacement of all other payments that Sanofi would otherwise have been required to make in the future pursuant to the insulin put option, without the Company being required to deliver any insulin for such payment. The Company was also relieved of its obligation to pay Sanofi $0.5 million in previously uncharged costs pursuant to the Sanofi License Agreement. The Company and Sanofi also agreed to a general release of potential claims against each other.

The settlement was accounted for in the year ended December 31, 2016, except for a $30.6 million cash payment received under the insulin put option agreement which reduced the receivable from Sanofi between December 31, 2016 and June 30, 2017.

8. Sale of Intellectual Property

On April 12, 2017 the Company entered into an agreement (the “Agreement”) to sell certain oncology assets and patents to Fosun. Fosun is required to pay the Company a one-time nonrefundable payment of $0.6 million (which was received net of taxes in June of 2017), royalties on net sales of products by Fosun and its affiliates and other consideration based on revenues from any licensees. The Company determined that the sale of the assets did not constitute a business and accordingly accounted for the transaction as a sale of assets. The Company evaluated the accounting for the payments received in 2017 under the multiple element accounting guidance and recorded the $0.6 million in payments received in revenue – other in the accompanying condensed consolidated financial statements for the three and six months ended June 30, 2017 as the deliverables under the Agreement were substantially delivered as of June 30, 2017. See Note 1 — Description of Business and Summary of Significant Accounting Policies for additional information on the Company’s accounting for multiple element arrangements. The Company also evaluated the accounting for royalties and other consideration in the Agreement. Since the amount of product that Fosun will ultimately be able to sell upon successfully utilizing this technology is uncertain, no royalty revenue will be recognized until such time when Fosun or its affiliates sell product to a third party and royalties are due to MannKind.

9. Fair Value of Financial Instruments

The Company applies various valuation approaches in determining the fair value of its financial assets and liabilities within a hierarchy that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company’s assumptions about the inputs that market participants would use in pricing the asset or liability and are developed based on the best information available in the circumstances. The fair value hierarchy is broken down into three levels based on the source of inputs as follows:

Level 1— Quoted prices for identical instruments in active markets.

Level 2— Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

Level 3— Significant inputs to the valuation model that are unobservable.

The availability of observable inputs can vary among the various types of financial assets and liabilities. To the extent that the valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for financial statement disclosure purposes, the level in the fair value hierarchy within which the fair value measurement is categorized is based on the lowest level input that is significant to the overall fair value measurement.

Cash Equivalents — Cash equivalents consist of highly liquid investments with original or remaining maturities of 90 days or less at the time of purchase, that are readily convertible into cash. As of June 30, 2017 and December 31, 2016, the Company held cash equivalents of $42.1 million and $20.5 million, respectively, comprised of money market funds. The fair value of these money market funds was determined by using quoted prices for identical investments in an active market (Level 1 in the fair value hierarchy).

Note Payable to Principal Stockholder —The fair value of the note payable to principal stockholder cannot be reasonably estimated as the Company would not be able to obtain a similar credit arrangement in the current economic environment. Therefore the fair value is based upon carrying value.

Financial Liabilities — The following tables set forth the fair value of the Company's financial instruments (in millions):

	As of June 30, 2017				
	Carrying Value	Level 1	Level 2	Level 3	Total
Financial liabilities:					
Senior convertible notes	$ 27.6	$ —	$ —	$ 24.2	$ 24.2
Facility financing obligation	57.5	—	—	60.0	60.0
Milestone rights	8.9	—	—	18.2	18.2
Warrant liability (at recurring fair value)	0.6	—	—	0.6	0.6
Total financial liabilities	$ 94.6	$ —	$ —	$103.0	$103.0

	As of December 31, 2016				
	Carrying Value	Level 1	Level 2	Level 3	Total
Financial liabilities:					
Senior convertible notes	$ 27.6	$ —	$ —	$ 22.9	$ 22.9
Facility financing obligation	71.3	—	—	74.5	74.5
Milestone rights	8.9	—	—	18.4	18.4
Warrant liability (at recurring fair value)	7.4	—	—	7.4	7.4
Total financial liabilities	$ 115.2	$ —	$ —	$123.2	$123.2

On May 12, 2016 we issued certain warrants with a fair value of $12.8 million. As of June 30, 2017 and December 31, 2016, the fair value of the warrant liability was $0.6 million and $7.4 million, respectively. The fair value of the warrants liability as of June 30, 2017 was estimated using a Monte Carlo valuation pricing model with the following underlying assumptions: (a) a risk-free interest rate of 1.4%; (b) an assumed dividend yield of zero percent; (c) an expected term of 0.9 years; and (d) an expected volatility of 112%. The following table provides a roll forward of the fair value of the warrant liability which is the only Level 3 financial instrument that is carried at fair value (in millions):

Balance at beginning of period December 31, 2016	$ 7.4
Additions	—
Changes in fair value	(6.8)
Payments	—
Fair value, end of period June 30, 2017	$ 0.6

Senior Convertible Notes — The estimated fair value of the 2018 notes was calculated based on model-derived valuations whose inputs were observable, such as the Company's stock price and yields on U.S. Treasury notes and actively traded bonds, and non-observable, such as the Company's longer-term historical volatility, and estimated yields implied from any available market trades of the Company's issued debt instruments. As there is no current active and observable market for the 2018 notes, the Company determined the estimated fair value using a convertible bond valuation model within a lattice framework. The convertible bond valuation model combined expected cash flows based on terms of the notes with market-based assumptions regarding risk-free rate, risk-adjusted yields (20%), stock price volatility (100%) and recent price quotes and trading information regarding Company issued debt instruments and shares of common stock into which the notes are convertible (Level 3 in the fair value hierarchy).

Facility Agreement — As discussed in Note 6 — Borrowings, the Company issued 2019 notes and subsequently issued Tranche B notes (the "Facility Financing Obligation") in connection with the Facility Agreement. As there is no current observable market for the 2019 notes or Tranche B notes, the Company determined the estimated fair value using a bond valuation model based on a discounted cash flow methodology. The bond valuation model combined expected cash flows associated with principal repayment and interest based on the contractual terms of the debt agreement discounted to present value using a selected market discount rate. On June 30, 2017, the market discount rate was recalculated at 12% for the principal for the facility financing obligation. Under the terms of the Facility Agreement, the Company is restricted from distributing any of its assets or declaring and distributing a dividend to its stockholders.

Milestone Rights Liability — In addition to the Facility Financing Obligation, the Company also issued the Milestone Rights. These rights are not reflected in the Facility Financing Obligation. The estimated fair value of the Milestone Rights was calculated using the income approach in which the cash flows associated with the specified contractual payments were adjusted for both the expected timing and the probability of achieving the milestones, discounted to present value using a selected market discount rate (Level 3 in the fair value hierarchy). The expected timing and probability of achieving the milestones, starting in 2014, was developed with consideration given to both internal data, such as progress made to date and assessment of criteria required for achievement, and external data, such as market research studies. The discount rate (14%) was selected based on an estimation of required rate of returns for similar investment opportunities using available market data. As of June 30, 2017, the carrying value of the milestone rights liability was $8.9 million and the fair value was estimated at $18.2 million. The fair value measurement of the liability is sensitive to the discount rate and the timing and probability of making milestone payments. If the achievement of each of the milestones which require payments were to be six months later than in the current forecast, the fair value of the liability would decrease by 7%. If the probabilities of meeting the milestones were to decrease by 5% or 10%, the fair value of the liability would decrease by 14% and 26%, respectively. Over the long term, these inputs are interrelated because if the Company's performance improves, the timing of meeting the milestones would likely be earlier, the probability of making payments on the milestones would likely be higher and the discount rate would likely decrease, all of which would increase the fair value of the liability. The inverse is also true.

Warrant Liability — Warrant liabilities are measured at fair value using a Monte Carlo pricing valuation model. The assumptions used in the valuation model for the common stock warrant liabilities were: (a) a risk-free interest rate based on the rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the remaining contractual term of the warrants; (b) an assumed dividend yield of zero percent based on the Company's expectation that it will pay no dividends in the foreseeable future; (c) an expected term based on the remaining contractual term of the warrants; (d) an expected volatility based upon the Company's historical volatility over the remaining contractual term of the warrants; and (e) probability of a dilutive financing that may trigger a price protection clause. The significant unobservable input used in measuring the fair value of the common stock warrant liabilities is the expected volatility. Significant increases in volatility would result in a higher fair value measurement (Level 3 in the fair value hierarchy).

Embedded Derivatives — The Company identified and evaluated a number of embedded features in the notes issued under the Facility Agreement to determine if they represented embedded derivatives that are required to be separated from the notes and accounted for as freestanding instruments. The Company analyzed the Tranche B notes and identified embedded derivatives, which required separate accounting. However, all of the embedded derivatives were determined to have a *de minimis* value at June 30, 2017 and December 31, 2016.

10. Stock-Based Compensation Expense

In March 2016, the FASB issued ASU No. 2016-09, *Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting.* The new standard involves several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities and classification on the statement of cash flows. For public business entities, the amendments in this standard are effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. The Company implemented the standard on January 1, 2017 and the standard did not have a material impact on the Company's financial statements as:

- The Company, as of December 31, 2016, had not recognized $11.6 million of excess tax benefits related to windfalls. As a result of adoption, it will now recognize these benefits as deferred tax assets. However, after assessment for realizability, the Company has also recorded a full valuation allowance against the deferred tax assets. This resulted in a zero cumulative effect adjustment to accumulated deficit as a result of the adoption. All shortfalls related to non-qualified options and restricted stock units are now recorded as an income tax expense for the period, offset by a full valuation allowance.
- Due to the full valuation allowance for the Company's deferred tax assets, the excess income tax benefits have never been recorded in additional paid-in-capital. The Company does not contemplate any impact going forward as any amounts to be recorded in the condensed consolidated statements of operations would be fully offset by the valuation allowance nor result in a related classification in cash flows for operating activities.
- The Company will continue to recognize forfeitures through estimates consistent with our past practices as opposed to when they occur.
- The Company already classifies cash paid to taxing authorities arising from the withholding of shares from employees in cash flows from financing activities.

Total stock-based compensation expense recognized in the accompanying condensed consolidated statements of operations for the three and six months ended June 30, 2017 and 2016 was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Stock-based compensation	$ 1,250	$ 1,355	$ 2,516	$ 2,628

During the six months ended June 30, 2017, the Company issued 544,105 restricted units to certain employees which vest over a four-year period. The grant date fair value of the restricted stock units was $0.6 million with a weighted average grant date fair value per share of $1.10.

During the six months ended June 30, 2017, the Company granted certain employees stock options to purchase an aggregate of 2,150,537 shares of common stock at a weighted average exercise price of $1.31 per share of which 1,508,159 of these awards vest in four equal tranches upon the achievement of certain product sales targets. The remaining 642,378 options vest over a four year period. The grant date fair value of these awards is $2.0 million with a weighted average grant date fair value of $0.93 per share, as determined using a Black-Scholes option pricing model.

As of June 30, 2017, there was $4.2 million, $4.4 million and $3.9 million of unrecognized compensation expense related to restricted stock units, options with performance conditions and options that vest over the vesting period. The Company evaluates stock awards with performance conditions as the probability that the performance conditions will be met and uses that information to estimate the date at which those performance conditions will be met in order to properly recognize stock-based compensation expense over the requisite service period.

On a periodic basis and as of June 30, 2017, the Company reviewed the probability of achieving the performance conditions for each of the four vesting tranches of the performance-based stock options that were granted during 2017 and in prior years and determined that it was probable that the Company would achieve the first vesting tranche in December 2017. Therefore, the Company recorded compensation expense related to performance-based stock options of $0.4 million and $0.7 million during the three and six months ended June 30, 2017, respectively. The Company further determined that no compensation costs would be recognized for the second, third and fourth vesting tranches as the probability of achieving those performance conditions has not been determined.

11. Commitments and Contingencies

Guarantees and Indemnifications — In the ordinary course of its business, the Company makes certain indemnities, commitments and guarantees under which it may be required to make payments in relation to certain transactions. The Company, as permitted under Delaware law and in accordance with its Bylaws, indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The maximum amount of potential future indemnification is unlimited; however, the Company has a director and officer insurance policy that may enable it to recover a portion of any future amounts paid. The Company believes the fair value of these indemnification agreements is minimal. The Company has not recorded any liability for these indemnities in the accompanying condensed consolidated balance sheets. However, the Company accrues for losses for any known contingent liability, including those that may arise from indemnification provisions, when future payment is probable and the amount can be reasonably estimated. No such losses have been recorded to date.

Litigation — The Company is subject to legal proceedings and claims which arise in the ordinary course of its business. As of June 30, 2017, the Company believes that the final disposition of such matters will not have a material adverse effect on the financial position, results of operations or cash flows of the Company and no accrual has been recorded. The Company maintains liability insurance coverage to protect the Company's assets from losses arising out of or involving activities associated with ongoing and normal business operations. The Company records a provision for a liability when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. The Company's policy is to accrue for legal expenses in connection with legal proceedings and claims as they are incurred.

Following the public announcement of Sanofi's election to terminate the Sanofi License Agreement and the subsequent decline in the Company's stock price, two motions were submitted to the district court at Tel Aviv, Economic Department for the certification of a class action against MannKind and certain of its officers and directors. In general, the complaints alleged that MannKind and certain of its officers and directors violated Israeli and U.S. securities laws by making materially false and misleading statements regarding the prospects for Afrezza, thereby artificially inflating the price of its common stock. The plaintiffs are seeking monetary damages. In November 2016, the district court dismissed one of the actions without prejudice. In the remaining action, the district court has been asked to determine whether Israeli or U.S. law is applicable before the case can be certified as a class action but has not yet ruled on this issue. The Company will vigorously defend against the claims advanced.

Contingencies — In connection with the Facility Agreement, on July 1, 2013, the Company also entered into a the Milestone Agreement with the Milestone Purchasers, pursuant to which the Company sold the Milestone Purchasers the Milestone Rights to receive payments up to $90.0 million upon the occurrence of specified strategic and sales milestones, including the first commercial sale of an Afrezza product in the United States and the achievement of specified net sales figures (see Note 6 – Borrowings).

Commitments — On July 31, 2014, the Company entered into a supply agreement (the "Insulin Supply Agreement") with Amphastar France Pharmaceuticals S.A.S., a French corporation ("Amphastar"), pursuant to which Amphastar manufactures for and supplies to the Company certain quantities of recombinant human insulin for use in Afrezza. Under the terms of the Insulin Supply Agreement, Amphastar is responsible for manufacturing the insulin in accordance with the Company's specifications and agreed-upon quality standards.

On November 9, 2016, the supply agreement with Amphastar was amended to extend the term over which the Company is required to purchase insulin, without reducing the total amount of insulin to be purchased. Under the amendment, annual minimum quantities of insulin to be purchased for calendar years 2017 through 2023 total an aggregate purchase price of €93.0 million at June 30, 2017. The Insulin Supply Agreement specifies that Amphastar will be deemed to have satisfied its obligations with respect to quantity, if the actual quantity supplied is within plus or minus ten percent (+/- 10%) of the quantity set forth in the applicable purchase order. In addition, the aggregate cancellation fees that the Company would incur in the event that certain insulin quantities are not purchased was lowered from $5.3 million for the period October 1, 2016 through 2018 to $3.4 million over the same period. The Company has not yet purchased any insulin under the amended agreement in 2017. The annual purchase requirements under the contract are as follows:

2017	€ 2.7 million
2018	€ 8.9 million
2019	€11.6 million
2020	€15.5 million
2021	€15.5 million
2022	€19.4 million
2023	€19.4 million

Unless earlier terminated, the term of the Insulin Supply Agreement with Amphastar expires on December 31, 2023 and can be renewed for additional, successive two year terms upon 12 months' written notice given prior to the end of the initial term or any additional two year term. The Company and Amphastar each have normal and customary termination rights, including termination for material breach that is not cured within a specific time frame or in the event of liquidation, bankruptcy or insolvency of the other party. In addition, the Company may terminate the Insulin Supply Agreement upon two years' prior written notice to Amphastar without cause or upon 30 days' prior written notice to Amphastar if a controlling regulatory authority withdraws approval for Afrezza, provided, however, in the event of a termination pursuant to either of the latter two scenarios, the provisions of the Insulin Supply Agreement require the Company to pay the full amount of all unpaid purchase commitments due over the initial term within 60 calendar days of the effective date of such termination.

At June 30, 2017, the Company has other firm commitments with suppliers for an aggregate of $0.9 million.

Office Lease — On May 5, 2017, the Company executed an office lease with Russell Ranch Road II LLC to lease office space for the Company's corporate headquarters in Westlake Village, California. The office lease commences on the earlier of (i) the date the Company commences business from the leased space or (ii) the later of the date of substantial completion of the build-out by the landlord or August 1, 2017. The lease requires monthly payments of $40,951, increased by 3% annually, plus the estimated cost of maintaining the property by the landlord. The lease expires 65 months from the commencement date and provides the Company with a five year renewal option. Future minimum lease payments are as follows:

2017	$ 41,000
2018	457,000
2019	512,000
2020	528,000
2021	544,000
Thereafter	560,000
	$2,642,000

12. Income Taxes

Management of the Company has evaluated the positive and negative evidence bearing upon the realizability of its deferred tax assets and concluded, in accordance with the applicable accounting standards, that net deferred tax assets should be fully reserved.

The Company has assessed its position with regards to uncertainty in tax positions and believes that its income tax filing positions and deductions will be sustained on audit and does not anticipate any adjustments that will result in a material change to its financial position. Therefore, no reserves for uncertain income tax positions have been recorded pursuant to this guidance. Tax years since 2012 remain subject to examination by the major tax jurisdictions in which the Company is subject to tax.

Table of Contents

The Company adopted ASU 2016-09, *Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting* in the first quarter of 2017. The adoption had no net impact on its income tax expense for the quarter and net deferred tax assets as of the date of adoption (See Note 10 – Stock-Based Compensation Expense).

13. Restructuring Charges

As of June 30, 2017 and December 31, 2016, the Company had a remaining restructuring accrual balance of $0.4 million and $1.4 million, respectively, which is recorded in accrued expenses and other current liabilities in the condensed consolidated balance sheets. The Company expects to substantially pay out the remainder of this obligation by end of first quarter of 2018.

A reconciliation of beginning and ending liability balances for the restructuring charges is as follows (in thousands):

Description	2016 Restructuring	2015 Restructuring	Total
Accrual—January 1, 2017	$ 209	$ 1,167	$ 1,376
Costs paid or settled	(209)	(805)	(1,014)
Accrual—June 30, 2017	$ —	$ 362	$ 362

On May 25, 2017, the board of directors (the “Board”) replaced Matthew J. Pfeffer as Chief Executive Officer and Chief Financial Officer of the Company. Pursuant to a severance agreement in effect on that date, Mr. Pfeffer’s estimated current value of payments and benefits upon termination totaled approximately $1.2 million. At the time of the Board action, Mr. Pfeffer was expected to remain employed by the Company in an advisory capacity until July 31, 2017, before transitioning to severance. Subsequently, the Company and Mr. Pfeffer began negotiating a new agreement that would, if and when finalized, supersede the existing severance agreement. Given that the new agreement would override any prior severance agreements and amounts previously due to Mr. Pfeffer and contains special termination benefits that are contingent upon certain factors that cannot be reasonably estimated, the Company recorded no severance accrual for Mr. Pfeffer during the second quarter of 2017. Current salary and benefits continue to be accrued as earned.

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

Statements in this report that are not strictly historical in nature are "forward-looking statements" within the meaning of the federal securities laws made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. In some cases, you can identify forward-looking statements by terms such as "anticipate," "believe," "could," "estimate," "expect," "goal," "intend," "may," "plan," "potential," "predict," "project," "should," "will," "would," and similar expressions intended to identify forward-looking statements, though not all forward-looking statements contain these identifying words. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth below in Part II, Item 1A Risk Factors and elsewhere in this quarterly report on Form 10-Q. The preceding interim condensed consolidated financial statements and this Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the financial statements and related notes for the year ended December 31, 2016 and Management's Discussion and Analysis of Financial Condition and Results of Operations contained in the Annual Report. Readers are cautioned not to place undue reliance on forward-looking statements. The forward-looking statements speak only as of the date on which they are made, and we undertake no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they are made.

OVERVIEW

We are a biopharmaceutical company focused on the discovery, development, and commercialization of therapeutic products for diseases such as diabetes. Our only approved product, Afrezza, is a rapid-acting inhaled insulin that was approved by the FDA on June 27, 2014 to improve glycemic control in adult patients with diabetes. Afrezza became available by prescription in United States retail pharmacies in February 2015. According to the Centers for Disease Control and Prevention, 30.3 million people in the United States had diabetes in 2015. Globally, the International Diabetes Federation has estimated that approximately 415.0 million people had diabetes in 2015 and approximately 642.0 million people will have diabetes by 2040.

Afrezza is a rapid-acting inhaled insulin used to control high blood sugar in adults with type 1 and type 2 diabetes. The product consists of a dry powder formulation of human insulin delivered from a small portable inhaler. Administered at the beginning of a meal, Afrezza dissolves rapidly upon inhalation to the lung and delivers insulin quickly to the bloodstream. Peak insulin levels are achieved within 12-15 minutes of administration.

On August 11, 2014, we executed the Sanofi License Agreement, pursuant to which Sanofi was responsible for global commercial, regulatory and development activities for Afrezza.

On January 4, 2016, we received written notification from Sanofi of its election to terminate in its entirety the Sanofi License Agreement. The effective date of termination was April 4, 2016, which was when we assumed responsibility for worldwide development and commercialization of Afrezza. Under the terms of the transition agreement, Sanofi continued to fulfill orders for Afrezza in the United States until we began distributing MannKind-branded Afrezza product to major wholesalers in late July 2016. We began recognizing commercial product sales revenue when MannKind-branded Afrezza was dispensed from pharmacies to patients in August 2016.

During the initial transition of the commercial responsibilities from Sanofi, we utilized a contract sales organization to promote Afrezza while we focused our internal resources on establishing a channel strategy, entering into distribution agreements and developing co-pay assistance programs, a voucher program, data agreements and payor relationships. In early 2017, we recruited our own sales force to promote Afrezza to endocrinologists and certain high-prescribing primary care physicians. In the future, we may seek to supplement our sales force through a co-promotion arrangement – an agreement with a third party that has an underutilized primary care sales force, which can be used to promote Afrezza to greater number of primary care physicians.

Our current strategy for future commercialization of Afrezza outside of the United States, subject to receipt of the necessary foreign regulatory approvals, is to seek and establish regional partnerships in foreign jurisdictions where there are appropriate commercial opportunities.

We also believe our Technosphere formulations of active pharmaceutical ingredients have the potential to demonstrate clinical advantages over existing therapeutic options in a variety of therapeutic areas. In addition to our collaboration with Receptor (See Note 7, Collaboration Agreements of the Notes to the Condensed Consolidated Financial Statements in this report), we are actively exploring other opportunities to out-license our proprietary Technosphere formulation and device technologies. We continue the development of certain products related to our Technosphere formulations and will continue to do so if we are able to obtain the required funding.

As of June 30, 2017, we had an accumulated deficit of $2.8 billion and a stockholders' deficit of $221.2 million. We had a net loss of approximately $35.3 million and $51.7 million for the three and six months ended June 30, 2017, respectively. We have historically funded our operations primarily through the sale of equity securities and convertible debt securities, borrowings under the Facility Agreement with Deerfield, borrowings under The Mann Group Loan Arrangement, which we can no longer borrow under as we have used all amounts available for borrowing, and the Sanofi License Agreement, which was terminated in 2016. As discussed below in "Liquidity and Capital Resources," if we are unable to obtain additional funding, there will be substantial doubt about our ability to continue as a going concern. As of June 30, 2017, we had cash and cash equivalents of $43.4 million, which, together with our debt obligations, including a $10.0 million principal repayment that is scheduled to become due on August 31, 2017 (subject to a possible extension to October 31, 2017), raises substantial doubt about our solvency and ability to continue as a going concern. We estimate that our net operating cash flow for the second half of 2017 will be approximately $18 to $24 million per quarter assuming that we continue as a going concern during this period. However, we cannot provide assurance that our plans will not change or that changed circumstances will not result in net operating cash flow that are greater than we currently estimate.

Our business is subject to significant risks, including but not limited to our need to raise additional capital to fund our operations, our ability to successfully commercialize Afrezza and manufacture sufficient quantities of Afrezza and the risks inherent in our ongoing clinical trials and the regulatory approval process for our product candidates. Additional significant risks also include the results of our research and development efforts, competition from other products and technologies and uncertainties associated with obtaining and enforcing patent rights.

CRITICAL ACCOUNTING POLICES

Our critical accounting policies can be found in Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations in our Form 10-K for the year ended December 31, 2016 and there have been no material changes.

RESULTS OF OPERATIONS

Three and six months ended June 30, 2017 and 2016

Revenues

The following table provides a comparison of the revenue categories for the three months ended June 30, 2017 and 2016 (dollars in thousands):

	Three Months Ended June 30,			
	2017	2016	$ Change	% Change
Revenues:				
Net revenue - commercial product sales:				
Gross revenue from product sales	$2,625	$—	$ 2,625	— %
Gross-to-Net Adjustments:				
Wholesaler distribution fees, prompt pay discounts and other rebates and discounts	(645)	—	(645)	— %
Patient discount and co-pay assistance programs	(207)	—	(207)	— %
Rebates and chargebacks	(225)	—	(225)	— %
Net revenue - commercial product sales	1,548	—	1,548	— %
Net revenue - collaboration	63	—	63	— %
Revenue - other	552	—	552	— %
Total revenues	$2,163	$—	$ 2,163	— %

During the three months ended June 30, 2017, we recognized net revenue from commercial product sales of $1.5 million, representing net sales of Afrezza dispensed to patients. Estimated gross-to-net adjustments of $1.1 million were approximately 41% of gross revenue from product sales for the three months ended June 30, 2017. During the three months ended June 30, 2016, we did not recognize any revenues from commercial product sales.

During the three months ended June 30, 2017, we recognized net revenue from collaboration of $0.1 million, representing a portion of the licensing fee received in the fourth quarter of 2016, whereas during the three months ended June 30, 2016 we did not recognize any revenues from collaboration.

During the three months ended June 30, 2017, we recognized $0.6 million of other revenues related to a sale of intellectual property whereas during the three months ended June 30, 2016 we did not recognize any other revenues.

The following table provides a comparison of the revenue categories for the six months ended June 30, 2017 and 2016 (dollars in thousands):

	Six Months Ended June 30,			
	2017	2016	$ Change	% Change
Revenues:				
Net revenue - commercial product sales:				
Gross revenue from product sales	$4,268	$—	$ 4,268	— %
Gross-to-Net Adjustments:				
Wholesaler distribution fees, prompt pay discounts and other rebates and discounts	(843)	—	(843)	— %
Patient discount and co-pay assistance programs	(331)	—	(331)	— %
Rebates and chargebacks	(349)	—	(349)	— %
Net revenue - commercial product sales	2,745	—	2,745	— %
Net revenue - collaboration	125	—	125	— %
Revenue - other	2,302	—	2,302	— %
Total revenues	$5,172	$—	$ 5,172	— %

During the six months ended June 30, 2017, we recognized net revenue from commercial product sales of $2.7 million, representing net sales of Afrezza dispensed to patients. Estimated gross-to-net adjustments of $1.5 million were approximately 36% of gross revenue from product sales for the six months ended June 30, 2017. During the six months ended June 30, 2016, we did not recognize any revenues from commercial product sales.

During the six months ended June 30, 2017, we recognized net revenue from collaboration of $0.1 million, representing a portion of the licensing fee received in the fourth quarter of 2016, whereas during the six months ended June 30, 2016 we did not recognize any revenues from collaboration.

During the six months ended June 30, 2017, we recognized $2.3 million of other revenues primarily related to a sale of bulk insulin to a third party of $1.7 million and a $0.6 million sale of intellectual property, whereas during the six months ended June 30, 2016 we did not recognize any other revenues.

Expenses

Total expenses are primarily comprised of costs of goods sold, research and development expenses, selling expenses, and general and administrative expenses. Each is described in more detail below:

Costs of Goods Sold

Cost of goods sold includes the costs related to Afrezza product dispensed by pharmacies to patients as well as under-absorbed labor and overhead and inventory write-offs, which are recorded as expenses in the period in which they are incurred, rather than as a portion of the inventory cost.

Research and Development Expenses

Our research and development expenses consist of costs associated with research and development of our product candidates, including associated clinical trials and manufacturing process development. This includes the salaries, benefits and stock-based compensation of research and development personnel, raw materials, laboratory supplies and materials, facility costs, costs for outsourced services and depreciation of equipment.

Selling Expenses

Our selling expenses are driven by salaries, benefits and stock-based compensation for sales and marketing personnel and for certain third party costs.

General and Administrative Expenses

Our general and administrative expenses are driven by salaries, benefits and stock-based compensation for administrative, finance, human resources, legal and information systems support personnel and for certain third party costs.

The following table provides a comparison of the expense categories for the three months ended June 30, 2017 and 2016 (dollars in thousands):

	Three Months Ended June 30,			
	2017	2016	$ Change	% Change
Expenses:				
Cost of goods sold	$ 5,086	$ 4,045	$ 1,041	26%
Research and development	3,123	4,310	(1,187)	(28%)
Selling	11,646	4,009	7,637	190%
General and administrative	6,920	7,101	(181)	(3%)
Property and equipment impairment	111	—	111	100%
(Gain) loss on foreign currency translation	6,848	(341)	7,189	(2108%)
Total expenses	$33,734	$19,124	$14,610	76%

The increase in cost of goods sold of $1.0 million for the three months ended June 30, 2017 compared to the same period in the prior year is primarily due to a write-down of inventory of approximately $1.5 million for expiring and obsolescent inventory and by $0.4 million of cost of goods sold attributed to the manufacturing of Afrezza dispensed to patients, offset by a $0.9 million decrease in under-absorbed labor and overhead due to the reduction in work force in the fourth quarter of 2016.

The decrease in research and development expense of $1.2 million for the three months ended June 30, 2017 compared to the same period in the prior year is primarily due to decreases in compensation expense of $1.3 million and non-cash stock-based compensation expense of $0.2 million, each as a result of reductions in staff. Partially offsetting the decreases was an increase due to clinical trials of $0.3 million.

The increase in selling expenses of $7.6 million for the three months ended June 30, 2017 compared to the same period in the prior year is primarily due to increases of $4.3 million for compensation expense associated with the sales force that we brought in-house in the first quarter of 2017, $2.4 million for cost of external services and commercial support, $1.5 million for promotional expenses, $1.0 million for travel and related sales force expenses and $0.4 million of other expenses. Partially offsetting the increase was a decrease in consultant spending of $1.7 million as a result of the transition of some of the sales force in-house.

The increase in general and administrative expenses of $0.2 million for the three months ended June 30, 2017 compared to the same period in the prior year was primarily due to increased spending of approximately $0.4 million in supporting regulatory activities, $0.3 million in supporting compliance activities, and $0.2 million in human resources services. These increases were offset with a decrease of $0.3 million in legal spending as a result of the Sanofi settlement that was reached in 2016 and a $0.4 million reduction in patent spending.

Loss on foreign currency translation of $6.8 million for the three months ended June 30, 2017 compared to a gain on foreign currency translation of $0.3 million for the same period in the prior year was due to the currency translation of the U.S. dollar to euro exchange rate associated with the purchase commitments from Amphastar.

The following table provides a comparison of the expense categories for the six months ended June 30, 2017 and 2016 (dollars in thousands):

	Six Months Ended June 30,			
	2017	2016	$ Change	% Change
Expenses:				
Cost of goods sold	$ 7,635	$ 9,213	$ (1,578)	(17%)
Research and development	$ 6,251	9,440	(3,189)	(34%)
Selling	19,371	4,017	15,354	382%
General and administrative	14,585	14,443	142	1%
Property and equipment impairment	111	—	111	100%
Loss on foreign currency translation	8,392	2,023	6,369	315%
Total expenses	$56,345	$39,136	$17,209	44%

The decrease in cost of goods sold of $1.6 million for the six months ended June 30, 2017 compared to the same period in the prior year is primarily due to a $3.3 million decrease in under-absorbed labor and overhead resulting from the reduction in work force in the fourth quarter of 2016 and no manufacturing of Afrezza in the first quarter of 2016. A decrease of $0.3 million is deferred cost related to defer revenue. These decreases were offset by a write-down of inventory of approximately $1.5 million for expiring and obsolescent inventory and $0.7 million of cost of goods sold attributed to the manufacturing of Afrezza dispensed to patients.

The decrease in research and development expense of $3.2 million for the six months ended June 30, 2017 compared to the same period in the prior year is primarily due to decreases in compensation expense of $3.2 million and non-cash stock-based compensation expense of $0.3 million, each as a result of reductions in staff. Partially offsetting the decreases was an increase due to clinical trials of $0.4 million.

The increase in selling expenses of $15.4 million for the six months ended June 30, 2017 compared to the same period in the prior year is primarily due to increases of $8.3 million for compensation expense associated with the sales force that we brought in-house in the first quarter of 2017, $4.7 million for cost of external services and commercial support, $1.9 million for travel and related sales force expenses, $0.6 million of other expenses, $0.4 million for product samples related expense, and $0.2 million for promotional expenses. Partially offsetting the increase was a decrease in consultant spending of $1.0 million as a result of the transition of some of the sales force in-house.

The increase in general and administrative expenses of $0.1 million for the six months ended June 30, 2017 compared to the same period in the prior year was primarily due to increased spending of $0.6 million in supporting regulatory activities, and $0.2 million increased spending in information systems supporting salesforce personnel. These increases offset with a decrease of $0.7 million in legal spending as a result of the Sanofi settlement that was reached in 2016.

Loss on foreign currency translation of $8.4 million for the six months ended June 30, 2017 compared to $2.0 million for the same period in the prior year was due to the currency translation impacting the U.S. dollar to euro exchange rate associated with the recognized loss on purchase commitments related to Amphastar.

Other Income (Expense)

The following table provides a comparison of the other income (expense) categories for the three months ended June 30, 2017 and 2016 (dollars in thousands):

	Three Months Ended June 30,			
	2017	2016	$Change	% Change
Change in fair value of warrant liability	$ 147	$ (5,306)	$5,453	(103%)
Interest income	58	26	32	123%
Interest expense on notes	(2,422)	(4,181)	1,759	(42%)
Interest expense on note payable to principal stockholder	(721)	(721)	—	— %
Loss on extinguishment of debt	(830)	—	(830)	100%
Other income	—	(653)	653	(100%)
Total other income (expense)	$(3,768)	$(10,835)	$7,067	(65%)

During the three months ended June 30, 2017, we recorded a $0.1 million change in the fair value of the warrant liability compared to $5.3 million for the same period in the prior year primarily due to the change in our stock price.

The decrease of $1.7 million in the interest expense on notes for the three months ended June 30, 2017 compared to the same period in the prior year was primarily related to the Sanofi debt that was forgiven in the fourth quarter of 2016.

The increase in the loss on extinguishment of debt of $0.8 million compared to the same period in the prior year was related to the Deerfield exchange transactions that were completed in April and June of 2017.

The following table provides a comparison of the other income (expense) categories for the six months ended June 30, 2017 and 2016 (dollars in thousands):

	Six Months Ended June 30,			
	2017	2016	$ Change	% Change
Change in fair value of warrant liability	$ 6,776	$ (5,306)	$12,082	(228%)
Interest income	114	41	73	178%
Interest expense on notes	(5,128)	(8,401)	3,273	(39%)
Interest expense on note payable to principal stockholder	(1,435)	(1,443)	8	(1%)
Loss on extinguishment of debt	(830)	—	(830)	100%
Other income	13	(586)	599	(102%)
Total other income (expense)	$ (490)	$(15,695)	$15,205	(97%)

During the six months ended June 30, 2017, we recorded a $6.8 million change in the fair value of the warrant liability compared to $5.3 million for the same period in the prior year primarily due to the change in our stock price.

The decrease of $3.3 million in the interest expense on notes for the six months ended June 30, 2017 compared to the same period in the prior year was primarily related to the Sanofi debt that was forgiven in the fourth quarter of 2016.

The increase in the loss on extinguishment of debt of $0.8 million compared to the same period in the prior year was related to the Deerfield exchange transactions entered into in April and June 2017.

LIQUIDITY AND CAPITAL RESOURCES

To date, we have funded our operations through the sale of equity securities and convertible debt securities, borrowings under The Mann Group Loan Arrangement, which we can no longer borrow under as we have used all amounts available for borrowing, borrowings under the Facility Agreement with Deerfield, receipt of upfront, milestone payments under the Sanofi License Agreement, and borrowings under the Sanofi Loan Facility which terminated in 2016.

As of June 30, 2017, we had $167.4 million principal amount of outstanding debt, consisting of:

- $27.7 million principal amount of 2018 notes bearing interest at 5.75% per annum and maturing on August 15, 2018;
- $45.0 million principal amount of 2019 notes bearing interest at 9.75% per annum, $10.0 million of which is due and payable in August 2017 (with an option for us to elect to further defer the payment of such principal amount from August 31, 2017 to October 31, 2017 if we meet certain conditions described in the Third Amendment), $15.0 million of which is due and payable in each of July 2018 and July 2019, and $5.0 million of which is due and payable in December 2019;
- $15.0 million principal amount of Tranche B notes bearing interest at 8.75% per annum, $5.0 million of which is due and payable in each of May 2018 and 2019, and $5.0 million of which is due and payable in December 2019; and
- $79.7 million principal amount of indebtedness under The Mann Group Loan Arrangement bearing interest at a fixed rate of 5.84% per annum and maturing on January 5, 2020.

On June 27, 2017, we entered into an agreement with The Mann Group, pursuant to which the parties agreed to, among other things, (i) capitalize $10.7 million of accrued and unpaid interest as of June 30, 2017 under The Mann Group Loan Arrangement, resulting in such amount being classified as outstanding principal under The Mann Group Loan Arrangement, (ii) advance to us approximately $19.4 million, the remaining amount available for borrowing by us under The Mann Group Loan Arrangement after the foregoing capitalization of accrued and unpaid interest, and (iii) defer all interest payable on the outstanding principal under The Mann Group Loan Arrangement until July 1, 2018, unless such payments are otherwise permitted under the subordination agreement with Deerfield, and subject to further deferral under the subordination agreement with Deerfield until our payment obligations to Deerfield have been satisfied in full. There are no additional funds available to borrow under The Mann Group Loan Arrangement. As of June 30, 2017, there was no accrued and unpaid interest under The Mann Group Loan Arrangement.

On April 18, 2017, we entered into an Exchange Agreement with Deerfield resulting in the cash repayment of $4.0 million under the Tranche B notes and the conversion of $1.0 million and $5.0 million of the Tranche B notes and the 2019 notes, respectively, to common shares. On June 29, 2017, we entered into the Third Amendment resulting in the conversion of $5.0 million of the 2019 notes to common shares and deferment of $10.0 million of principal amount of the 2019 notes due July 18, 2017 to August 31, 2017 with an option to further defer the payment of such principal amount from August 31, 2017 to October 31, 2017 if certain conditions are met.

Outstanding debt is more fully described in Note 5 – Related Party Arrangements, Note 6- Borrowings, Note 9 – Fair Value of Financial Instruments and Note 11 – Commitments and Contingencies.

There can be no assurance that we will have sufficient resources to make any required repayments of principal under the 2018 notes, 2019 notes, Tranche B notes or The Mann Group Loan Arrangement when required. Further, if we undergo a fundamental change, as that term is defined in the indentures governing the terms of the 2018 notes, or certain Major Transactions as defined in the Facility Agreement in respect of the 2019 notes and the Tranche B notes, the holders of the respective debt securities will have the option to require us to repurchase all or any portion of such debt securities at a repurchase price of 100% of the principal amount of such debt securities to be repurchased plus accrued and unpaid interest, if any. The 2018 notes bear interest at the rate of 5.75% per year on the outstanding principal amount, payable in cash semiannually in arrears on February 15 and August 15 of each year. The 2019 notes bear interest at the rate of 9.75% per year on the outstanding principal amount and the Tranche B notes bear interest at the rate of 8.75% on the outstanding principal amount, with accrued interest on each payable in cash quarterly in arrears on the last business day of March, June, September and December of each year. Outstanding loans under The Mann Group Loan Arrangement accrue interest at a rate of 5.84% per annum, due and payable quarterly in arrears on the first day of each calendar quarter for the preceding quarter, except that The Mann Group has agreed to defer interest payments until July 1, 2018 unless otherwise permitted by the subordination agreement with Deerfield, and such interest payments are subject to additional deferral beyond July 1, 2018 until our payment obligations to Deerfield have been satisfied in full. While we have been able to timely make our required interest payments to date, we cannot guarantee that we will be able to do so in the future. If we fail to pay interest on the 2018 notes, 2019 notes, and Tranche B notes or if we fail to repay or repurchase the 2018 notes, 2019 notes, Tranche B notes, or borrowings under The Mann Group Loan Arrangement, we will be in default under the applicable instrument for such indebtedness, and may also suffer an event of default under the terms of other borrowing arrangements that we may enter into from time to time. Any of these events could have a material adverse effect on our business, results of operations and financial condition, up to and including the note holders initiating bankruptcy proceedings or causing us to cease operations altogether.

In connection with the execution of the Facility Agreement, on July 1, 2013, we issued Milestone Rights to the Milestone Purchasers. The Milestone Rights provide the Milestone Purchasers certain rights to receive payments of up to $90.0 million upon the occurrence of specified strategic and sales milestones, including the first commercial sale of an Afrezza product and the achievement of specified net sales figures. In addition, the Facility Agreement includes customary representations, warranties and covenants, including, a restriction on the incurrence of additional indebtedness, and a financial covenant which requires our cash and cash equivalents, which includes available borrowings under The Mann Group Loan Arrangement, on the last day of each fiscal quarter to not be less than $25.0 million, or pursuant to the Third Amendment, $10.0 million as of the last day of each month through October 31, 2017 and as of December 31, 2017 if certain conditions are met. See Note 11 — Commitments and Contingencies and Note 6 — Borrowings for further information related to the Facility Agreement.

On July 31, 2014, we entered into the Insulin Supply Agreement, pursuant to which we agreed to purchase certain annual minimum quantities of insulin. See Note 11 — Commitments and Contingencies for further information related to the Insulin Supply Agreement.

Pursuant to the Sanofi License Agreement, we received an initial upfront payment of $150.0 million and milestone payments totaling $50.0 million in the first quarter of 2015 upon satisfaction of certain manufacturing milestones specified in the Sanofi License Agreement. As a result of the termination of the Sanofi License Agreement, we will not receive any additional milestone payments from Sanofi under the agreement. In addition, on November 9, 2016, in connection with the Settlement Agreement, we and Aventisub LLC, an affiliate of Sanofi, agreed to terminate the Sanofi Loan Facility. In connection with such termination, Aventisub LLC agreed to forgive the full outstanding loan balance on the Sanofi Loan Facility of $72.0 million owed by us and agreed to release its security interests encumbering our assets. Sanofi also agreed to make a cash payment of $30.6 million to us, which was received in early January 2017 as acceleration and in replacement of all other payments that Sanofi would otherwise have been required to make in the future pursuant to the insulin put option, without being required to deliver any insulin for such payment. See Note 7 — Collaboration Arrangements for further information related to the Sanofi agreements.

Cash used in operating activities, which consists of net loss adjusted for the various non-cash items, changes in working capital and changes in other balance sheet accounts, totaled $11.5 million for the six months ended June 30, 2017. Cash used in operating activities totaled $42.3 million for the six months ended June 30, 2016.

During the six months ended June 30, 2017, we used $11.5 million of cash for our operating activities as a result of our net loss of $51.7 million, offset by a net decrease in operating assets and liabilities of $31.9 million and non-cash charges of $8.3 million. The decrease in operating assets and liabilities was primarily as a result of the receipt of $30.6 million from Sanofi pursuant to the insulin put option in January 2017, increases in accounts payable of $3.4 million and decreases in prepaid expenses and other assets of $1.9 million, offset by decreases in deferred revenue of $0.8 million, purchase commitment liabilities of $0.5 million and accrued expenses and other current liabilities of $0.5 million and increases accounts receivable of $1.0 million, inventory of $0.8 million, and deferred costs from commercial product sales of $0.2 million. The non-cash charges included $6.8 million from changes in the fair value of the warrant liability, offset by $8.4 million loss on foreign currency exchange, $2.5 million of stock-based compensation, $1.8 million of depreciation, amortization and accretion, $1.4 million of interest accrued through notes payable to principal stockholder and $0.8 million of loss on extinguishment of debt.

During the six months ended June 30, 2016, we used $42.3 million of cash for our operating activities as a result of our net loss of $54.8 million, offset by non-cash charges of $17.4 million and a net decrease in operating assets and liabilities of $4.8 million. The non-cash charges included $4.7 million of depreciation and accretion and stock-based compensation, $2.0 million loss on foreign currency exchange, $2.6 million of interest accrued through borrowings under Sanofi Loan Facility, $5.3 million from changes in the fair value of the warrant liability, $0.7 million from warrant issuance costs, $1.4 million interest accrued through notes payable to principal stockholder and $0.7 million of impairment charges. The net decrease in operating assets and liabilities was due to decreases in accounts payable of $12.5 million and $3.9 million in purchase commitments liability, and an increase of $2.9 million in inventory, offset by an increase of $9.2 million in deferred payments from collaboration, $2.6 million in prepaid expenses and other current assets, and $2.7 million increase in accrued expenses and other liabilities.

Cash provided from investing activities was $16.7 million for the six months ended June 30, 2017 compared to cash used in investing activities of $1.1 million for the six months ended June 30, 2016. The difference was primarily related to net proceeds received during the six months ended June 30, 2017 for the sale of certain parcels of real estate owned by us in Valencia, California and certain related improvements, personal property, equipment, supplies and fixtures for $16.7 million.

Cash provided from financing activities was $15.3 million for the six months ended June 30, 2017 primarily related to $19.4 million received from borrowings on the note payable to principal stockholder offset by a principal payment of $4.0 million on the facility financing obligation. Cash provided by financing activities of $48.1 million for the six months ended June 30, 2016 was primarily related to $47.4 in net proceeds received from the sale of stock and warrants during the six months ended June 30, 2016.

As of June 30, 2017, we had $43.4 million in cash and cash equivalents, which, together with our debt obligations, including a $10.0 million principal repayment that is scheduled to become due on August 31, 2017 (subject to a possible extension to October 31, 2017), raises substantial doubt about our solvency and ability to continue as a going concern. We expect to expend our capital resources for the manufacturing, sales and marketing of Afrezza and to develop our product candidates. We also intend to use our capital resources for general corporate purposes. We estimate that our net operating cash flow for the second half of 2017 will be approximately $18 to $24 million per quarter assuming that we continue as a going concern during this period. However, we cannot provide assurance that our plans will not change or that changed circumstances will not result in net operating cash flow that are greater than we currently estimate.

If we enter into strategic business collaborations with respect to our product candidates or Afrezza for commercialization outside of the United States, we may, as part of the transaction, receive additional capital. In addition, we expect to pursue the sale of equity and/or debt securities, or the establishment of other funding facilities. Issuances of debt or additional equity could impact the rights of our existing stockholders, dilute the ownership percentages of our existing stockholders and may impose restrictions on our operations. These restrictions could include limitations on additional borrowing, specific restrictions on the use of our assets as well as prohibitions on our ability to create liens, pay dividends, redeem our stock or make investments. We also may seek to raise additional capital by pursuing opportunities for the licensing, sale or divestiture of certain intellectual property and other assets, including our Technosphere technology platform. There can be no assurance, however, that any strategic collaboration, sale of securities or sale or license of assets will be available to us on a timely basis or on acceptable terms, if at all. If we are unable to raise additional capital when needed or on acceptable terms, we may be required to enter into agreements with third parties to develop or commercialize products or technologies that we otherwise would have sought to develop independently, and any such agreements may not be on terms as commercially favorable to us.

We cannot provide assurances that our plans will not change or that changed circumstances will not result in the depletion of our capital resources more rapidly than we currently anticipate. If planned operating results are not achieved or we are not successful in raising additional capital through equity or debt financing or entering business collaborations, we will be required to reduce expenses through the delay, reduction or curtailment of our projects, or further reduction of costs for facilities and administration, and there will continue to be substantial doubt about our ability to continue as a going concern.

Off-Balance Sheet Arrangements

As of June 30, 2017, we did not have any off-balance sheet arrangements.

Contractual Obligations

As of June 30, 2017, there were no material changes outside of the ordinary course of business in our contractual obligations from those disclosed within “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” as contained in the Annual Report, except for the following:

Note Payable To Principal Stockholder

On June 27, 2017, we entered into an agreement with The Mann Group, pursuant to which the parties agreed to, among other things, (i) capitalize $10.7 million of accrued and unpaid interest as of June 30, 2017 under The Mann Group Loan Arrangement, resulting in such amount being classified as outstanding principal under The Mann Group Loan Arrangement, (ii) advance to us approximately $19.4 million, the remaining amount available for borrowing by us under The Mann Group Loan Arrangement after the foregoing capitalization of accrued and unpaid interest, and (iii) defer all interest payable on the outstanding principal under The Mann Group Loan Arrangement until July 1, 2018, unless such payments are otherwise permitted under the subordination agreement with Deerfield, and subject to further deferral under the subordination agreement with Deerfield until our payment obligations to Deerfield have been satisfied in full. The outstanding principal amount, including the additional amounts borrowed under the June 2017 agreement, and all accrued interest thereon will continue to be due on January 5, 2020.

Facility Financing Obligation

On April 18, 2017, we entered into an Exchange Agreement with Deerfield resulting in the cash repayment of $4.0 million under the Tranche B notes and the conversion of $1.0 million and $5.0 million of the Tranche B notes and the 2019 notes, respectively, to common shares. The principal amount being repaid and exchanged under the Tranche B notes and the principal amount being exchanged under the 2019 notes represents the principal amount that would have otherwise become due and payable in May 2017 and July 2017 under the Tranche B notes and the 2019 notes, respectively. On June 29, 2017, we entered into the Third Amendment resulting in the conversion of $5.0 million of the 2019 notes to common shares and deferment of $10.0 million of principal amount of the 2019 notes due July 18, 2017 to August 31, 2017.

Operating Lease Obligations

On May 5, 2017, we executed an office lease with Russell Ranch Road II LLC to lease office space for our corporate headquarters in Westlake Village, California. The office lease commences on the earlier of (i) the date we commence business from the leased space or (ii) the later of the date of substantial completion of the build-out by the landlord or August 1, 2017. The lease requires monthly payments of $40,951, increased by 3% annually, plus the estimated cost of maintaining the property by the landlord. The lease expires 65 months from the commencement date and provides us with a five year renewal option.

Our contractual obligations are more fully described in Note 5 – Related Party Arrangements, Note 6 – Borrowings, Note 9 – Fair Value of Financial Instruments and Note 11 – Commitments and Contingencies.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk

Due to the fixed interest rates of our debt, we currently do not have exposure to changes in our interest expense as a result of changes in interest rates. The interest rate on amounts borrowed under The Mann Group Loan Arrangement for the three and six months ended June 30, 2017 was a fixed rate equal to 5.84%. As of June 30, 2017, the total principal amount outstanding under The Mann Group Loan Arrangement was $79.7 million. We also have debt related to the 2018 notes at a fixed interest rate of 5.75%, debt related to the 2019 notes at a fixed interest rate of 9.75% and debt related to the Tranche B notes at a fixed interest rate of 8.75%.

Our current policy requires us to maintain a highly liquid short-term investment portfolio consisting mainly of U.S. money market funds and investment-grade corporate, government and municipal debt. None of these investments are entered into for trading purposes. Our cash is deposited in and invested through highly rated financial institutions in North America.

If a change in interest rates equal to 10% of the interest rates on June 30, 2017 were to have occurred, this change would not have had a material effect on the value of our short-term investment portfolio.

Foreign Currency Exchange Risk

We incur and will continue to incur significant expenditures for insulin supply obligations under our supply agreement with Amphastar. Such obligations are denominated in euros. At the end of each reporting period, these liabilities, if any, are converted to U.S. dollars at the then-applicable foreign exchange rate. As a result, our business is affected by fluctuations in exchange rates between the U.S. dollar and foreign currencies. We have not entered into foreign currency hedging transactions to mitigate our exposure to foreign currency exchange risks, but may enter into foreign currency hedging transactions in the future. Exchange rate fluctuations may adversely affect our expenses, results of operations, financial position and cash flows. If a change in the U.S. dollar to euro exchange rate equal to 10% of the U.S. dollar to euro exchange rate were to have occurred on June 30, 2017, this change would have resulted in a foreign currency impact to our pre-tax losses of approximately $10.6 million.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, as of June 30, 2017. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on the evaluation of our disclosure controls and procedures as of June 30, 2017, we have concluded, as of such date, that our disclosure controls and procedures were effective.

Changes in Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined in Rule 13a-15(f) of the Exchange Act. An evaluation was also performed under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of any change in our internal control over financial reporting that occurred during our last fiscal quarter and that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. That evaluation did not identify any change in our internal control over financial reporting that occurred during our latest fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Following the public announcement of Sanofi's election to terminate the Sanofi License Agreement and the subsequent decline in our stock price, two motions were submitted to the district court at Tel Aviv, Economic Department for the certification of a class action against MannKind and certain of our officers and directors. In general, the complaints alleged that MannKind and certain of our officers and directors violated Israeli and U.S. securities laws by making materially false and misleading statements regarding the prospects for Afrezza, thereby artificially inflating the price of its common stock. The plaintiffs are seeking monetary damages. In November 2016, the district court dismissed one of the actions without prejudice. In the remaining action, the district court has been asked to determine whether Israeli or U.S. law is applicable before the case can be certified as a class action but has not yet ruled on this issue. We will vigorously defend against the claims advanced.

We are also subject to legal proceedings and claims which arise in the ordinary course of our business. As of the date hereof, we believe that the final disposition of such matters will not have a material adverse effect on our financial position, results of operations or cash flows. We maintain liability insurance coverage to protect our assets from losses arising out of or involving activities associated with ongoing and normal business operations.

Item 1A. Risk Factors

You should consider carefully the following information about the risks described below, together with the other information contained in this quarterly report on Form 10-Q before you decide to buy or maintain an investment in our common stock. We believe the risks described below are the risks that are material to us as of the date of this quarterly report. Additional risks and uncertainties that we are unaware of may also become important factors that affect us. The risk factors set forth below marked with an asterisk (*) did not appear as separate risk factors in, or contain changes to the similarly titled risk factors included in, Item 1A of the Annual Report. If any of the following risks actually occur, our business, financial condition, results of operations and future growth prospects would likely be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you may lose all or part of the money you paid to buy our common stock.

RISKS RELATED TO OUR BUSINESS

We will need to raise additional capital to fund our operations, and there is substantial doubt about our ability to continue as a going concern.*

This report includes disclosures stating that our existing cash resources and our accumulated stockholders' deficit raise substantial doubt about our ability to continue as a going concern. We will need to raise additional capital, whether through the sale of equity or debt securities, additional strategic business collaborations, the establishment of other funding facilities, licensing arrangements, asset sales or other means, in order to support our ongoing activities, including the commercialization of Afrezza and the development of our product candidates, and to avoid defaulting under the financial covenant in the Facility Agreement, which requires us to maintain at least $25.0 million in cash and cash equivalents or available borrowings under The Mann Group Loan Arrangement as of the last day of each fiscal quarter. On June 29, 2017, we entered into the Third Amendment with Deerfield, which, among other things, amended such financial covenant to provide that, if certain conditions under the 2017 Facility Agreement Amendment remain satisfied, then the obligation to maintain at least $25.0 million in cash as of the end of each quarter will be reduced to $10.0 million as of the last day of each month through October 31, 2017 and as of December 31, 2017. It may be difficult for us to raise additional funds on favorable terms, or at all. As of June 30, 2017, we had cash and cash equivalents of $43.4 million and a stockholders' deficit of $221.2 million, which, together with our debt obligations, including a $10.0 principal repayment that is scheduled to become due in August 2017 (subject to a possible extension to October 2017) raises substantial doubt about our solvency and ability to continue as a going concern. Net operating cash flow for the second half of 2017 will be approximately $18 to $24 million per quarter. The extent of our additional funding requirements will depend on a number of factors, including:

- the degree to which Afrezza is commercially successful;
- the degree to which we are able to generate revenue from our Technosphere drug delivery platform;
- the costs of developing and commercializing Afrezza on our own in the United States, including the costs of building our commercialization capabilities;
- the costs of finding regional collaboration partners for the development and commercialization of Afrezza in foreign jurisdictions;

- the demand by any or all of the holders of the 2018 notes, the 2019 notes, and the Tranche B notes to require us to repay or repurchase such debt securities if and when required;
- our ability to repay or refinance existing indebtedness, and the extent to which the 2018 notes or any other convertible debt securities we may issue are converted into or exchanged for shares of our common stock;
- the rate of progress and costs of our clinical studies and research and development activities;
- the costs of procuring raw materials and operating our manufacturing facilities;
- our obligation to make milestone payments pursuant to the Milestone Rights issued to the Milestone Purchasers under the Milestone Agreement;
- our success in establishing strategic business collaborations or other sales or licensing of assets, and the timing and amount of any payments we might receive from any such transactions;
- actions taken by the FDA and other regulatory authorities affecting Afrezza and our product candidates and competitive products;
- the emergence of competing technologies and products and other market developments;
- the costs of preparing, filing, prosecuting, maintaining and enforcing patent claims and other intellectual property rights or defending against claims of infringement by others;
- the level of our legal and litigation expenses; and
- the costs of discontinuing projects and technologies, and/or decommissioning existing facilities, if we undertake any such activities.

We have raised capital in the past through the sale of equity and debt securities and we may in the future pursue the sale of additional equity and/or debt securities, or the establishment of other funding facilities including asset-based borrowings. There can be no assurances, however, that we will be able to raise additional capital in the future on acceptable terms, or at all. Issuances of additional debt or equity securities or the conversion of any of our currently outstanding convertible debt securities into shares of our common stock or the exercise of our currently outstanding warrants for shares of our common stock could impact the rights of the holders of our common stock and will dilute their ownership percentage. Moreover, the establishment of other funding facilities may impose restrictions on our operations. These restrictions could include limitations on additional borrowing and specific restrictions on the use of our assets, as well as prohibitions on our ability to create liens, pay dividends, redeem our stock or make investments. We also will need to raise additional capital by pursuing opportunities for the licensing or sale of certain intellectual property and other assets. We cannot offer assurances, however, that any strategic collaborations, sales of securities or sales or licenses of assets will be available to us on a timely basis or on acceptable terms, if at all. We may be required to enter into relationships with third parties to develop or commercialize products or technologies that we otherwise would have sought to develop independently, and any such relationships may not be on terms as commercially favorable to us as might otherwise be the case.

In the event that sufficient additional funds are not obtained through strategic collaboration opportunities, sales of securities, funding facilities, licensing arrangements and/or asset sales on a timely basis, we may be required to reduce expenses through the delay, reduction or curtailment of our projects, or further reduction of costs for facilities and administration. Moreover, if we do not obtain such additional funds, there will continue to be substantial doubt about our ability to continue as a going concern and increased risk of insolvency and up to total loss of investment to our stockholders and other security holders. As of the date hereof, we have not obtained a solvency opinion or otherwise conducted a valuation of our properties to determine whether our debts exceed the fair value of our property within the meaning of applicable solvency laws. If we are or become insolvent, holders of our common stock or other securities may lose the entire value of their investment.

We cannot provide assurances that changed or unexpected circumstances will not result in the depletion of our capital resources more rapidly than we currently anticipate. There can be no assurances that we will be able to raise additional capital in sufficient amounts or on favorable terms, or at all. If we are unable to raise adequate additional capital when required or in sufficient amounts or on terms acceptable to us, we may have to delay, scale back or discontinue one or more product development programs, curtail our commercialization activities, significantly reduce expenses, sell assets (potentially at a discount to their fair value or carrying value), enter into relationships with third parties to develop or commercialize products or technologies that we otherwise would have sought to develop or commercialize independently, cease operations altogether, pursue an acquisition of our company at a price that may result in up to a total loss on investment for our stockholders, file for bankruptcy or seek other protection from creditors, or liquidate all of our assets. In addition, if we default under the Facility Agreement, our senior secured lender, Deerfield, could foreclose on substantially all of our assets.

Our prospects are heavily dependent on the successful commercialization of our only approved product, Afrezza. The continued commercialization and development of Afrezza will require substantial capital that we may not be able to obtain.*

We have expended significant time, money and effort in the development of our only approved product, Afrezza. We anticipate that in the near term our prospects and ability to generate significant revenues will heavily depend on our ability to successfully commercialize Afrezza in the United States. We anticipate that our near term revenues will also, to a much lesser extent, depend on our ability to enter into licensing arrangements for our Technosphere platform technology that involve license, milestone, royalty or other payments to us.

We assumed responsibility for worldwide commercialization of Afrezza in April 2016, prior to which time Sanofi was responsible for global commercial activities for Afrezza. We began distributing Afrezza in the United States in late July 2016, and intend to continue the commercialization of Afrezza in the United States through our own commercial organization. Successful commercialization of Afrezza is subject to many risks and there are many factors that could cause the commercialization of Afrezza to be unsuccessful, including a number of factors that are outside our control. We ultimately may be unable to gain market acceptance of Afrezza for a variety of reasons, including the treatment and dosage regimen, potential adverse effects, relative pricing compared with alternative products, the availability of alternative treatments and lack of coverage or adequate reimbursement.

We have never, as an organization, launched or commercialized a product other than Afrezza, and there is no guarantee that we will be able to successfully do so with Afrezza. There are numerous examples of unsuccessful product launches, second launches that underperform original expectations and other failures to fully exploit the market potential of drug products, including by pharmaceutical companies with more experience and resources than us. During our initial transition of the commercial responsibilities from Sanofi, we utilized a contract sales organization to promote Afrezza while we focused our internal resources on establishing a channel strategy, entering into distribution agreements and developing co-pay assistance programs, a voucher program, data agreements and payor relationships. In early 2017, we recruited our own sales force, which included some of the sales representatives that previously were employed by the contract sales organization. We will need to maintain and continue to build our commercialization capabilities in order to successfully commercialize Afrezza in the United States, and we may not have sufficient resources to do so. The market for skilled commercial personnel is highly competitive, and we may not be able to retain and find and hire all of the personnel we need on a timely basis or retain them for a sufficient period. In addition, Afrezza is a novel insulin therapy with a distinct profile and non-injectable administration, and we are therefore required to expend significant time and resources to train our sales force to be credible, persuasive and compliant with applicable laws in marketing Afrezza for the treatment diabetes to physicians and to ensure that a consistent and appropriate message about Afrezza is being delivered to our potential customers. If we are unable to effectively train our sales force and equip them with effective materials, including medical and sales literature to help them inform and educate potential customers about the benefits of Afrezza and its proper administration, our efforts to successfully commercialize Afrezza could be put in jeopardy, which would negatively impact our ability to generate product revenues.

If we are unable to maintain coverage of, and adequate payment levels for Afrezza, physicians may limit how much or under what circumstances they will prescribe or administer Afrezza. As a result, patients may decline to purchase Afrezza, which would have an adverse effect on our ability to generate revenues.

We are responsible for the NDA for Afrezza and its maintenance. Prior to the termination of the Sanofi License Agreement in April 2016, we had no experience with the maintenance of an NDA and may fail to comply with maintenance requirements, including timely submitting required reports. Furthermore, we are responsible for the conduct of the remaining required post-approval trials of Afrezza. Our financial and other resource constraints may result in delays or adversely impact the reliability and completion of these trials.

Maintaining and further building the internal infrastructure to further develop and commercialize Afrezza is costly and time-consuming, and we may not be successful in our efforts or successful in obtaining financing to support those efforts.

If we fail to successfully commercialize Afrezza in the United States, our business, financial condition and results of operations will be materially and adversely affected.

We expect that our results of operations will fluctuate for the foreseeable future, which may make it difficult to predict our future performance from period to period.

Our operating results have fluctuated in the past and are likely to do so in future periods. Some of the factors that could cause our operating results to fluctuate from period to period include the factors that will affect our funding requirements described above under “Risk Factors — We will need to raise additional capital to fund our operations, and there is substantial doubt about our ability to continue as a going concern.”

We believe that comparisons from period to period of our financial results are not necessarily meaningful and should not be relied upon as indications of our future performance.

If we do not obtain regulatory approval of Afrezza in foreign jurisdictions, we will not be able to market Afrezza in any jurisdiction outside of the United States, which could limit our commercial revenues. We may not be successful in establishing regional partnerships or other arrangements with third parties for the commercialization of Afrezza outside of the United States.

While Afrezza has been approved in the United States by the FDA for glycemic control in adult patients with diabetes, we have not yet sought approval in any other jurisdiction. In order to market Afrezza outside of the United States, we must obtain regulatory approval in each applicable foreign jurisdiction, and we may never be able to obtain such approvals. The research, testing, manufacturing, labeling, approval, sale, import, export, marketing, and distribution of pharmaceutical products outside the United States are subject to extensive regulation by foreign regulatory authorities, whose regulations differ from country to country. We will be required to comply with different regulations and policies of the jurisdictions where we seek approval for Afrezza, and we have not yet identified all of the requirements that we will need to satisfy to submit Afrezza for approval for other jurisdictions. This will require additional time, expertise and expense, including the potential need to conduct additional studies or development work for other jurisdictions beyond the work that we have conducted to support the NDA for Afrezza.

Our current strategy for the future commercialization of Afrezza outside of the United States, subject to receipt of the necessary regulatory approvals, is to seek and establish regional partnerships in foreign jurisdictions where there are appropriate commercial opportunities. It may be difficult to find collaboration partners that are able and willing to devote the time and resources necessary to successfully commercialize Afrezza. Collaborations with third parties may require us to relinquish material rights, including revenue from commercialization, agree to unfavorable terms or assume material ongoing development obligations that we would have to fund. These collaboration arrangements are complex and time-consuming to negotiate, and if we are unable to reach agreements with third-party collaborators, we may fail to meet our business objectives and our financial condition may be adversely affected. We may also face significant competition in seeking collaboration partners, especially in the current market, and may not be able to find a suitable collaboration partner in a timely manner on acceptable terms, or at all. Any of these factors could cause delay or prevent the successful commercialization of Afrezza in foreign jurisdictions and could have a material and adverse impact on our business, financial condition and results of operations and the market price of our common stock and other securities could decline.

We may not be successful in our efforts to develop and commercialize our product candidates.*

We have sought to develop our product candidates through our internal research programs. All of our product candidates will require additional research and development and, in some cases, significant preclinical, clinical and other testing prior to seeking regulatory approval to market them. Accordingly, most of these product candidates will not be commercially available for a number of years, if at all. Further research and development on these programs will require significant financial resources. Given our limited financial resources and our focus on development and commercialization of Afrezza, we will not be able to advance these programs unless we are able to enter into collaborations with third parties to fund these programs or to obtain funding to enable us to continue these programs.

A significant portion of the research that we have conducted involves new technologies, including our Technosphere platform technology. Even if our research programs identify product candidates that initially show promise, these candidates may fail to progress to clinical development for any number of reasons, including discovery upon further research that these candidates have adverse effects or other characteristics that indicate they are unlikely to be effective. In addition, the clinical results we obtain at one stage are not necessarily indicative of future testing results. If we fail to develop and commercialize our product candidates, or if we are significantly delayed in doing so, our ability to generate product revenues will be limited to the revenues we can generate from Afrezza.

We have a history of operating losses, we expect to incur losses in the future and we may not generate positive cash flow from operations in the future.*

We have never been profitable or generated positive cash flow from cumulative operations to date. Historically, we have reported negative cash flow from operations other than for the nine months ended September 30, 2014, for the year ended December 31, 2014, and for the three months ended March 31, 2015 as a result of non-recurring payments from Sanofi. As of June 30, 2017, we had an accumulated deficit of $2.8 billion. The accumulated deficit has resulted principally from costs incurred in our research and development programs, the write-off of goodwill and general operating expenses. We expect to make substantial expenditures and to incur increasing operating losses in the future in order to continue the commercialization of Afrezza. In connection with our quarterly assessment of impairment indicators and inventory valuation for the quarter ended December 31, 2015, we identified an impairment of our long-lived assets and inventory, which resulted in charges of $140.4 million and $36.1 million, respectively, in such quarter. In addition, under the amended Insulin Supply Agreement with Amphastar, we agreed to purchase certain annual minimum quantities of insulin for calendar years 2017 through 2023 for an aggregate total remaining purchase price of €93.0 million at June 30, 2017. We may not have the necessary capital resources on hand in order to service this contractual commitment.

Our losses have had, and are expected to continue to have, an adverse impact on our working capital, total assets and stockholders' equity. As of June 30, 2017, we had stockholders' deficit of $221.2 million. Our ability to achieve and sustain positive cash flow from operations and profitability depends heavily upon successfully commercializing Afrezza, and we cannot be sure when, if ever, we will generate positive cash flow from operations or become profitable.

We have a substantial amount of debt pursuant to the 2018 notes, 2019 notes, Tranche B notes and The Mann Group Loan Arrangement, and we may be unable to make required payments of interest and principal as they become due.*

As of June 30, 2017, we had $167.4 million principal amount of outstanding debt, consisting of:

- $27.7 million principal amount of 2018 notes bearing interest at 5.75% per annum and maturing on August 15, 2018;
- $45.0 million principal amount of 2019 notes bearing interest at 9.75% per annum, $10.0 million of which is due and payable in August 2017 (with an option for us to elect to further defer the payment of such principal amount from August 31, 2017 to October 31, 2017 if we meet certain conditions described in the Third Amendment), $15.0 million of which is due and payable in each of July 2018 and July 2019, and $5.0 million of which is due and payable in December 2019;
- $15.0 million principal amount of Tranche B notes bearing interest at 8.75% per annum, $5.0 million of which is due and payable in each of May 2018 and 2019, and $5.0 million of which is due and payable in December 2019; and
- $79.7 million principal amount of indebtedness under The Mann Group Loan Arrangement bearing interest at a fixed rate of 5.84% per annum due on January 5, 2020.

On June 27, 2017, we entered into an agreement with The Mann Group, pursuant to which the parties agreed to, among other things, (i) capitalize $10.7 million of accrued and unpaid interest as of June 30, 2017 under The Mann Group Loan Arrangement, resulting in such amount being classified as outstanding principal under The Mann Group Loan Arrangement, (ii) advance to us approximately $19.4 million, the remaining amount available for borrowing by us under The Mann Group Loan Arrangement after the foregoing capitalization of accrued and unpaid interest, and (iii) defer all interest payable on the outstanding principal under The Mann Group Loan Arrangement until July 1, 2018, unless such payments are otherwise permitted under the subordination agreement with Deerfield, and subject to further deferral pursuant to the terms of the subordination agreement with until our payment obligations to Deerfield have been satisfied in full. There are no additional funds available to borrow under The Mann Group Loan Arrangement. As of June 30, 2017, there was no accrued and unpaid interest under The Mann Group Loan Arrangement.

There can be no assurance that we will have sufficient resources to make any required repayments of principal under the terms of our indebtedness when required. Further, if we undergo a fundamental change, as that term is defined in the indentures governing the terms of the 2018 notes, or certain Major Transactions as defined in the Facility Agreement in respect of the 2019 notes and the Tranche B notes, the holders of the respective debt securities will have the option to require us to repurchase all or any portion of such debt securities at a repurchase price of 100% of the principal amount of such debt securities to be repurchased plus accrued and unpaid interest, if any. The 2018 notes bear interest at the rate of 5.75% per year on the outstanding principal amount, payable in cash semiannually in arrears on February 15 and August 15 of each year. The 2019 notes bear interest at the rate of 9.75% per year on the outstanding principal amount and the Tranche B notes bear interest at the rate of 8.75% on the outstanding principal amount, with accrued interest on each payable in cash quarterly in arrears on the last business day of March, June, September and December of each year. Outstanding loans under The Mann Group Loan Arrangement accrue interest at a rate of 5.84% per annum, due and payable quarterly in arrears on the first day of each calendar quarter for the preceding quarter, except that The Mann Group has agreed to defer interest payments until July 1, 2018 unless otherwise permitted by the subordination agreement with Deerfield, and such interest payments are subject to additional deferral beyond July 1, 2018 until our payment obligations to Deerfield have been satisfied in full. While we have been able to timely make our required interest payments to date, we cannot guarantee that we will be able to do so in the future. If we fail to pay interest on the 2018 notes, 2019 notes, or Tranche B notes, or if we fail to repay or repurchase the 2018 notes, 2019 notes, Tranche B notes, or the loans under The Mann Group Loan Arrangement when required, we will be in default under the instrument for such debt securities or loans, and may also suffer an event of default under the terms of other borrowing arrangements that we may enter into from time to time. Any of these events could have a material adverse effect on our business, results of operations and financial condition, up to and including the note holders initiating bankruptcy proceedings or causing us to cease operations altogether.

The agreements governing our indebtedness contain covenants that we may not be able to meet and place restrictions on our operating and financial flexibility.*

Our obligations under the Facility Agreement, including any indebtedness under the 2019 notes and the Tranche B notes, and the Milestone Agreement are secured by substantially all of our assets, including our intellectual property, accounts receivables, equipment, general intangibles, inventory (excluding the insulin inventory) and investment property, and all of the proceeds and products of the foregoing. Our obligations under the Facility Agreement and the Milestone Agreement are also secured by a certain mortgage on our facility in Danbury, Connecticut. The Facility Agreement includes customary representations, warranties and covenants by us, including restrictions on our ability to incur additional indebtedness, grant certain liens, engage in certain mergers and acquisitions, make certain distributions and make certain voluntary prepayments. Events of default under the Facility Agreement include: our failure to timely make payments due under the 2019 notes or the Tranche B notes; inaccuracies in our representations and warranties to Deerfield; our failure to comply with any of our covenants under any of the Facility Agreement, Milestone Agreement or certain other related security agreements and documents entered into in connection with the Facility Agreement, subject to a cure period with respect to most covenants; our insolvency or the occurrence of certain bankruptcy-related events; certain judgments against us; the suspension, cancellation or revocation of governmental authorizations that are reasonably expected to have a material adverse effect on our business; the acceleration of a specified amount of our indebtedness; our cash and cash equivalents, including amounts available to us under The Mann Group Loan Arrangement, falling below $25.0 million as of the last day of any fiscal quarter, or pursuant to the 2017 Facility Agreement Amendment, $10.0 million as of the last day of each month through October 31, 2017 and as of December 31, 2017 if certain conditions are met. If we fail to timely pay accrued interest under The Mann Group Loan Arrangement when required, we will be in default under The Mann Group Loan Arrangement. If one or more events of default under the Facility Agreement occurs and continues beyond any applicable cure period, the holders of the 2019 notes and Tranche B notes may declare all or any portion of the 2019 notes and Tranche B notes to be immediately due and payable. The Milestone Agreement includes customary representations and warranties and covenants by us, including restrictions on transfers of intellectual property related to Afrezza. The milestones are subject to acceleration in the event we transfer our intellectual property related to Afrezza in violation of the terms of the Milestone Agreement.

There can be no assurance that we will be able to comply with the covenants under any of the foregoing agreements, and we cannot predict whether the holders of the 2019 notes or Tranche B notes would demand repayment of the outstanding balance of the 2019 notes or the Tranche B notes as applicable or exercise any other remedies available to such holders if we were unable to comply with these covenants. The covenants and restrictions contained in the foregoing agreements could significantly limit our ability to respond to changes in our business or competitive activities or take advantage of business opportunities that may create value for our stockholders and the holders of our other securities. In addition, our inability to meet or otherwise comply with the covenants under these agreements could have an adverse impact on our financial position and results of operations and could result in an event of default under the terms of our other indebtedness, including our indebtedness under the 2018 notes. In the event of certain future defaults under the foregoing agreements for which we are not able to obtain waivers, the holders of the 2018 notes, 2019 notes and Tranche B notes may accelerate all of our repayment obligations, and, with respect to the 2019 notes and Tranche B notes, take control of our pledged assets, potentially requiring us to renegotiate the terms of our indebtedness on terms less favorable to us, or to immediately cease operations. If we enter into additional debt arrangements, the terms of such additional arrangements could further restrict our operating and financial flexibility. In the event we must cease operations and liquidate our assets, the rights of any holders of our outstanding secured debt would be senior to the rights of the holders of our unsecured debt and our common stock to receive any proceeds from the liquidation.

If we do not achieve our projected development goals in the timeframes we expect, our business, financial condition and results of operations will be harmed and the market price of our common stock and other securities could decline.

For planning purposes, we estimate the timing of the accomplishment of various scientific, clinical, regulatory and other product development goals, which we sometimes refer to as milestones. These milestones may include the commencement or completion of scientific studies and clinical studies and the submission of regulatory filings. From time to time, we publicly announce the expected timing of some of these milestones. All of these milestones are based on a variety of assumptions. The actual timing of the achievement of these milestones can vary dramatically from our estimates, in many cases for reasons beyond our control, depending on numerous factors, including:

- the rate of progress, costs and results of our clinical studies and preclinical research and development activities;
- our ability to identify and enroll patients who meet clinical study eligibility criteria;
- our ability to access sufficient, reliable and affordable supplies of components used in the manufacture of our product candidates;
- the costs of expanding and maintaining manufacturing operations, as necessary;
- the extent to which our clinical studies compete for clinical sites and eligible subjects with clinical studies sponsored by other companies; and
- actions by regulators.

In addition, if we do not obtain sufficient additional funds through sales of securities, strategic collaborations or the license or sale of certain of our assets on a timely basis, we may be required to reduce expenses by delaying, reducing or curtailing our development of product candidates. If we fail to commence or complete, or experience delays in or are forced to curtail, our proposed clinical programs or otherwise fail to adhere to our projected development goals in the timeframes we expect (or within the timeframes expected by analysts or investors), our business, financial condition and results of operations will be harmed and the market price of our common stock and other securities may decline.

Afrezza or our product candidates may be rendered obsolete by rapid technological change.

A number of established pharmaceutical companies have or are developing technologies for the treatment of unmet medical needs.

The rapid rate of scientific discoveries and technological changes could result in Afrezza or one or more of our product candidates becoming obsolete or noncompetitive. Our competitors may develop or introduce new products that render our technology or Afrezza less competitive, uneconomical or obsolete. For example, in January 2017, Novo Nordisk announced that Fiasp®, a faster formulation of insulin aspart, was approved in Europe and Canada. It is currently undergoing regulatory review in the United States. Our future success will depend not only on our ability to develop our product candidates but to improve them and keep pace with emerging industry developments. We cannot assure you that we will be able to do so.

We also expect to face competition from universities and other non-profit research organizations. These institutions carry out a significant amount of research and development in various areas of unmet medical need. These institutions are becoming increasingly aware of the commercial value of their findings and are more active in seeking patent and other proprietary rights as well as licensing revenues.

Continued testing of Afrezza or our product candidates may not yield successful results, and even if it does, we may still be unable to commercialize our product candidates.

Forecasts about the effects of the use of drugs, including Afrezza, over terms longer than the clinical studies or in much larger populations may not be consistent with the earlier clinical results. For example, with the approval of Afrezza, the FDA has required a five-year, randomized, controlled trial in 8,000 — 10,000 patients with type 2 diabetes, the primary objective of which is to compare the incidence of pulmonary malignancy observed with Afrezza to that observed in a standard of care control group. If long-term use of a drug results in adverse health effects or reduced efficacy or both, the FDA or other regulatory agencies may terminate our or any future marketing partner’s ability to market and sell the drug, may narrow the approved indications for use or otherwise require restrictive product labeling or marketing, or may require further clinical studies, which may be time-consuming and expensive and may not produce favorable results.

Our research and development programs are designed to test the safety and efficacy of our product candidates through extensive nonclinical and clinical testing. We may experience numerous unforeseen events during, or as a result of, the testing process that could delay or impact commercialization of any of our product candidates, including the following:

- safety and efficacy results obtained in our nonclinical and early clinical testing may be inconclusive or may not be predictive of results that we may obtain in our future clinical studies or following long-term use, and we may as a result be forced to stop developing a product candidate or alter the marketing of an approved product;
- the analysis of data collected from clinical studies of our product candidates may not reach the statistical significance necessary, or otherwise be sufficient to support FDA or other regulatory approval for the claimed indications;
- after reviewing clinical data, we or any collaborators may abandon projects that we previously believed were promising; and
- our product candidates may not produce the desired effects or may result in adverse health effects or other characteristics that preclude regulatory approval or limit their commercial use once approved.

As a result of any of these events, we, any collaborator, the FDA, or any other regulatory authorities, may suspend or terminate clinical studies or marketing of the drug at any time. Any suspension or termination of our clinical studies or marketing activities may harm our business, financial condition and results of operations and the market price of our common stock and other securities may decline.

If our suppliers fail to deliver materials and services needed for the production of Afrezza in a timely and sufficient manner or fail to comply with applicable regulations, and if we fail to timely identify and qualify alternative suppliers, our business, financial condition and results of operations would be harmed and the market price of our common stock and other securities could decline.

For the commercial manufacture of Afrezza, we need access to sufficient, reliable and affordable supplies of insulin, our Afrezza inhaler, the related cartridges and other materials. Currently, the only approved source of insulin for Afrezza is manufactured by Amphastar. We must rely on our suppliers, including Amphastar, to comply with relevant regulatory and other legal requirements, including the production of insulin and FDKP in accordance with the FDA's cGMP for drug products, and the production of the Afrezza inhaler and related cartridges in accordance with QSRs. The supply of any of these materials may be limited or any of the manufacturers may not meet relevant regulatory requirements, and if we are unable to obtain any of these materials in sufficient amounts, in a timely manner and at reasonable prices, or if we encounter delays or difficulties in our relationships with manufacturers or suppliers, the production of Afrezza may be delayed. Likewise, if Amphastar ceases to manufacture or is otherwise unable to deliver insulin for Afrezza, we will need to locate an alternative source of supply and the production of Afrezza may be delayed. If any of our suppliers is unwilling or unable to meet its supply obligations and we are unable to secure an alternative supply source in a timely manner and on favorable terms, our business, financial condition, and results of operations may be harmed and the market price of our common stock and other securities may decline.

If we fail as an effective manufacturing organization or fail to engage third-party manufacturers with this capability, we may be unable to support commercialization of this product.

We use our Danbury, Connecticut facility to formulate Afrezza inhalation powder, fill plastic cartridges with the powder, package the cartridges in blister packs, and place the blister packs into foil pouches. We utilize a contract packager to assemble the final kits of foil-pouched blisters containing cartridges along with inhalers and the package insert. The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production, especially in scaling up initial production. These problems include difficulties with production costs and yields, quality control and assurance and shortages of qualified personnel, as well as compliance with strictly enforced federal, state and foreign regulations. If we engage a third-party manufacturer, we would need to transfer our technology to that third-party manufacturer and gain FDA approval, potentially causing delays in product delivery. In addition, our third-party manufacturer may not perform as agreed or may terminate its agreement with us.

Any of these factors could cause us to delay or suspend production, could entail higher costs and may result in our being unable to obtain sufficient quantities for the commercialization of Afrezza at the costs that we currently anticipate. Furthermore, if we or a third-party manufacturer fail to deliver the required commercial quantities of the product or any raw material on a timely basis, and at commercially reasonable prices, sustainable compliance and acceptable quality, and we were unable to promptly find one or more replacement manufacturers capable of production at a substantially equivalent cost, in substantially equivalent volume and quality on a timely basis, we would likely be unable to meet demand for Afrezza and we would lose potential revenues.

If Afrezza or any other product that we develop does not become widely accepted by physicians, patients, third-party payors and the healthcare community, we may be unable to generate significant revenue, if any.

Afrezza, and other products that we may develop in the future, may not gain market acceptance among physicians, patients, third-party payors and the healthcare community. Failure to achieve market acceptance would limit our ability to generate revenue and would adversely affect our results of operations.

The degree of market acceptance of Afrezza and other products that we may develop in the future depends on many factors, including the:

- approved labeling claims;
- effectiveness of efforts by us or any future marketing partner to educate physicians about the benefits and advantages of Afrezza or our other products and to provide adequate support for them, and the perceived advantages and disadvantages of competitive products;
- willingness of the healthcare community and patients to adopt new technologies;
- ability to manufacture the product in sufficient quantities with acceptable quality and cost;
- perception of patients and the healthcare community, including third-party payors, regarding the safety, efficacy and benefits compared to competing products or therapies;
- convenience and ease of administration relative to existing treatment methods;
- coverage and pricing and reimbursement relative to other treatment therapeutics and methods; and
- marketing and distribution support.

Because of these and other factors, Afrezza and any other product that we develop may not gain market acceptance, which would materially harm our business, financial condition and results of operations.

If third-party payors do not cover Afrezza or any of our product candidates for which we receive regulatory approval, Afrezza or such product candidates might not be prescribed, used or purchased, which would adversely affect our revenues.

Our future revenues and ability to generate positive cash flow from operations may be affected by the continuing efforts of government and other third-party payors to contain or reduce the costs of healthcare through various means. For example, in certain foreign markets the pricing of prescription pharmaceuticals is subject to governmental control. In the United States, there has been, and we expect that there will continue to be, a number of federal and state proposals to implement similar governmental controls. We cannot be certain what legislative proposals will be adopted or what actions federal, state or private payors for healthcare goods and services may take in response to any drug pricing and reimbursement reform proposals or legislation. Such reforms may limit our ability to generate revenues from sales of Afrezza or other products that we may develop in the future and achieve profitability. Further, to the extent that such reforms have a material adverse effect on the business, financial condition and profitability of any future marketing partner for Afrezza, and companies that are prospective collaborators for our product candidates, our ability to commercialize Afrezza and our product candidates under development may be adversely affected.

In the United States and elsewhere, sales of prescription pharmaceuticals still depend in large part on the availability of coverage and adequate reimbursement to the consumer from third-party payors, such as governmental and private insurance plans. Third-party payors are increasingly challenging the prices charged for medical products and services. The market for Afrezza and our product candidates for which we may receive regulatory approval will depend significantly on access to third-party payors' drug formularies, or lists of medications for which third-party payors provide coverage and reimbursement. The industry competition to be included in such formularies often leads to downward pricing pressures on pharmaceutical companies. Also, third-party payors may refuse to include a particular branded drug in their formularies or otherwise restrict patient access to a branded drug when a less costly generic equivalent or other alternative is available. In addition, because each third-party payor individually approves coverage and reimbursement levels, obtaining coverage and adequate reimbursement is a time-consuming and costly process. We may be required to provide scientific and clinical support for the use of any product to each third-party payor separately with no assurance that approval would be obtained. This process could delay the market acceptance of any product and could have a negative effect on our future revenues and operating results. Even if we succeed in bringing more products to market, we cannot be certain that any such products would be considered cost-effective or that coverage and adequate reimbursement to the consumer would be available. Patients will be unlikely to use our products unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of our products.

In addition, in many foreign countries, particularly the countries of the European Union, the pricing of prescription drugs is subject to government control. In some non-U.S. jurisdictions, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing vary widely from country to country. For example, the European Union provides options for its member states to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. A member state may approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. We may face competition for Afrezza or any of our other product candidates that receives marketing approval from lower-priced products in foreign countries that have placed price controls on pharmaceutical products. In addition, there may be importation of foreign products that compete with our own products, which could negatively impact our profitability.

If we or any future marketing partner is unable to obtain coverage of, and adequate payment levels for, Afrezza or any of our other product candidates that receive marketing approval from third-party payors, physicians may limit how much or under what circumstances they will prescribe or administer them and patients may decline to purchase them. This in turn could affect our and any future marketing partner's ability to successfully commercialize Afrezza and our ability to successfully commercialize any of our other product candidates that receives regulatory approval and impact our profitability, results of operations, financial condition, and prospects.

Healthcare legislation may make it more difficult to receive revenues.*

In both the United States and certain foreign jurisdictions, there have been a number of legislative and regulatory proposals in recent years to change the healthcare system in ways that could impact our ability to sell our products profitably. For example, in March 2010, PPACA became law in the United States. PPACA substantially changes the way healthcare is financed by both governmental and private insurers and significantly affects the healthcare industry. Among the provisions of PPACA of importance to us are the following:

- an annual, nondeductible fee on any entity that manufactures or imports certain branded prescription drugs and biologic agents, apportioned among these entities according to their market share in certain government healthcare programs;

- a 2.3% medical device excise tax on certain transactions, including many U.S. sales of medical devices, which currently includes and we expect will continue to include U.S. sales of certain drug-device combination products, which was suspended for calendar years 2016 and 2017;
- an increase in the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program to 23.1% and 13% of the average manufacturer price for most branded and generic drugs, respectively;
- a licensure framework for follow-on biological products;
- expansion of healthcare fraud and abuse laws, including the False Claims Act and the Anti-Kickback Statute, new government investigative powers, and enhanced penalties for noncompliance;
- a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 50% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D;
- extension of manufacturers' Medicaid rebate liability to covered drugs dispensed to individuals who are enrolled in Medicaid managed care organizations;
- expansion of eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals with income at or below 133% of the Federal Poverty Level, thereby potentially increasing manufacturers' Medicaid rebate liability;
- expansion of the entities eligible for discounts under the Public Health Service pharmaceutical pricing program;
- new requirements to report annually to the Centers for Medicare & Medicaid Services ("CMS") certain financial arrangements with physicians and teaching hospitals, as defined in PPACA and its implementing regulations, including reporting any "payments or transfers of value" made or distributed to prescribers, teaching hospitals and other healthcare providers and reporting any ownership and investment interests held by physicians and their immediate family members and applicable group purchasing organizations during the preceding calendar year;
- a new requirement to annually report drug samples that certain manufacturers and authorized distributors provide to physicians; and
- a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research.

The medical device excise tax has been suspended by the Consolidated Appropriations Act of 2016 (the "CAA") through December 31, 2017. Absent further Congressional action, the excise tax will be reinstated for medical device sales beginning January 1, 2018. The CAA also temporarily delays implementation of other taxes intended to help fund PPACA programs.

Further, there have been judicial and Congressional challenges to other aspects of PPACA. As a result there have been delays in the implementation of, and action taken to repeal or replace, certain aspects of the PPACA. In January 2017, President Trump signed an Executive Order directing federal agencies with authorities and responsibilities under the PPACA to waive, defer, grant exemptions from, or delay the implementation of any provision of the PPACA that would impose a fiscal or regulatory burden on states, individuals, healthcare providers, health insurers, or manufacturers of pharmaceuticals or medical devices. The U.S. House of Representatives passed legislation known as the American Health Care Act of 2017 in May 2017. More recently, the Senate Republicans have released and then updated a draft bill known as the Better Care Reconciliation Act of 2017. Each of these Congressional proposals would repeal and replace certain aspects of the PPACA if ultimately enacted. The Senate Republicans have also contemplated legislation to repeal the PPACA without companion legislation to replace it. The prospects for enactment of these legislative initiatives remain uncertain. Further, Congress also could consider other legislation to replace elements of the PPACA. We continue to evaluate the potential effect of the possible repeal and replacement of the PPACA may have on our business.

In addition, other legislative changes have been proposed and adopted since PPACA was enacted. For example, on August 2, 2011, the Budget Control Act of 2011, among other things, created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, starting in 2013, and, following passage of the Bipartisan Budget Act of 2015, will stay in effect through 2025 unless additional Congressional action is taken. On January 2, 2013, President Obama signed into law the American Taxpayer Relief Act of 2012 (the "ATRA"), which, among other things, reduced Medicare payments to several providers, including hospitals, imaging centers and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. In addition, recently there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products. Specifically, there have been several recent U.S. Congressional inquiries and proposed bills designed to, among other things, bring more transparency to drug pricing, reduce the cost of prescription drugs under Medicare, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. These new laws and initiatives may result in additional reductions in Medicare and other healthcare funding, which could have a material adverse effect on our customers and accordingly, our financial operations.

We expect that PPACA, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for any approved product, and could seriously harm our future revenues. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private third-party payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability, or commercialize our products.

If we or any future marketing partner fails to comply with federal and state healthcare laws, including fraud and abuse and health information privacy and security laws, we could face substantial penalties and our business, results of operations, financial condition and prospects could be adversely affected.

As a biopharmaceutical company, even though we do not and will not control referrals of healthcare services or bill directly to Medicare, Medicaid or other third-party payors, certain federal and state healthcare laws and regulations, including those pertaining to fraud and abuse and patients' rights are and will be applicable to our business. For example, we could be subject to healthcare fraud and abuse and patient privacy regulation by both the federal government and the states in which we conduct our business. The laws that may affect our ability to operate include, among others:

- the federal Anti-Kickback Statute (as amended by PPACA, which modified the intent requirement of the federal Anti-Kickback Statute so that a person or entity no longer needs to have actual knowledge of the Statute or specific intent to violate it to have committed a violation), which constrains our business activities, including our marketing practices, educational programs, pricing policies, and relationships with healthcare providers or other entities by prohibiting, among other things, knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce, or in return for, either the referral of an individual or the purchase or recommendation of an item or service reimbursable under a federal healthcare program, such as the Medicare and Medicaid programs;
- federal civil and criminal false claims laws, including without limitation the civil False Claims Act, and civil monetary penalties laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other federal healthcare programs that are false or fraudulent, and knowingly making, or causing to be made, a false record or statement material to a false or fraudulent claim to avoid, decrease or conceal an obligation to pay money to the federal government, and under PPACA, the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal false claims laws;
- HIPAA, which created new federal criminal statutes that prohibit, among other things, knowingly and willfully executing a scheme to defraud any healthcare benefit program or falsifying, concealing, or covering up a material fact in connection with the delivery of or payment for health care benefits;
- HIPAA, as amended by HITECH, and their respective implementing regulations, which imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information on entities subject to the law, such as healthcare providers, health plans, and healthcare clearinghouses and their respective business associates that perform services for them that involve the creation, use, maintenance or disclosure of, individually identifiable health information;
- the federal physician sunshine requirements under PPACA, which requires certain manufacturers of drugs, devices, biologics, and medical supplies to report annually to the CMS information related to payments and other transfers of value to physicians, other healthcare providers, and teaching hospitals, and ownership and investment interests held by physicians and other healthcare providers and their immediate family members; and
- state and foreign law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts; state laws that require pharmaceutical companies to comply with the industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government that otherwise restricts certain payments that may be made to healthcare providers and entities; and state laws that require drug manufacturers to report information related to payments and other transfer of value to physicians and other healthcare providers and entities.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exceptions, it is possible that some of our business activities could be subject to challenge under one or more of such laws. To the extent that Afrezza or any of our product candidates that receives marketing approval is ultimately sold in a foreign country, we may be subject to similar foreign laws and regulations. If we or our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, individual imprisonment, disgorgement, exclusion of products from reimbursement under U.S. federal or state healthcare programs, additional reporting requirements and/or oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment or restructuring of our operations could materially adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal and state privacy, security and fraud laws may prove costly.

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

We participate in the Medicaid Drug Rebate Program, as administered by CMS, and other federal and state government pricing programs in the United States, and we may participate in additional government pricing programs in the future. These programs generally require us to pay rebates or otherwise provide discounts to government payors in connection with drugs that are dispensed to beneficiaries/recipients of these programs. In some cases, such as with the Medicaid Drug Rebate Program, the rebates are based on pricing that we report on a monthly and quarterly basis to the government agencies that administer the programs. Pricing requirements and rebate/discount calculations are complex, vary among products and programs, and are often subject to interpretation by governmental or regulatory agencies and the courts. The requirements of these programs, including, by way of example, their respective terms and scope, change frequently. Responding to current and future changes may increase our costs, and the complexity of compliance will be time consuming. Invoicing for rebates is provided in arrears, and there is frequently a time lag of up to several months between the sales to which rebate notices relate and our receipt of those notices, which further complicates our ability to accurately estimate and accrue for rebates related to the Medicaid program as implemented by individual states. Thus, there can be no assurance that we will be able to identify all factors that may cause our discount and rebate payment obligations to vary from period to period, and our actual results may differ significantly from our estimated allowances for discounts and rebates. Changes in estimates and assumptions may have a material adverse effect on our business, results of operations and financial condition.

In addition, the Office of Inspector General of the Department of Health and Human Services and other Congressional, enforcement and administrative bodies have recently increased their focus on pricing requirements for products, including, but not limited to the methodologies used by manufacturers to calculate average manufacturer price ("AMP") and best price ("BP") for compliance with reporting requirements under the Medicaid Drug Rebate Program. We are liable for errors associated with our submission of pricing data and for any overcharging of government payors. For example, failure to submit monthly/quarterly AMP and BP data on a timely basis could result in a civil monetary penalty of $10,000 per day for each day the submission is late beyond the due date. Failure to make necessary disclosures and/or to identify overpayments could result in allegations against us under the False Claims Act and other laws and regulations. Any required refunds to the U.S. government or responding to a government investigation or enforcement action would be expensive and time consuming and could have a material adverse effect on our business, results of operations and financial condition. In addition, in the event that the CMS were to terminate our rebate agreement, no federal payments would be available under Medicaid or Medicare for our covered outpatient drugs.

If product liability claims are brought against us, we may incur significant liabilities and suffer damage to our reputation.

The testing, manufacturing, marketing and sale of Afrezza and any clinical testing of our product candidates expose us to potential product liability claims. A product liability claim may result in substantial judgments as well as consume significant financial and management resources and result in adverse publicity, decreased demand for a product, injury to our reputation, withdrawal of clinical studies volunteers and loss of revenues. We currently carry worldwide product liability insurance in the amount of $10.0 million. Our insurance coverage may not be adequate to satisfy any liability that may arise, and because insurance coverage in our industry can be very expensive and difficult to obtain, we cannot assure you that we will seek to obtain, or be able to obtain if desired, sufficient additional coverage. If losses from such claims exceed our liability insurance coverage, we may incur substantial liabilities that we may not have the resources to pay. If we are required to pay a product liability claim our business, financial condition and results of operations would be harmed and the market price of our common stock and other securities may decline.

If we lose any key employees or scientific advisors, our operations and our ability to execute our business strategy could be materially harmed.

We face intense competition for qualified employees among companies in the biotechnology and biopharmaceutical industries. Our success depends upon our ability to attract, retain and motivate highly skilled employees. We may be unable to attract and retain these individuals on acceptable terms, if at all. In addition, in order to commercialize Afrezza successfully, we may be required to expand our work force, particularly in the areas of manufacturing and sales and marketing. These activities will require the addition of new personnel, including management, and the development of additional expertise by existing personnel, and we cannot assure you that we will be able to attract or retain any such new personnel on acceptable terms, if at all.

The loss of the services of any principal member of our management and scientific staff could significantly delay or prevent the achievement of our scientific and business objectives. All of our employees are “at will” and we currently do not have employment agreements with any of the principal members of our management or scientific staff, and we do not have key person life insurance to cover the loss of any of these individuals. Replacing key employees may be difficult and time-consuming because of the limited number of individuals in our industry with the skills and experience required to develop, gain regulatory approval of and commercialize products successfully.

We have relationships with scientific advisors at academic and other institutions to conduct research or assist us in formulating our research, development or clinical strategy. These scientific advisors are not our employees and may have commitments to, and other obligations with, other entities that may limit their availability to us. We have limited control over the activities of these scientific advisors and can generally expect these individuals to devote only limited time to our activities. Failure of any of these persons to devote sufficient time and resources to our programs could harm our business. In addition, these advisors are not prohibited from, and may have arrangements with, other companies to assist those companies in developing technologies that may compete with Afrezza or our product candidates.

If our internal controls over financial reporting are not considered effective, our business, financial condition and market price of our common stock and other securities could be adversely affected.

Section 404 of the Sarbanes-Oxley Act of 2002 requires us to evaluate the effectiveness of our internal controls over financial reporting as of the end of each fiscal year, and to include a management report assessing the effectiveness of our internal controls over financial reporting in our annual report on Form 10-K for that fiscal year. Section 404 also requires our independent registered public accounting firm to attest to, and report on, our internal controls over financial reporting.

Our management, including our Chief Executive Officer and our Chief Financial Officer, does not expect that our internal controls over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system’s objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud involving a company have been, or will be, detected. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and we cannot assure you that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected. A material weakness in our internal controls has been identified in the past, and we cannot assure you that we or our independent registered public accounting firm will not identify a material weakness in our internal controls in the future. A material weakness in our internal controls over financial reporting would require management and our independent registered public accounting firm to evaluate our internal controls as ineffective. If our internal controls over financial reporting are not considered effective, we may experience a loss of public confidence, which could have an adverse effect on our business, financial condition and the market price of our common stock and other securities.

We may undertake internal restructuring activities in the future that could result in disruptions to our business or otherwise materially harm our results of operations or financial condition.

From time to time we may undertake internal restructuring activities as we continue to evaluate and attempt to optimize our cost and operating structure in light of developments in our business strategy and long-term operating plans. These activities may result in write-offs or other restructuring charges. There can be no assurance that any restructuring activities that we undertake will achieve the cost savings, operating efficiencies or other benefits that we may initially expect. Restructuring activities may also result in a loss of continuity, accumulated knowledge and inefficiency during transitional periods and thereafter. In addition, internal restructurings can require a significant amount of time and focus from management and other employees, which may divert attention from commercial operations. If we undertake any internal restructuring activities and fail to achieve some or all of the expected benefits therefrom, our business, results of operations and financial condition could be materially and adversely affected.

We and certain of our executive officers and directors have been named as defendants in ongoing securities lawsuits that could result in substantial costs and divert management's attention.*

Following the public announcement of Sanofi's election to terminate the Sanofi License Agreement and the subsequent decline in our stock price, two motions were submitted to the District Court at Tel Aviv, Economic Department for the certification of a class action against MannKind and certain of our officers and directors. The complaints alleged that MannKind and certain of our officers and directors violated Israeli and U.S. securities laws by making materially false and misleading statements regarding the prospects for Afrezza, thereby artificially inflating the price of MannKind's common stock. The plaintiffs are seeking monetary damages. In November 2016, the court in Israel dismissed one of the actions without prejudice. In the remaining action, the district court has been asked to determine whether Israeli or U.S. law is applicable before the case can be certified as a class action but has not yet ruled on the issue. We intend to vigorously defend against these claims. If we are not successful in our defense, we could be forced to make significant payments to or other settlements with our stockholders and their lawyers, and such payments or settlement arrangements could have a material adverse effect on our business, operating results or financial condition. Even if such claims are not successful, the litigation could result in substantial costs and significant adverse impact on our reputation and divert management's attention and resources, which could have a material adverse effect on our business, operating results and financial condition.

Our operations might be interrupted by the occurrence of a natural disaster or other catastrophic event.

We expect that at least for the foreseeable future, our manufacturing facility in Danbury, Connecticut will be the sole location for the manufacturing of Afrezza. This facility and the manufacturing equipment we use would be costly to replace and could require substantial lead time to repair or replace. We depend on our facilities and on collaborators, contractors and vendors for the continued operation of our business, some of whom are located in other countries. Natural disasters or other catastrophic events, including interruptions in the supply of natural resources, political and governmental changes, severe weather conditions, wildfires and other fires, explosions, actions of animal rights activists, terrorist attacks, volcanic eruptions, earthquakes and wars could disrupt our operations or those of our collaborators, contractors and vendors. We might suffer losses as a result of business interruptions that exceed the coverage available under our and our contractors' insurance policies or for which we or our contractors do not have coverage. For example, we are not insured against a terrorist attack. Any natural disaster or catastrophic event could have a significant negative impact on our operations and financial results. Moreover, any such event could delay our research and development programs or cause interruptions in our commercialization of Afrezza.

We deal with hazardous materials and must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our research and development and commercialization of Afrezza work involves the controlled storage and use of hazardous materials, including chemical and biological materials. In addition, our manufacturing operations involve the use of a chemical that may form an explosive mixture under certain conditions. Our operations also produce hazardous waste products. We are subject to federal, state and local laws and regulations (i) governing how we use, manufacture, store, handle and dispose of these materials (ii) imposing liability for costs of cleaning up, and damages to natural resources from past spills, waste disposals on and off-site, or other releases of hazardous materials or regulated substances, and (iii) regulating workplace safety. Moreover, the risk of accidental contamination or injury from hazardous materials cannot be completely eliminated, and in the event of an accident, we could be held liable for any damages that may result, and any liability could fall outside the coverage or exceed the limits of our insurance. Currently, our general liability policy provides coverage up to $1.0 million per occurrence and $2.0 million in the aggregate and is supplemented by an umbrella policy that provides a further $20.0 million of coverage; however, our insurance policy excludes pollution liability coverage and we do not carry a separate hazardous materials policy. In addition, we could be required to incur significant costs to comply with environmental laws and regulations in the future. Finally, current or future environmental laws and regulations may impair our research, development or production efforts or have an adverse impact on our business, results of operations and financial condition. When we purchased the facilities located in Danbury, Connecticut in 2001, a soil and groundwater investigation and remediation was being conducted by a former site operator (the responsible party) under the oversight of the Connecticut Department of Environmental Protection. During the construction of our expanded manufacturing facility, we excavated contaminated soil under the footprint of our building expansion location. The responsible party reimbursed us for our increased excavation and disposal costs of contaminated soil in the amount of $1.6 million. It has conducted at its expense all work and will make all filings necessary to achieve closure for the environmental remediation conducted at the site, and has agreed to indemnify us for any future costs and expenses we may incur that are directly related to the final closure. If we are unable to collect these future costs and expenses, if any, from the responsible party, our business, financial condition and results of operations may be harmed.

We are increasingly dependent on information technology systems, infrastructure and data security.

We are increasingly dependent upon information technology systems, infrastructure and data security. Our business requires manipulating, analyzing and storing large amounts of data. In addition, we rely on an enterprise software system to operate and manage our business. Our business therefore depends on the continuous, effective, reliable and secure operation of our computer hardware, software, networks, Internet servers and related infrastructure. The multitude and complexity of our computer systems and the potential value of our data make them inherently vulnerable to service interruption or destruction, malicious intrusion and random attack. Likewise, data privacy or security breaches by employees or others may pose a risk that sensitive data including intellectual property, trade secrets or personal information belonging to us or our customers or other business partners may be exposed to unauthorized persons or to the public. Our systems are also potentially subject to cyber-attacks, which can be highly sophisticated and may be difficult to detect. Such attacks are often carried out by motivated, well-resourced, skilled and persistent actors including nation states, organized crime groups and "hacktivists." Cyber-attacks could include the deployment of harmful malware and key loggers, a denial-of-service attack, a malicious website, the use of social engineering and other means to affect the confidentiality, integrity and availability of our information technology systems, infrastructure and data. Our key business partners face similar risks and any security breach of their systems could adversely affect our security status. While we continue to invest in the protection of our critical or sensitive data and information technology, there can be no assurance that our efforts will prevent or detect service interruptions or breaches in our systems that could adversely affect our business and operations and/or result in the loss of critical or sensitive information, which could result in financial, legal, business or reputational harm to us.

RISKS RELATED TO GOVERNMENT REGULATION

Our product candidates must undergo costly and time-consuming rigorous nonclinical and clinical testing and we must obtain regulatory approval prior to the sale and marketing of any product in each jurisdiction. The results of this testing or issues that develop in the review and approval by a regulatory agency may subject us to unanticipated delays or prevent us from marketing any products.

Our research and development activities, as well as the manufacturing and marketing of Afrezza and our product candidates, are subject to regulation, including regulation for safety, efficacy and quality, by the FDA in the United States and comparable authorities in other countries. FDA regulations and the regulations of comparable foreign regulatory authorities are wide-ranging and govern, among other things:

- product design, development, manufacture and testing;
- product labeling;
- product storage and shipping;
- pre-market clearance or approval;
- advertising and promotion; and
- product sales and distribution.

The requirements governing the conduct of clinical studies and manufacturing and marketing of Afrezza and our product candidates outside the United States vary widely from country to country. Foreign approvals may take longer to obtain than FDA approvals and can require, among other things, additional testing and different clinical study designs. Foreign regulatory approval processes include essentially all of the risks associated with the FDA approval processes. Some of those agencies also must approve prices of the products. Approval of a product by the FDA does not ensure approval of the same product by the health authorities of other countries. In addition, changes in regulatory policy in the United States or in foreign countries for product approval during the period of product development and regulatory agency review of each submitted new application may cause delays or rejections.

Clinical testing can be costly and take many years, and the outcome is uncertain and susceptible to varying interpretations. We cannot be certain if or when regulatory agencies might request additional studies, under what conditions such studies might be requested, or what the size or length of any such studies might be. The clinical studies of our product candidates may not be completed on schedule, regulatory agencies may order us to stop or modify our research, or these agencies may not ultimately approve any of our product candidates for commercial sale. The data collected from our clinical studies may not be sufficient to support regulatory approval of our product candidates. Even if we believe the data collected from our clinical studies are sufficient, regulatory agencies have substantial discretion in the approval process and may disagree with our interpretation of the data. Our failure to adequately demonstrate the safety and efficacy of any of our product candidates would delay or prevent regulatory approval of our product candidates, which could prevent us from achieving profitability.

Questions that have been raised about the safety of marketed drugs generally, including pertaining to the lack of adequate labeling, may result in increased cautiousness by regulatory agencies in reviewing new drugs based on safety, efficacy, or other regulatory considerations and may result in significant delays in obtaining regulatory approvals. Such regulatory considerations may also result in the imposition of more restrictive drug labeling or marketing requirements as conditions of approval, which may significantly affect the marketability of our drug products.

The FDA and other regulatory authorities impose significant restrictions on approved products through regulations on advertising, promotional and distribution activities. This oversight encompasses, but is not limited to, direct-to-consumer advertising, healthcare provider-directed advertising and promotion, sales representative communications to healthcare professionals, promotional programming and promotional activities involving the Internet. Regulatory authorities may also review industry-sponsored scientific and educational activities that make representations regarding product safety or efficacy in a promotional context. The FDA and other regulatory authorities may take enforcement action against a company for promoting unapproved uses of a product or for other violations of its advertising and labeling laws and regulations. Enforcement action may include product seizures, injunctions, civil or criminal penalties or regulatory letters, which may require corrective advertising or other corrective communications to healthcare professionals. Failure to comply with such regulations also can result in adverse publicity or increased scrutiny of company activities by the U.S. Congress or other legislators. Certain states have also adopted regulations and reporting requirements surrounding the promotion of pharmaceuticals. Failure to comply with state requirements may affect our ability to promote or sell our products in certain states.

If we do not comply with regulatory requirements at any stage, whether before or after marketing approval is obtained, we may be fined or forced to remove a product from the market, subject to criminal prosecution, or experience other adverse consequences, including restrictions or delays in obtaining regulatory marketing approval.

Even if we comply with regulatory requirements, we may not be able to obtain the labeling claims necessary or desirable for product promotion. We may also be required to undertake post-marketing studies. For example, as part of the approval of Afrezza, the FDA required that we complete a clinical trial to evaluate the potential risk of pulmonary malignancy with Afrezza. To date, we have not enrolled any subjects in this trial.

In addition, if we or other parties identify adverse effects after any of our products are on the market, or if manufacturing problems occur, regulatory approval may be withdrawn and a reformulation of our products, additional clinical studies, changes in labeling of, or indications of use for, our products and/or additional marketing applications may be required. If we encounter any of the foregoing problems, our business, financial condition and results of operations will be harmed and the market price of our common stock and other securities may decline.

We are subject to stringent, ongoing government regulation.

The manufacture, marketing and sale of Afrezza are subject to stringent and ongoing government regulation. The FDA may also withdraw product approvals if problems concerning the safety or efficacy of a product appear following approval. We cannot be sure that FDA and United States Congressional initiatives or actions by foreign regulatory bodies pertaining to ensuring the safety of marketed drugs or other developments pertaining to the pharmaceutical industry will not adversely affect our operations. For example, stability failure of Afrezza could lead to product recall or other sanctions.

We also are required to register our establishments and list our products with the FDA and certain state agencies. We and any third-party manufacturers or suppliers must continually adhere to federal regulations setting forth requirements, known as cGMP (for drugs) and QSR (for medical devices), and their foreign equivalents, which are enforced by the FDA and other national regulatory bodies through their facilities inspection programs. In complying with cGMP and foreign regulatory requirements, we and any of our potential third-party manufacturers or suppliers will be obligated to expend time, money and effort in production, record-keeping and quality control to ensure that our products meet applicable specifications and other requirements. QSR requirements also impose extensive testing, control and documentation requirements. State regulatory agencies and the regulatory agencies of other countries have similar requirements. In addition, we will be required to comply with regulatory requirements of the FDA, state regulatory agencies and the regulatory agencies of other countries concerning the reporting of adverse events and device malfunctions, corrections and removals (e.g., recalls), promotion and advertising and general prohibitions against the manufacture and distribution of adulterated and misbranded devices. Failure to comply with these regulatory requirements could result in civil fines, product seizures, injunctions and/or criminal prosecution of responsible individuals and us. Any such actions would have a material adverse effect on our business, financial condition and results of operations.

FDA and comparable foreign regulatory authorities subject Afrezza and any approved drug product to extensive and ongoing regulatory requirements concerning the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion, import, export and recordkeeping. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with cGMPs and GCP requirements for any clinical trials that we conduct post-approval. Later discovery of previously unknown problems, including adverse events of unanticipated severity or frequency, or with our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of our product candidates, withdrawal of the product from the market, or voluntary or mandatory product recalls;
- fines, warning letters or holds on clinical trials;
- refusal by the FDA to approve pending applications or supplements to approved applications filed by us or suspension or revocation of approvals;
- product seizure or detention, or refusal to permit the import or export of our product candidates; and
- injunctions or the imposition of civil or criminal penalties.

The FDA’s and other regulatory authorities’ policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability.

Our suppliers are subject to FDA inspection.

We depend on suppliers for insulin and other materials that comprise Afrezza, including our Afrezza inhaler and cartridges. Each supplier must comply with relevant regulatory requirements and is subject to inspection by the FDA. Although we conduct our own inspections and review and/or approve investigations of each supplier, there can be no assurance that the FDA, upon inspection, would find that the supplier substantially complies with the QSR or cGMP requirements, where applicable. If we or any potential third-party manufacturer or supplier fails to comply with these requirements or comparable requirements in foreign countries, regulatory authorities may subject us to regulatory action, including criminal prosecutions, fines and suspension of the manufacture of our products.

If we are required to find a new or additional supplier of insulin, we will be required to evaluate the new supplier’s ability to provide insulin that meets regulatory requirements, including cGMP requirements as well as our specifications and quality requirements, which would require significant time and expense and could delay the manufacturing and commercialization of Afrezza.

Reports of side effects or safety concerns in related technology fields or in other companies’ clinical studies could delay or prevent us from obtaining regulatory approval for our product candidates or negatively impact public perception of Afrezza or any other products we may develop.

If other pharmaceutical companies announce that they observed frequent adverse events in their studies involving insulin therapies, we may be subject to class warnings in the label for Afrezza. In addition, the public perception of Afrezza might be adversely affected, which could harm our business, financial condition and results of operations and cause the market price of our common stock and other securities to decline, even if the concern relates to another company’s products or product candidates.

There are also a number of clinical studies being conducted by other pharmaceutical companies involving compounds similar to, or potentially competitive with, our product candidates. Adverse results reported by these other companies in their clinical studies could delay or prevent us from obtaining regulatory approval or negatively impact public perception of our product candidates, which could harm our business, financial condition and results of operations and cause the market price of our common stock and other securities to decline.

RISKS RELATED TO INTELLECTUAL PROPERTY

If we are unable to protect our proprietary rights, we may not be able to compete effectively, or operate profitably.

Our commercial success depends, in large part, on our ability to obtain and maintain intellectual property protection for our technology. Our ability to do so will depend on, among other things, complex legal and factual questions, and it should be noted that the standards regarding intellectual property rights in our fields are still evolving. We attempt to protect our proprietary technology through a combination of patents, trade secrets and confidentiality agreements. We own a number of domestic and international patents, have a number of domestic and international patent applications pending and have licenses to additional patents. We cannot assure you that our patents and licenses will successfully preclude others from using our technologies, and we could incur substantial costs in seeking enforcement of our proprietary rights against infringement. Even if issued, the patents may not give us an advantage over competitors with alternative technologies.

Moreover, the term of a patent is limited and, as a result, the patents protecting our products expire at various dates. For example, some patents providing protection for Afrezza inhalation powder have terms extending into 2020, 2026, 2028, 2029, and 2030. In addition, patents providing protection for our inhaler and cartridges have terms extending into 2023, 2031 and 2032, and we have method of treatment claims that extend into 2026, 2029, 2030 and 2031. As and when these different patents expire, Afrezza could become subject to increased competition. As a consequence, we may not be able to recover our development costs.

An issued patent is presumed valid unless it is declared otherwise by a court of competent jurisdiction. However, the issuance of a patent is not conclusive as to its validity or enforceability and it is uncertain how much protection, if any, will be afforded by our patents. A third party may challenge the validity or enforceability of a patent after its issuance by various proceedings such as oppositions in foreign jurisdictions, or post grant proceedings, including, oppositions, re-examinations or other review in the United States. In some instances we may seek re-examination or reissuance of our own patents. If we attempt to enforce our patents, they may be challenged in court where they could be held invalid, unenforceable, or have their breadth narrowed to an extent that would destroy their value.

Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. The laws of foreign countries may not protect our rights to the same extent as the laws of the United States. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. We therefore cannot be certain that we or our licensors were the first to make the invention claimed in our owned and licensed patents or pending applications, or that we or our licensor were the first to file for patent protection of such inventions. Assuming the other requirements for patentability are met, in the United States prior to March 15, 2013, the first to make the claimed invention is entitled to the patent, while outside the United States, the first to file a patent application is entitled to the patent. After March 15, 2013, under the Leahy-Smith America Invents Act (“AIA”), or the Leahy-Smith Act, enacted on September 16, 2011, the United States moved to a first inventor to file system. The Leahy-Smith Act also includes a number of significant changes that affect the way patent applications will be prosecuted and may also affect patent litigation. The full effects of these changes are currently unclear. In general, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

Moreover, patent law continues to evolve. Several further changes to patent law are before Congress. The United States Supreme Court has exhibited an increased interest in patent law and several of its recent decisions have tended to narrow the scope of patentable subject matter related to medical products and methods. These and recent decisions of lower courts and guidelines issued by the USPTO call into question the patentability of biological inventions that had previously been considered patentable. While none of this has had an immediately apparent impact on our core technology and patents, the full and ultimate effect of these developments is not yet known. We also rely on unpatented technology, trade secrets, know-how and confidentiality agreements. We require our officers, employees, consultants and advisors to execute proprietary information and invention and assignment agreements upon commencement of their relationships with us. These agreements provide that all inventions developed by the individual on behalf of us must be assigned to us and that the individual will cooperate with us in connection with securing patent protection on the invention if we wish to pursue such protection. We also execute confidentiality agreements with outside collaborators. There can be no assurance, however, that our inventions and assignment agreements and our confidentiality agreements will provide meaningful protection for our inventions, trade secrets, know-how or other proprietary information in the event of unauthorized use or disclosure of such information. If any trade secret, know-how or other technology not protected by a patent were to be disclosed to or independently developed by a competitor, our business, results of operations and financial condition could be adversely affected.

If we become involved in lawsuits to protect or enforce our patents or the patents of our collaborators or licensors, we would be required to devote substantial time and resources to prosecute or defend such proceedings.

Competitors may infringe our patents or the patents of our collaborators or licensors. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover its technology. A court may also decide to award us a royalty from an infringing party instead of issuing an injunction against the infringing activity. An adverse determination of any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent applications at risk of not issuing.

Interference proceedings brought by the USPTO, may be necessary to determine the priority of inventions with respect to our pre-AIA patent applications or those of our collaborators or licensors. Additionally, the Leahy-Smith Act has greatly expanded the options for post-grant review of patents that can be brought by third parties. In particular Inter Partes Review ("IPR"), available against any issued United States patent (pre—and post-AIA), has resulted in a higher rate of claim invalidation, due in part to the much reduced opportunity to repair claims by amendment as compared to re-examination, as well as the lower standard of proof used at the USPTO as compared to the federal courts. With the passage of time an increasing number of patents related to successful pharmaceutical products are being subjected to IPR. Moreover, the filing of IPR petitions has been used by short-sellers as a tool to help drive down stock prices. We may not prevail in any litigation, post-grant review, or interference proceedings in which we are involved and, even if we are successful, these proceedings may result in substantial costs and be a distraction to our management. Further, we may not be able, alone or with our collaborators and licensors, to prevent misappropriation of our proprietary rights, particularly in countries where the laws may not protect such rights as fully as in the United States.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, during the course of this kind of litigation, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, the market price of our common stock and other securities may decline.

If our technologies conflict with the proprietary rights of others, we may incur substantial costs as a result of litigation or other proceedings and we could face substantial monetary damages and be precluded from commercializing our products, which would materially harm our business and financial condition.

Biotechnology patents are numerous and may, at times, conflict with one another. As a result, it is not always clear to industry participants, including us, which patents cover the multitude of biotechnology product types. Ultimately, the courts must determine the scope of coverage afforded by a patent and the courts do not always arrive at uniform conclusions.

A patent owner may claim that we are making, using, selling or offering for sale an invention covered by the owner's patents and may go to court to stop us from engaging in such activities. Such litigation is not uncommon in our industry.

Patent lawsuits can be expensive and would consume time and other resources. There is a risk that a court would decide that we are infringing a third party's patents and would order us to stop the activities covered by the patents, including the commercialization of our products. In addition, there is a risk that we would have to pay the other party damages for having violated the other party's patents (which damages may be increased, as well as attorneys' fees ordered paid, if infringement is found to be willful), or that we will be required to obtain a license from the other party in order to continue to commercialize the affected products, or to design our products in a manner that does not infringe a valid patent. We may not prevail in any legal action, and a required license under the patent may not be available on acceptable terms or at all, requiring cessation of activities that were found to infringe a valid patent. We also may not be able to develop a non-infringing product design on commercially reasonable terms, or at all.

Moreover, certain components of Afrezza may be manufactured outside the United States and imported into the United States. As such, third parties could file complaints under 19 U.S.C. Section 337(a)(1)(B) (a "337 action") with the International Trade Commission (the "ITC"). A 337 action can be expensive and would consume time and other resources. There is a risk that the ITC would decide that we are infringing a third party's patents and either enjoin us from importing the infringing products or parts thereof into the United States or set a bond in an amount that the ITC considers would offset our competitive advantage from the continued importation during the statutory review period. The bond could be up to 100% of the value of the patented products. We may not prevail in any legal action, and a required license under the patent may not be available on acceptable terms, or at all, resulting in a permanent injunction preventing any further importation of the infringing products or parts thereof into the United States. We also may not be able to develop a non-infringing product design on commercially reasonable terms, or at all.

Although we own a number of domestic and foreign patents and patent applications relating to Afrezza, we have identified certain third-party patents having claims that may trigger an allegation of infringement in connection with the commercial manufacture and sale of Afrezza. If a court were to determine that Afrezza was infringing any of these patent rights, we would have to establish with the court that these patents are invalid or unenforceable in order to avoid legal liability for infringement of these patents. However, proving patent invalidity or unenforceability can be difficult because issued patents are presumed valid. Therefore, in the event that we are unable to prevail in a non-infringement or invalidity action we will have to either acquire the third-party patents outright or seek a royalty-bearing license. Royalty-bearing licenses effectively increase production costs and therefore may materially affect product profitability. Furthermore, should the patent holder refuse to either assign or license us the infringed patents, it may be necessary to cease manufacturing the product entirely and/or design around the patents, if possible. In either event, our business, financial condition and results of operations would be harmed and our profitability could be materially and adversely impacted.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, during the course of this kind of litigation, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, the market price of our common stock and other securities may decline.

In addition, patent litigation may divert the attention of key personnel and we may not have sufficient resources to bring these actions to a successful conclusion. At the same time, some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. An adverse determination in a judicial or administrative proceeding or failure to obtain necessary licenses could prevent us from manufacturing and selling our products or result in substantial monetary damages, which would adversely affect our business, financial condition and results of operations and cause the market price of our common stock and other securities to decline.

We may not obtain trademark registrations for our potential trade names.

We have not selected trade names for some of our product candidates in our pipeline; therefore, we have not filed trademark registrations for such potential trade names for our product candidates, nor can we assure that we will be granted registration of any potential trade names for which we do file. No assurance can be given that any of our trademarks will be registered in the United States or elsewhere, or once registered that, prior to our being able to enter a particular market, they will not be cancelled for non-use. Nor can we give assurances, that the use of any of our trademarks will confer a competitive advantage in the marketplace.

Furthermore, even if we are successful in our trademark registrations, the FDA has its own process for drug nomenclature and its own views concerning appropriate proprietary names. It also has the power, even after granting market approval, to request a company to reconsider the name for a product because of evidence of confusion in the marketplace. We cannot assure you that the FDA or any other regulatory authority will approve of any of our trademarks or will not request reconsideration of one of our trademarks at some time in the future.

RISKS RELATED TO OUR COMMON STOCK

We may not be able to generate sufficient cash to service all of our indebtedness. We may be forced to take other actions to satisfy our obligations under our indebtedness or we may experience a financial failure.

Our ability to make scheduled payments on or to refinance our debt obligations will depend on our financial and operating performance, which is subject to the commercial success of Afrezza, the extent to which we are able to successfully develop and commercialize our Technosphere drug delivery platform and any other product candidates that we develop, prevailing economic and competitive conditions, and to certain financial, business and other factors beyond our control. We cannot assure you that we will maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness. If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets or operations, seek additional capital or restructure or refinance our indebtedness. We cannot assure you that we would be able to take any of these actions, that these actions would be successful and permit us to meet our scheduled debt service obligations or that these actions would be permitted under the terms of our future debt agreements. In the absence of sufficient operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. We may not be able to consummate those dispositions or obtain sufficient proceeds from those dispositions to meet our debt service and other obligations when due.

Future sales of shares of our common stock in the public market, or the perception that such sales may occur, may depress our stock price and adversely impact the market price of our common stock and other securities.

If our existing stockholders or their distributees sell substantial amounts of our common stock in the public market, the market price of our common stock could decrease significantly. The perception in the public market that our existing stockholders might sell shares of common stock could also depress the market price of our common stock and the market price of our other securities. Any such sales of our common stock in the public market may affect the price of our common stock or the market price of our other securities.

In the future, we may sell additional shares of our common stock to raise capital. In addition, a substantial number of shares of our common stock is reserved for: issuance upon the exercise of stock options, warrant exercises, and the vesting of restricted stock unit awards; the purchase of shares of common stock under our employee stock purchase program; and the issuance of shares upon exchange or conversion of the 2018 notes or any other convertible debt we may issue. We cannot predict the size of future issuances or the effect, if any, that they may have on the market price for our common stock. The issuance or sale of substantial amounts of common stock, or the perception that such issuances or sales may occur, could adversely affect the market price of our common stock and other securities.

Our stock price is volatile and may affect the market price of our common stock and other securities.*

Between January 1, 2014 and June 30, 2017, our closing stock price as reported on The NASDAQ Global Market has ranged from $0.71 to $54.80, adjusted for the reverse stock split that occurred during this period; in unadjusted terms, the range over this period was $0.14 to $10.96. The trading price of our common stock is likely to continue to be volatile. The stock market, particularly in recent years, has experienced significant volatility particularly with respect to pharmaceutical and biotechnology stocks, and this trend may continue.

The volatility of pharmaceutical and biotechnology stocks often does not relate to the operating performance of the companies represented by the stock. Our business and the market price of our common stock may be influenced by a large variety of factors, including:

- our ability to obtain marketing approval for Afrezza outside of the United States and to find collaboration partners for the commercialization of Afrezza in foreign jurisdictions;
- our future estimates of Afrezza sales, prescriptions or other operating metrics;
- our ability to successful commercialize our Technosphere drug delivery platform;
- the progress of preclinical and clinical studies of our product candidates and of post-approval studies of Afrezza required by the FDA;
- the results of preclinical and clinical studies of our product candidates;
- general economic, political or stock market conditions;
- legislative developments;
- announcements by us, our collaborators, or our competitors concerning clinical study results, acquisitions, strategic alliances, technological innovations, newly approved commercial products, product discontinuations, or other developments;
- the availability of critical materials used in developing and manufacturing Afrezza or other product candidates;
- developments or disputes concerning our relationship with any of our current or future collaborators or third party manufacturers;
- developments or disputes concerning our patents or proprietary rights;
- the expense and time associated with, and the extent of our ultimate success in, securing regulatory approvals;
- announcements by us concerning our financial condition or operating performance;
- changes in securities analysts' estimates of our financial condition or operating performance;
- general market conditions and fluctuations for emerging growth and pharmaceutical market sectors;
- sales of large blocks of our common stock, including sales by our executive officers, directors and significant stockholders;
- our ability, or the perception of investors of our ability, to continue to meet all applicable requirements for continued listing of our common stock on The NASDAQ Stock Market, and the possible delisting of our common stock if we are unable to do so;
- the status of any legal proceedings or regulatory matters against or involving us or any of our executive officers and directors; and
- discussion of Afrezza, our other product candidates, competitors' products, or our stock price by the financial and scientific press, the healthcare community and online investor communities such as chat rooms. In particular, it may be difficult to verify statements about us and our investigational products that appear on interactive websites that permit users to generate content anonymously or under a pseudonym and statements attributed to company officials may, in fact, have originated elsewhere.

Any of these risks, as well as other factors, could cause the market value of our common stock and other securities to decline.

If we fail to continue to meet all applicable listing requirements, our common stock may be delisted from The NASDAQ Global Market, which could have an adverse impact on the liquidity and market price of our common stock.*

Our common stock is currently listed on The NASDAQ Global Market, which has qualitative and quantitative listing criteria. If we are unable to meet any of the NASDAQ listing requirements in the future, such as the corporate governance requirements, the minimum closing bid price requirement, or the minimum market value of listed securities requirement, NASDAQ could determine to delist our common stock. A delisting of our common stock could adversely affect the market liquidity of our common stock, decrease the market price of our common stock, adversely affect our ability to obtain financing for the continuation of our operations and result in the loss of confidence in our company. On September 14, 2016, we received notice from the Listing Qualifications Department of the NASDAQ Stock Market indicating that, for the previous 30 consecutive business days, the bid price for our common stock closed below the minimum $1.00 per share required for continued inclusion on The NASDAQ Global Market. The notification letter stated that we would be afforded 180 calendar days, or until March 13, 2017, to regain compliance with the minimum bid price requirement. In order to regain compliance, on March 1, 2017, our board of directors and stockholders approved the Charter Amendment to effect the Reverse Stock Split. On March 3, 2017, our common stock began trading on The NASDAQ Global Market on a split-adjusted basis at a ratio of 1 share for 5. On March 16, 2017, we received a letter from the Nasdaq Stock Market indicating that we had regained compliance with the $1.00 minimum closing bid price requirement. Since effecting the Reverse Stock Split, the market price per share of our common stock has closed below $1.00 on multiple occasions. There can be no assurance that the market price per share of our common stock will remain in excess of the $1.00 minimum closing bid price requirement in the future.

If other biotechnology and biopharmaceutical companies or the securities markets in general encounter problems, the market price of our common stock and other securities could be adversely affected.

Public companies in general, including companies listed on The NASDAQ Global Market, have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. There has been particular volatility in the market prices of securities of biotechnology and other life sciences companies, and the market prices of these companies have often fluctuated because of problems or successes in a given market segment or because investor interest has shifted to other segments. These broad market and industry factors may cause the market price of our common stock and other securities to decline, regardless of our operating performance. We have no control over this volatility and can only focus our efforts on our own operations, and even these may be affected due to the state of the capital markets.

In the past, following periods of large price declines in the public market price of a company’s securities, securities class action litigation has often been initiated against that company. Litigation of this type could result in substantial costs and diversion of management’s attention and resources, which would hurt our business. Any adverse determination in litigation could also subject us to significant liabilities.

The future sale of our common stock, the exchange or conversion of our 2018 notes into common stock or the exercise of our warrants for common stock could negatively affect the market price of our common stock and other securities.*

As of August 1, 2017, we had 104,682,717 shares of common stock outstanding. Substantially all of these shares are available for public sale, subject in some cases to volume and other limitations. If our common stockholders sell substantial amounts of common stock in the public market, or the market perceives that such sales may occur, the market price of our common stock and other securities may decline. Likewise the issuance of additional shares of our common stock upon the exchange or conversion of some or all of our 2018 notes, 2019 notes, Tranche B notes or upon the exercise of outstanding warrants, could adversely affect the market price of our common stock and other securities. In addition, the existence of these notes and warrants may encourage short selling of our common stock by market participants, which could adversely affect the market price of our common stock and other securities.

In addition, we will need to raise substantial additional capital in the future to fund our operations. If we raise additional funds by issuing equity securities or additional convertible debt, the market price of our common stock and other securities may decline.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

We are incorporated in Delaware. Certain anti-takeover provisions under Delaware law and in our certificate of incorporation and amended and restated bylaws, as currently in effect, may make a change of control of our company more difficult, even if a change in control would be beneficial to our stockholders or the holders of our other securities. Our anti-takeover provisions include provisions such as a prohibition on stockholder actions by written consent, the authority of our board of directors to issue preferred stock without stockholder approval, and supermajority voting requirements for specified actions. In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits stockholders owning 15% or more of our outstanding voting stock from merging or combining with us in certain circumstances. These provisions may delay or prevent an acquisition of us, even if the acquisition may be considered beneficial by some of our stockholders. In addition, they may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management.

Because we do not expect to pay dividends in the foreseeable future, you must rely on stock appreciation for any return on any investment in our common stock.

We have paid no cash dividends on any of our capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future, and payment of cash dividends, if any, will also depend on our financial condition, results of operations, capital requirements and other factors and will be at the discretion of our board of directors. Pursuant to the Facility Agreement, we are subject to contractual restrictions on the payment of dividends. There is no guarantee that our common stock will appreciate or maintain its current price. You could lose the entire value of any investment in our common stock.

We have a limited number of unreserved shares available for future issuance, which may impair our ability to conduct future financing and other transactions.*

Our amended and restated certificate of incorporation, as amended on March 1, 2017 to effect the Reverse Stock Split, currently authorizes us to issue up to 140,000,000 shares of common stock and 10,000,000 shares of preferred stock. As of August 1, 2017, we had a total of 104,682,717 shares of common stock that were authorized but unissued, and we have currently reserved a significant number of these shares for future issuance pursuant to outstanding equity awards, outstanding warrants, our equity plans and our 2018 notes. As a result, our ability to issue shares of common stock other than pursuant to existing arrangements will be limited until such time, if ever, that we are able to amend our amended and restated certificate of incorporation to further increase our authorized shares of common stock or shares currently reserved for issuance otherwise become available (for example, due to the termination of the underlying agreement to issue the shares).

If we are unable to enter into new arrangements to issue shares of our common stock or securities convertible or exercisable into shares of our common stock, our ability to complete equity-based financings or other transactions that involve the potential issuance of our common stock or securities convertible or exercisable into our common stock, will be limited. In lieu of issuing common stock or securities convertible into our common stock in any future equity financing transactions, we may need to issue some or all of our authorized but unissued shares of preferred stock, which would likely have superior rights, preferences and privileges to those of our common stock, or we may need to issue debt that is not convertible into shares of our common stock, which may require us to grant security interests in our assets and property and/or impose covenants upon us that restrict our business. If we are unable to issue additional shares of common stock or securities convertible or exercisable into our common stock, our ability to enter into strategic transactions such as acquisitions of companies or technologies, may also be limited. If we propose to amend our amended and restated certificate of incorporation to increase our authorized shares of common stock, such a proposal would require the approval by the holders of a majority of our outstanding shares of common stock, and we cannot assure you that such a proposal would be adopted. If we are unable to complete financing, strategic or other transactions due to our inability to issue additional shares of common stock or securities convertible or exercisable into our common stock, our financial condition and business prospects may be materially harmed.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

As previously disclosed in our Quarterly Report on Form 10-Q (filed on May 10, 2015), on May 5, 2017, we executed an office lease with Russell Ranch Road II LLC to lease approximately 64,300 square feet of office space located at 30930 Russell Ranch Road, Suite 301, Westlake Village, CA 91362 for our corporate headquarters. The office lease commences on the earlier of (i) the date the Company commences business from the leased space or (ii) the later of the date of substantial completion of the build-out by the landlord or August 1, 2017. The lease requires monthly payments of $40,951, increased by 3% annually, plus the estimated cost of maintaining the property by the landlord. The lease expires 65 months from the commencement date and provides us with a five year renewal option.

ITEM 6. EXHIBITS

Exhibit Number	Description of Document
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to MannKind's Quarterly Report on Form 10-Q (File No. 000-50865), filed with the SEC on August 9, 2016).
3.2	Certificate of Amendment of Amended and Restated Certificate of incorporation of MannKind Corporation (incorporated by reference to Exhibit 3.1 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on March 2, 2017).
3.3	Amended and Restated Bylaws (incorporated by reference to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on November 19, 2007).
4.1	Reference is made to Exhibits 3.1, 3.2 and 3.3.
4.2	Form of common stock certificate (incorporated by reference to Exhibit 4.2 to MannKind's Annual Report on Form 10-K (File No. 000-50865), filed with the SEC on March 16, 2017).
4.3	Form of 9.75% Senior Secured Convertible Promissory Note due 2019 (incorporated by reference to MannKind's current report on Form 8-K (File No. 000-50865), filed with the SEC on July 1, 2013).
4.4	Form of Amended and Restated 9.75% Senior Secured Convertible Promissory Note due 2019 (incorporated by reference to MannKind's Annual Report on Form 10-K (File No. 000-50865), filed with the SEC on March 3, 2014).
4.5	Form of Tranche B Senior Secured Note due 2019 (incorporated by reference to Exhibit 4.8 to MannKind's Quarterly Report on Form 10-Q (File No. 000-50856), filed with the SEC on May 12, 2014).
4.6	Milestone Rights Purchase Agreement, dated as of July 1, 2013, by and among MannKind, Deerfield Private Design Fund II, L.P. and Horizon Santé FLML SÁRL (incorporated by reference to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on July 1, 2013).
4.7	Guaranty and Security Agreement, dated as of July 1, 2013, by and among MannKind, MannKind LLC, Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P. and Horizon Santé FLML SÁRL (incorporated by reference to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on July 1, 2013).
4.8	Facility Agreement, dated as of July 1, 2013, by and among MannKind Corporation, Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P. (incorporated by reference to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on July 1, 2013).
4.9	First Amendment to Facility Agreement and Registration Rights Agreement, dated as of February 28, 2014, by and among MannKind, Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P. (incorporated by reference to MannKind's Annual Report on Form 10-K (File No. 000-50865), filed with the SEC on March 3, 2014).

Exhibit Number	Description of Document
4.10	Second Amendment to Facility Agreement and Registration Rights Agreement, dated as of August 11, 2014, by and among MannKind, Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P. (incorporated by reference to Exhibit 4.14 to MannKind's Quarterly Report on Form 10-Q (File No. 000-50865), filed with the SEC on November 10, 2014).
4.11	Indenture, by and between MannKind and U.S. Bank (as successor trustee to Wells Fargo, N.A., dated August 10, 2015 (incorporated by reference to Exhibit 4.18 to MannKind's Quarterly Report on Form 10-Q (File No. 000-50865), filed with the SEC on August 10, 2015).
4.12	Form of 5.75% Convertible Senior Subordinated Exchange Note due 2018 (included in Exhibit 4.18 as Exhibit A thereto) (incorporated by reference to Exhibit 4.19 to MannKind's Quarterly Report on Form 10-Q (File No. 000-50865), filed with the SEC on August 10, 2015).
4.13	Form of Warrant to Purchase Common Stock issued November 16, 2015 (incorporated by reference to Exhibit 4.17 to MannKind's Annual Report on Form 10-K (File No. 000-50865), filed with the SEC on March 15, 2016).
4.14	Form of Series A Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on May 10, 2016).
4.15	Form of Series B Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.2 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on May 10, 2016).
4.16	Form of Securities Purchase Agreement (incorporated by reference to Exhibit 99.1 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on May 10, 2016).
10.1*	Form of Change of Control Agreement (incorporated by reference to Exhibit 99.1 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on April 7, 2017).
10.2	Exchange Agreement, dated April 18, 2017, by and among MannKind Corporation, MannKind LLC, Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P. (incorporated by reference to Exhibit 99.1 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on April 19, 2017).
10.3	Office Lease, dated May 5 2017, by and between MannKind and Russell Ranch Road II LLC.
10.4	Agreement, dated June 27, 2017, by and between MannKind and The Mann Group LLC (incorporated by reference to Exhibit 99.1 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on June 29, 2017).
10.5	Exchange and Third Amendment to Facility Agreement, dated June 29, 2017 by and among MannKind, MannKind LLC, Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P. (incorporated by reference to Exhibit 99.2 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on June 29, 2017).
10.6*	Offer Letter Agreement, dated July 12, 2017, by and between MannKind and Steven Binder (incorporated by reference to Exhibit 99.1 to MannKind's Current Report on Form 8-K (File No. 000-50865), filed with the SEC on July 17, 2017).
31.1	Certification of the Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended.
31.2	Certification of the Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended.
32.1	Certification of the Chief Executive Officer pursuant to Rules 13a-14(b) and 15d-14(b) of the Securities Exchange Act of 1934, as amended and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350).
32.2	Certification of the Chief Financial Officer pursuant to Rules 13a-14(b) and 15d-14(b) of the Securities Exchange Act of 1934, as amended and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350).
101	Interactive Data Files pursuant to Rule 405 of Regulation S-T.

* Indicates management contract or compensatory plan

SIGNATURE

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

Dated: August 7, 2017	MANNKIND CORPORATION
	By: /s/ MICHAEL CASTAGNA Michael Castagna Chief Executive Officer (on behalf of the registrant and as the registrant's Principal Executive Officer)
	By: /s/ STEVEN BINDER Steven Binder Chief Financial Officer (on behalf of the registrant and as the registrant's Principal Financial and Accounting Officer)

Exhibit 10.3

OFFICE LEASE

BETWEEN

RUSSELL RANCH ROAD II LLC,
a Delaware limited liability company,

AS LANDLORD

AND

MANNKIND CORPORATION,
a Delaware corporation

AS TENANT

OFFICE LEASE

THIS OFFICE LEASE (this "**Lease**") is made and entered into as of May 5, 2017 (the "**Effective Date**"), by and between

"**Landlord**" RUSSELL RANCH ROAD II LLC, a Delaware limited liability company

and

"**Tenant**" MANNKIND CORPORATION, a Delaware corporation

ARTICLE I DEFINITIONS

Access Laws: The Americans With Disabilities Act of 1990 (including the Americans with Disabilities Act Accessibility Guidelines for Building and Facilities) and all other Governmental Requirements relating to the foregoing.

Additional Rent: Defined in paragraph captioned "Additional Rent".

Base Amount Allocable to the Premises: Defined in paragraph captioned "Additional Rent".

Base Rent: Base Rent shall be as follows:

Month of Lease Term:	Monthly Base Rent:
1 – 12	$40,951.00 per month
13 – 24	$42,179.53 per month
25 – 36	$43,444.92 per month
37 – 48	$44,748.26 per month
49 – 60	$46,090.71 per month
61 – 65	$47,473.43 per month

Base Rent Credit: See Section 3.2.2 herein.

Base Year: Calendar year 2017.

Brokers: Tenant was represented in this transaction by Jones Lang LaSalle, a licensed real estate broker. Landlord was represented in this transaction by Jones Lang LaSalle and IDS Real Estate Group, each licensed real estate brokers. The parties acknowledge that Jones Lang LaSalle is acting in a Dual Agency role in representing both Landlord and Tenant in this transaction.

Building: The building located on the Land at 30930 Russell Ranch Road, Westlake Village, California, and containing approximately sixty-four thousand three hundred four (64,304) rentable square feet. Landlord shall have the right (but not the obligation) to re-measure the rentable and usable square footage of the Building, and the results of Landlord's re-measurement shall be provided to Tenant and shall be binding and conclusive on Tenant for all purposes under this Lease. If the amount of the rentable square feet and/or the usable square feet of the Building is adjusted, then Tenant's Pro Rata Share of the Building shall be equitably adjusted by Landlord accordingly.

Business Day: Calendar days, except for Saturdays and Sundays and holidays when banks are closed in Los Angeles, California.

Claims: An individual and collective reference to any and all claims, demands, damages, injuries, losses, liens, liabilities, penalties, fines, lawsuits, actions, other proceedings and expenses (including attorneys' fees and expenses incurred in connection with the proceeding whether at trial or on appeal).

Commencement Date: The earlier to occur of (i) the date Tenant commences conducting business from the Premises, or (ii) the later of: (a) the date of Substantial Completion of the Landlord Work, (b) the date Tenant has been granted access to the Premises for purposes of installing IT equipment and other related facilities, or (c) August 1, 2017.

Commencement Date Memorandum: Defined in the Section entitled "Commencement Date Memorandum".

ERISA: The Employee Retirement Income Security Act of 1974, as now or hereafter amended, and the regulations promulgated under it.

Estimated Operating Costs Allocable to the Premises: Defined in the Section captioned "Additional Rent".

Events of Default: One or more of those events or states of facts defined in the Section captioned "Events of Default".

Governmental Agency: The United States of America, the State of California, any county, city, district, municipality or other governmental subdivision, court or agency or quasi-governmental agency having jurisdiction over the Land and any board, agency or authority associated with any such governmental entity, including the fire department having jurisdiction over the Land.

Governmental Requirements: Any and all statutes, ordinances, codes, laws, rules, regulations, orders and directives of any Governmental Agency as now or later amended.

Green Agency Ratings: Any one or more of the following ratings, as same may be in effect or amended or supplemented from time to time: The U.S. EPA's Energy Star® rating and/or Design to Earn Energy Star, the Green Building Initiative's Green Globes TM for Continual Improvement of Existing Buildings (Green GlobesTM-CIEB), the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system, LEED EBOM (existing buildings operations and maintenance) and any applicable substitute third party or government mandated rating systems.

Guarantor: N/A.

Hazardous Substance(s): Any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other material expected to be on the Premises, is a basis for potential liability of Landlord or Landlord's Agents to any Governmental Agency or third party under any applicable statute or common law theory. Hazardous Substances shall include asbestos, PCB, petroleum or petroleum-based chemicals or substances, urea formaldehyde or any chemical, material, element, compound, solution, mixture, substance or other matter of any kind whatsoever which is now or later defined, classified, listed, designated or regulated as hazardous, toxic or radioactive by any Governmental Agency or is similarly defined pursuant to any applicable Governmental Requirements.

Land: The land upon which the Building is located in Westlake Village, California.

Landlord: The limited liability company named on the first page of this Lease, or its successors and assigns as provided in the Section captioned "Assignment by Landlord".

Landlord Work: See Section 2.8.2 below.

Landlord's Agents: Landlord's trustees, affiliates, officers, directors, partners, members, consultants, employees, agents, managers and advisors.

Lease Security Deposit: Forty-Seven Thousand Four Hundred Seventy-Three and 43/100 Dollars ($47,473.43).

Lease Term: Commencing on the Commencement Date and ending on the last day of that calendar month which is sixty-five (65) months after the Commencement Date.

Lender: Defined in Section captioned "Landlord's Default".

Manager: IDS Real Estate Group, or its replacement as specified by written notice from Landlord to Tenant.

Manager's Address: Set forth in Landlord's signature block below, which address may be changed by written notice from Landlord to Tenant.

Operating Costs: Defined in the Section captioned "Additional Rent".

Operating Costs Allocable to the Premises: Defined in the Section captioned "Additional Rent".

Parking: Subject to the terms and conditions of this paragraph and Section 4.11 below and subject to the Parking Encumbrance (as defined below), as of the Commencement Date, Tenant shall have the right, during the Lease Term, to use a total of fifty (50) unreserved parking passes for unreserved parking of Tenant's automobiles on a non-exclusive first-come, first served basis, in the Project parking area(s) designated by Landlord from time to time; provided, however, that Tenant shall be entitled to convert five (5) of such unreserved parking passes to reserved parking passes (subject to availability as determined by Landlord in Landlord's sole and absolute discretion), which, if available, shall be for parking spaces located within a reasonable walking distance from the south entrance of the Building.

Permitted Use. General office use, so long as such use is strictly in accordance with Governmental Requirements and matters of record. In no event shall Tenant be permitted to engage in retail, food or restaurant sales or activities at the Premises; provided that the foregoing shall not prohibit the incidental preparation of food and beverages by Tenant's employees using conventional microwave ovens, toaster ovens or coffee makers customarily found in first-class office spaces.

Premises: Approximately thirteen thousand two hundred ten (13,210) rentable square feet on the third (3rd) floor of the Building, as depicted on Exhibit A attached hereto. Such square footage shall be final, conclusive and controlling. Notwithstanding the foregoing, Landlord shall have the right (but not the obligation) to re-measure the rentable and usable square footage of the Premises, and the results of Landlord's re-measurement shall be provided to Tenant and shall be binding and conclusive on Tenant for all purposes under this Lease. If the amount of the rentable square feet and/or the usable square feet of the Premises and/or Project is adjusted, then Base Rent, Tenant's Pro Rata Share, and Parking (and all other amounts that Landlord determines are based on the square footage of the Premises) shall be equitably adjusted by Landlord accordingly.

<u>Prepaid Rent</u>: Forty Thousand Nine Hundred Fifty-One Dollars ($40,951.00), to be applied toward Base Rent for the first month of the Lease Term.

<u>Prime Rate</u>: Defined in the Section captioned "<u>Default Rate</u>".

<u>Project</u>: The project known as Westlake Landmark, which includes the Building, the Land, and the other improvements located thereon. The Project currently includes two (2) three story office buildings (including the Building).

<u>Property Taxes</u>: (a) Any form of ad valorem real or personal property tax or assessment imposed by any Governmental Agency on the Land, Building, related improvements or any personal property owned by Landlord associated with such Land, Building or improvements; (b) any other form of tax or assessment, license fee, license tax, tax or excise on rent or any other levy, charge, expense or imposition made or required by any Governmental Agency on any interest of Landlord in such Land, Building, related improvements or personal property; (c) any fee for services charged by any Governmental Agency for any services such as fire protection, street, sidewalk and road maintenance, refuse collection, school systems or other services provided or formerly provided to property owners and residents within the general area of the Land; (d) any governmental impositions allocable to or measured by the area of any or all of such Land, Building, related improvements or personal property or the amount of any base rent, additional rent or other sums payable under any lease for any or all of such Land, Building, related improvements or personal property; (e) any gross receipts or other excise tax allocable to, measured by or a function of any one or more of the matters referred to in clause (d); (f) any impositions by any Governmental Agency on any transaction evidenced by a lease of any or all of such Land, Building, related improvements or personal property or charge with respect to any document to which Landlord is a party creating or transferring an interest or an estate in any or all of such Land, Building, related improvements or personal property; and (g) any increase in any of the foregoing based upon construction of improvements or change of ownership of any or all of such Land, Building, related improvements or personal property. Notwithstanding anything to the contrary set forth in this Lease, in no event shall Property Taxes included in Operating Costs for any Year subsequent to the Base Year be less than the amount of Property Taxes included in Operating Costs for the Base Year. In addition, when calculating Property Taxes for the Base Year, special assessments shall only be deemed included in Property Taxes for the Base Year to the extent that such special assessments are included in Property Taxes for the applicable subsequent Year during the Lease Term. In the event such Property Taxes are eliminated or reduced by any federal, state or municipal body or governmental agency having jurisdiction thereof, and another tax is imposed by way of substitution for (or in addition thereto) all or any part of such Property Taxes, then such substituted (or additional) tax shall be included as Property Taxes under this Lease. Notwithstanding anything to the contrary set forth in this Lease, the amount of Property Taxes for the Base Year and any subsequent calendar year shall be calculated without taking into account any decreases in real estate taxes obtained in connection with Proposition 8, and, therefore, the Property Taxes in the Base Year and/or any subsequent calendar year may be greater than those actually incurred by Landlord, but shall, nonetheless, be the taxes due under this Lease; provided that tax refunds under Proposition 8 shall not be deducted from Property Taxes, but rather shall be the sole property of Landlord. Landlord and Tenant acknowledge and agree that the immediately preceding sentence is not intended to in any way affect (i) the inclusion in Property Taxes of the statutory two percent (2.0%) annual increase in taxes (as such statutory increase may be modified by subsequent legislation), or (ii) the inclusion of real estate taxes in Property Taxes pursuant to the terms of Proposition 13. Notwithstanding the foregoing, Property Taxes shall not include (i) franchise, inheritance or capital stock taxes, or income taxes measured by the net income of Landlord from all sources, unless any such taxes are levied or assessed against Landlord as a substitute for, in whole or in part, any Property Tax; and (iii) penalties, fines, interest or charges due for late payment of Property Taxes by Landlord unless such late payment is due to Tenant's act or omission.

Substantial Completion: The term "**Substantial Completion**" shall mean (i) the completion of the Landlord Work, as reasonably determined by Landlord and confirmed pursuant to a walk-through by representatives of Landlord and Tenant, subject only to minor punch list items identified by Tenant in a written notice to Landlord delivered within five (5) days after Landlord tenders possession of the Premises, such that none of the Landlord Work remaining incomplete or needing adjustment shall prevent Tenant's occupancy of the Premises, and (ii) to the extent legally required, a valid temporary certificate of occupancy (or other governmental approval), or the substantial equivalent of the foregoing (but in all cases only to the extent legally required) has been issued allowing Tenant to commence use of the Premises for the Permitted Use; provided that in the event any such certificate, approval or substantial equivalent cannot be issued as a result of Tenant's particular use of the Premises or any additional work to be performed by or on behalf of Tenant (if any) outside of the scope of the Landlord Work (including, without limitation, with respect to the installation of any fixtures or equipment), then the delivery of such certificate, approval or substantial equivalent shall not be required for Substantial Completion to occur (and satisfaction of item (i) above shall constitute Substantial Completion). In the event of any dispute as to whether Substantial Completion has occurred, the sign-off by the municipal building inspector shall be conclusive.

Telecommunication Facilities: Equipment, facilities, apparatus and other materials utilized for the purpose of electronic telecommunication, including cable, switches, wires, conduit and sleeves.

Telecommunication Services: Services associated with electronic telecommunications, whether in a wired or wireless mode. Basic voice telephone services are included within this definition.

Tenant: The person or entity(ies) named on the first page of this Lease.

Tenant's Agents: Any and all officers, partners, members, contractors, subcontractors, consultants, licensees, agents, concessionaires, subtenants, servants, employees, customers, guests, invitees or visitors of Tenant.

Tenant Alterations: Defined in the Section captioned "Tenant Alterations".

Tenant's Pro Rata Share: 19.59%.

Year: A calendar year commencing January 1 and ending December 31 or that portion of the calendar year within the Lease Term.

ARTICLE II PREMISES AND TERM

2.1. **Lease of Premises**. Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, upon the terms and conditions set forth in this Lease. Appurtenant to Tenant's lease of the Premises and subject to the terms and conditions of this Lease, Tenant shall also have the non-exclusive right, in common with Landlord and other tenants and occupants of the Project, to use the common areas and parking facilities of the Project, and the right of ingress to and egress from the Premises through, over, under, across, and along the common areas and parking facilities. Subject to the terms and conditions of this Lease, Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week.

2.2 **Lease Term**.

2.2.1 The Lease Term shall be for the period stated in the definition of that term, unless earlier terminated as provided in this Lease. If this Lease is executed before the Premises become vacant or otherwise available or if any present tenant or occupant of the Premises holds over, and Landlord cannot acquire possession of the Premises in time to deliver them by any estimated or anticipated Commencement Date (or any other date), or if Landlord is otherwise unable to deliver the Premises by any estimated or anticipated Commencement Date (or any other date), this Lease shall not be void or voidable, and Landlord shall not be deemed to be in default hereunder, nor shall Landlord be liable for any loss or damage directly or indirectly arising out of or resulting from such holdover or otherwise. Subject to extension for any delays caused by events of force majeure and/or Tenant or Tenant's Agents, if Substantial Completion of the Landlord Work fails to occur by November 1, 2017 (the "**Outside Date**"), then Tenant (as Tenant's sole remedy for such failure) shall thereafter, prior to the Substantial Completion of the Landlord Work, have the right to terminate this Lease by delivery of written notice of such election to Landlord, which notice must be given, if at all, on or before the date which is ten (10) days following the Outside Date, which termination shall be effective thirty (30) days after Landlord receives Tenant's termination notice; provided, further, that if Substantial Completion of the Landlord Work occurs during such 30-day period, Tenant's termination notice shall automatically be deemed null and void. Notwithstanding the foregoing, in the event that Tenant fails to deliver any such Lease termination notice to Landlord within ten (10) days following the Outside Date and/or prior to Substantial Completion of the Landlord Work, Tenant's right to terminate the Lease as described herein shall automatically terminate and become null and void and be of no further force or effect. If this Lease is terminated pursuant to the terms of this paragraph, this Lease and the rights and obligations of the parties pursuant to this Lease shall cease and terminate following which neither party shall have any further rights or obligations arising out of this Lease or the termination of this Lease, except those rights and obligations expressly surviving expiration or earlier termination of this Lease.

2.2.2 Subject to all Governmental Requirements (defined below), Tenant may enter the Premises after July 31, 2017 (and prior to such date with Landlord's written consent, which consent shall not be unreasonably withheld if the existing tenant that currently occupies the Premises as of the Effective Date of this Lease has otherwise vacated and surrendered possession of the Premises to Landlord), for the sole purpose of installing Tenant's furniture, fixtures and equipment (provided, however, Tenant shall only be permitted to enter upon such portions of the Premises, and at such times, as Landlord reasonably determines will not unreasonably interfere with the performance of the Landlord Work). Notwithstanding the foregoing, in no event shall Tenant enter the Premises until such time as Tenant has provided Landlord with evidence that Tenant has fulfilled its obligation to provide insurance pursuant to the provisions of this Lease. Such early entry in and of itself will not advance the Commencement Date. All of the provisions of this Lease shall apply to Tenant and Landlord during any early entry, including, without limitation, the indemnities set forth in this Lease and Tenant's obligation to not unreasonably interfere with the performance of the Landlord Work, but excluding only the obligation to pay Base Rent until the Commencement Date has occurred, whereupon Base Rent shall immediately commence. During any such early entry, Landlord shall not be responsible for any loss, including theft, damage or destruction to any work or material installed or stored by Tenant at the Premises or for any injury to Tenant or its agents, employees, contractors, subcontractors, subtenants, assigns, licensees or invitees, except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents (subject to the terms and conditions in Section 4.15 below). Landlord shall have the right to post appropriate notices of non-responsibility in connection with any early entry by Tenant.

2.3 **Intentionally Omitted**.

2.4 **Commencement Date Memorandum**. Landlord may, at its option, prepare and submit to the Tenant a Commencement Date Memorandum in the form of Exhibit C, completed in good faith by Landlord, and executed by Landlord. The information inserted on the Commencement Date Memorandum shall be controlling and conclusive and shall prevail over any inconsistent provision in this Lease on (a) the mutual execution of the Commencement Date Memorandum by Landlord and Tenant, or (b) the lapse of seven (7) days following delivery of the Commencement Date Memorandum to Tenant without Tenant delivering to Landlord a written objection to all or part of the information in the Commencement Date Memorandum. If Tenant does object in good faith to any information set forth in the Commencement Date Memorandum, it shall execute the Commencement Date Memorandum subject to its specifically-stated, written objections. Tenant must explain the reasons for its objections in reasonable detail. That portion of the Commencement Date Memorandum to which no objection was made shall be conclusive and controlling. Pending resolution of any dispute by agreement or a final determination by a court of competent jurisdiction in accordance with this Lease, Landlord's information as inserted in the Commencement Date Memorandum shall be utilized subject to any later adjustment agreed or found to be appropriate. Tenant's refusal or failure to execute a Commencement Date Memorandum shall not constitute a default under this Lease, but shall neither prevent nor delay the occurrence of the Commencement Date. In no event shall this Lease or the Commencement Date Memorandum be recorded without the prior written consent of Landlord, in its sole and absolute discretion.

2.5 **Use and Conduct of Business**.

2.5.1 The Premises are to be used only for the Permitted Uses, and for no other business or purpose without the prior consent of Landlord. Landlord makes no representation or warranty as to the suitability of the Premises for Tenant's intended use. Tenant shall, at its own cost and expense, obtain and maintain any and all licenses, permits, and approvals necessary or appropriate for its use, occupation and operation of the Premises for the Permitted Uses. Tenant's inability to obtain or maintain any such license, permit or approval necessary or appropriate for its use, occupation or operation of the Premises shall not relieve it of its obligations under this Lease, including the obligation to pay Base Rent and Additional Rent.

2.5.2 No act shall be done in or about the Premises that is unlawful or that will increase the existing rate of insurance on any or all of the Land or Building. Tenant shall not commit or allow to be committed or exist: (a) any waste upon the Premises, (b) any public or private nuisance, or (c) any act or condition which disturbs the quiet enjoyment of any other tenant in the Building, violates any of Landlord's contracts affecting any or all of the Land or Building, or creates or contributes to any work stoppage, strike, picketing, labor disruption or dispute, interferes in any way with the business of Landlord or any other tenant in the Building or with the rights or privileges of any contractors, subcontractors, licensees, agents, concessionaires, subtenants, servants, employees, customers, guests, invitees or visitors or any other persons lawfully in and upon the Land or Building.

2.5.3 Tenant shall not, without the prior consent of Landlord, use any apparatus, machinery, device or equipment in or about the Premises which will cause any substantial noise or vibration which can be heard or felt outside of the Premises, or any increase in the consumption level of electric power (other than ordinary and typical office equipment typically used in the ordinary course of business by similar office tenants in the Building or other Class A office buildings in the vicinity of the Project). If any of Tenant's apparatus, machinery, devices or equipment should disturb the quiet enjoyment of any other tenant in the Building, then Tenant shall provide, at its sole cost and expense, adequate insulation or take other such action, including removing such apparatus, machinery, devices or equipment, as may be necessary to eliminate the disturbance. No food or beverage dispensing machines shall be installed by Tenant in the Premises without the prior written consent of Landlord, not to be unreasonably withheld, conditioned or delayed.

2.5.4 Tenant shall not knowingly use or operate the Premises in any manner that will cause the Building or any part thereof not to conform with Landlord's sustainability practices or the certification of the Building issued pursuant to any Green Agency Rating.

2.6 **Compliance with Governmental Requirements and Rules and Regulations**. Tenant shall comply with all Governmental Requirements relating to the Premises (including, without limitation, Tenant's use, occupancy and operation thereof), and/or the use of the Building by Tenant and/or Tenant's Agents, and all other covenants, conditions and restrictions and other matters of record, and Tenant shall observe such reasonable, non-discriminatory rules and regulations as may be adopted and published by Landlord from time to time for the safety, care and cleanliness of the Premises and the Building, and for the preservation of good order in the Building, including the Rules and Regulations attached to this Lease as Exhibit D. In the event of any conflict between the Rules and Regulations and the terms of this Lease, the terms of this Lease shall control.

2.7 **Relocation**. Subject to the terms and conditions of this Section 2.7, at any time after the execution of this Lease, Landlord shall have the one time right, but not the obligation, to relocate Tenant from the Premises into any other premises of approximately the same size, quality, and layout, located on the third (3^{rd}) floor of the Building (the "Relocation Premises"). Such Relocation Premises shall be deemed to be the Premises for all purposes hereunder and this Lease shall be deemed modified accordingly and shall remain in full force and effect as so modified; provided, however, if the Relocation Premises is larger or smaller than the Premises, then Base Rent, Tenant's Pro Rata Share of Operating Costs, and all other sums payable hereunder that are based upon the square footage of the Premises shall be proportionately adjusted (but shall not be increased during the initial Lease Term). In the event Landlord elects to relocate Tenant, Landlord shall provide Tenant with written notice of its election to relocate at least forty-five (45) Business Days prior to the actual relocation date selected by Landlord (the "Relocation Notice"). The date selected by Landlord for the actual relocation of Tenant (which date must be at least forty-five (45) Business Days after the date of the Relocation Notice) is referred to as the "Selected Date". Following Landlord's election and written notice thereof to Tenant, Tenant shall be obligated to relocate to the Relocation Premises by no later than the Selected Date and lease such Relocation Premises from Landlord on the same terms and conditions as this Lease. Landlord shall be obligated to pay to Tenant an allowance (the "Relocation Allowance") equal to the reasonable out-of-pocket moving expenses actually incurred by Tenant to move from the Premises to the Relocation Premises (including the physical move from the Premises to the Relocation Premises, the expenses associated with the relocation of Telecommunication Facilities and other Tenant electronic installations, and costs for stationery, business cards, invoices, brochures and the like if Tenant's address, facsimile or telephone numbers are changed in any manner due to the relocation); provided that, Tenant shall submit to Landlord a detailed description of the type and estimated amount of such moving expenses prior to the move and Landlord shall have consented to such expenses, which consent shall not be unreasonably withheld. Tenant shall be solely responsible for any costs and expenses incurred by it with respect to the relocation in excess of the Relocation Allowance. The work to be performed under this Section 2.7 is subject to the union labor requirement as set forth in the Section of this Lease captioned "Tenant's Work Performance".

2.8 **Condition of Premises "AS-IS"**.

2.8.1 Subject to Section 2.8.2 below, and except as expressly provided elsewhere in this Lease, Tenant hereby agrees that the Premises shall be taken "as is", "with all faults", without any representations or warranties, and Tenant hereby agrees and warrants that it has investigated and inspected the condition of the Premises and the suitability of same for Tenant's purposes, and Tenant does hereby waive and disclaim any objection to, cause of action based upon, or claim that its obligations hereunder should be reduced or limited because of the condition of the Premises or the Building or the suitability of same for Tenant's purposes. Tenant acknowledges that neither Landlord nor any agent nor any employee of Landlord has made any representations or warranty with respect to the Premises or the Building or with respect to the suitability of either for the conduct of Tenant's business, and Tenant expressly warrants and represents that Tenant has relied solely on its own investigation and inspection of the Premises and the Building in its decision to enter into this Lease and let the Premises in an "as is" condition. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in satisfactory condition. Tenant hereby waives subsection 1 of Section 1932 of the Civil Code of California or any successor provision of law.

2.8.2 Landlord shall, on a one-time basis only, using Building-standard materials, guidelines, specifications and procedures (except to the extent otherwise designated by Landlord), perform the following work within the Premises (collectively, the "**Landlord Work**"): (i) install Tenant's choice of new Building-standard carpet within the Premises; (ii) install Tenant's choice of Building-standard VCT flooring in the kitchen and server room within the Premises; (iii) install Tenant's choice of new Building-standard base molding throughout the Premises; (iv) paint the interior walls of the Premises utilizing Tenant's choice of Building-standard colors; and (v) move or lift any existing furniture, fixtures and equipment in the Premises as needed to complete the Landlord Work. Except as expressly provided herein, the exact scope and specifications for each element of the Landlord Work shall be determined by Landlord in its commercially reasonable discretion. Landlord shall submit specifications for the Landlord Work at least ten (10) days prior to commencing the Landlord Work. If Tenant fails to give written notice of its approval of such specifications, or fails to send a written notice of its reasonable disapproval setting forth its reasons therefore in reasonably sufficient detail, within such ten (10) day period, Tenant shall be deemed to have approved the specifications submitted by Landlord. Tenant shall not (and Tenant shall ensure that its agents, employees and contractors do not) unreasonably interfere with the performance of the Landlord Work and shall cooperate with Landlord in connection with the performance of the Landlord Work. Landlord shall have no responsibility for, or for any reason be liable to, Tenant for any direct or indirect injury to or interference with Tenant's business arising from the performance of the Landlord Work, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the performance of the Landlord Work or Landlord's or Landlord's contractor's or agent's actions in connection with the performance of the Landlord Work, or for any inconvenience or annoyance occasioned by the performance of the Landlord Work or Landlord's or Landlord's contractor's or agent's actions in connection with the performance of the Landlord Work. Tenant shall be responsible for any increase in the cost of performing the Landlord Work resulting from any negligent or unreasonable act or omission of Tenant or any agent, employee, contractor, licensee or invitee of Tenant (and Tenant shall pay any such increased costs to Landlord upon demand).

2.8.3 Landlord hereby represents to Tenant that, to the actual knowledge of Landlord, (i) Landlord has not received written notice from a governmental authority with jurisdiction indicating that the Premises contain Hazardous Substances in violation of applicable Governmental Requirements and that remediation is required (which violation has not been cured), and (ii) Landlord has not received written notice from a governmental authority with jurisdiction indicating that the Premises is in violation of applicable Governmental Requirements and that remediation is required (which violation has not been cured). Landlord also hereby represents that, as of the Commencement Date, the existing plumbing, lighting, electrical, mechanical and HVAC systems serving the Premises (collectively, the "**Building Systems**") shall be in good working order; provided, however, if Tenant does not deliver written notice to Landlord of any material breach of such representation within thirty (30) days following the Commencement Date, then Tenant shall be deemed to have inspected and accepted the Building Systems in their present condition, and the correction of any subsequently discovered defects shall be the obligation of the applicable party pursuant to the other provisions of this Lease. If a material breach of the foregoing representation exists, and Tenant timely (i.e., within thirty (30) following the Commencement Date) delivers written notice to Landlord setting forth in reasonable detail a description of such material breach, Landlord shall, as Tenant's sole and exclusive remedy, rectify the same at Landlord's expense, and not as part of Operating Costs (provided, however, in no event shall Landlord be responsible for any damages or defects to the extent existing as a result of any act or omission of Tenant or Tenant's agents, employees, contractors, subcontractors, subtenants, assigns, licensees or invitees, all of which shall be the sole responsibility of Tenant).

2.8.4 Tenant acknowledges that Landlord may elect, in Landlord's sole and absolute discretion, at anytime during the Lease Term, to install (at Landlord's sole cost and expense) a multi-tenant corridor (the "**Corridor Work**") to demise the Premises from the remainder of the third (3^{rd}) floor during the Tenant's occupancy of the Premises. If, however, Landlord leases space adjacent to the Premises on the third (3^{rd}) floor of the Building to a third party, then Landlord shall be obligated to perform the Corridor Work (at Landlord's sole cost and expense) following the date Landlord enters into such lease with such third party, which Corridor Work shall include demolishing any partial walls, installing new drywall, painting same to match the existing wall colors, and modifying the ceiling and flooring as necessary to reasonably match the interior or the Premises. Landlord shall perform and complete the Corridor Work in compliance with all Governmental Requirements. In either of such events, the square footage of the Premises shall not be reduced and Landlord shall use commercially reasonable efforts to not unreasonably interfere with Tenant's use and occupancy of and access to the Premises during performance of the Corridor Work. Except as expressly provided herein, the exact scope and specifications for each element of the Corridor Work shall be determined by Landlord in its commercially reasonable discretion. Tenant shall not (and Tenant shall ensure that its agents, employees and contractors do not) unreasonably interfere with the performance of the Corridor Work and shall cooperate with Landlord in connection with the performance of the Corridor Work, including, without limitation, by permitting the Landlord to move any equipment and other property which Landlord or its contractor may request be moved (at Landlord's sole cost and expense). If the Corridor Work is performed during Tenant's occupancy of the Premises, Landlord shall use commercially reasonable efforts to cause the Corridor Work to be performed outside of normal business hours, but shall not have any obligation to pay overtime or other premiums and, if the Corridor Work is to be performed during normal business hours, Landlord shall use commercially reasonable efforts to minimize unreasonable interference with Tenant's business in, and occupancy of, the Premises. Tenant hereby agrees that the performance of the Corridor Work in accordance with this Section 2.8.4 shall in no way constitute a constructive eviction of Tenant, or entitle Tenant to any abatement of rent payable pursuant to the Lease. Landlord shall have no responsibility for, or for any reason be liable to, Tenant for any direct or indirect injury to or interference with Tenant's business arising from the performance of the Corridor Work, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the performance of the Corridor Work or Landlord's or Landlord's contractor's or agent's actions in connection with the performance of the Corridor Work, or for any inconvenience or annoyance occasioned by the performance of the Corridor Work or Landlord's or Landlord's contractor's or agent's actions in connection with the performance of the Corridor Work; provided, however, that Landlord shall be responsible for any actual damage to Tenant's personal property or personal injury to Tenant's Agents caused by the gross negligence or willful misconduct of Landlord and/or Landlord's Agents, but subject in all events to Section 4.15 below. Landlord shall promptly repair any damage to the Premises to the extent caused by Landlord and/or Landlord's Agents during the performance of the Corridor Work. Tenant shall be responsible for any increase in the cost of performing the Corridor Work resulting from any negligent or unreasonable act or omission of Tenant or any agent, employee, contractor, licensee or invitee of Tenant (and Tenant shall pay any such increased costs to Landlord upon demand).

2.8.5 Landlord will request that the existing tenant of the Premises (the "**Existing Tenant**") surrender the Premises to Landlord with certain existing office furniture in place. Tenant shall have the right to designate, by written notice to Landlord delivered within ten (10) Business Days following the mutual execution and delivery of this Lease, that Landlord remove from the Premises any unwanted portion of any such furniture within the Premises that is surrendered by the existing tenant of the Premises (the "**Existing Furniture**"). Tenant hereby agrees that Landlord makes no representation or warranty with regard to the Existing Furniture, and Tenant shall accept the same in its "as-is" condition, without representation or warranty of any kind (express or implied) by Landlord. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be obligated to remove the Existing Furniture upon the expiration or earlier termination of the Lease Term.

2.9 **Sustainable Building Operations**.

2.9.1 This Building is or may become in the future certified under certain Green Agency Ratings or operated pursuant to Landlord's sustainable building practices, as same may be in effect or modified from time to time. Landlord's sustainability practices address, without limitation, whole-building operations and maintenance issues including chemical use; indoor air quality; energy efficiency; water efficiency; recycling programs; exterior maintenance programs; and systems upgrades to meet green building energy, water, Indoor Air Quality, and lighting performance standards. All of Tenant's construction and maintenance methods and procedures, purchase of materials, and disposal of waste must be in compliance with minimum standards and specifications as outlined by the Green Agency Ratings, in addition to all Governmental Requirements.

2.9.2 Tenant shall use commercially reasonable efforts to ensure the use of proven energy and carbon reduction measures (as may be designated by Landlord in writing from time to time), including energy efficient bulbs in task lighting; use of lighting controls; daylighting measures to avoid overlighting interior spaces; closing shades on the south side of the building to avoid over heating the space; turning off lights and equipment at the end of the work day; and purchasing ENERGY STAR® qualified equipment, including but not limited to lighting, office equipment, commercial and residential quality kitchen equipment, vending and ice machines; and purchasing products certified by the U.S. EPA's Water Sense® program.

2.10 **Recycling and Waste Management**. Tenant covenants and agrees, at its sole cost and expense: (a) to comply with all present and future Governmental Requirements regarding the collection, sorting, separation, and recycling of garbage, trash, rubbish and other refuse (collectively, "trash"); (b) to comply with Landlord's recycling policy, as stated in the Rules and Regulations (as such policy may be amended or supplemented from time to time), as part of Landlord's sustainability practices where it may be more stringent than applicable Governmental Requirements, including without limitation, recycling such categories of items designated by Landlord and transporting such items to any recycling areas designated by Landlord; (c) to sort and separate its trash and recycling into such categories as are provided by Governmental Requirements or Landlord's then-current sustainability practices; (d) that each separately sorted category of trash and recycling shall be placed in separate receptacles as directed by Landlord; (e) that Landlord reserves the right to refuse to collect or accept from Tenant any waste that is not separated and sorted as required by Governmental Requirements, and to require Tenant to arrange for such collection at Tenant's sole cost and expense, utilizing a contractor reasonably satisfactory to Landlord; and (f) that Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this paragraph 2.10.

2.11 **Accessibility Disclosure**. Landlord hereby discloses to Tenant, in accordance with California Civil Code Section 1938, and Tenant hereby acknowledges that the Premises have not undergone an inspection by a Certified Access Specialist (CASp) to determine whether the Premises meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing, and notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant hereby agree as follows: (i) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp approved in advance by Landlord, subject to Landlord's rules and requirements; (ii) Landlord shall have no obligation to perform any work or repairs identified in any such CASp inspection; and (iii) to the extent that any work, repairs, replacements, or improvements are recommended or required by the CASp (or otherwise required as a result of any such CASp inspection or anything done by Tenant in its use or occupancy of the Premises), then, at Landlord's election, Tenant shall be required to perform the same at Tenant's sole cost and expense (subject to the terms and conditions of this Lease and Landlord's right to approve of detailed plans and specifications in advance); provided, however, Landlord shall have the option to perform any or all of the foregoing at Tenant's sole cost and expense (with Tenant to reimburse Landlord upon demand for the reasonable costs and expenses incurred by Landlord in performing the same). Notwithstanding the foregoing (except to the extent any of the following alterations or improvements are required as a result of Tenant's specific use of the Premises or any alterations, improvements or other work performed by or on behalf of Tenant, in which case Tenant shall be responsible therefor at Tenant's sole cost and expense), Landlord (not Tenant) shall be responsible, at Landlord's sole cost and expense, for making all alterations and improvements required under Governmental Requirements to remedy any violation of Governmental Requirements which existed prior to the date Tenant was first granted access to any portion of the Premises (the "**Early Access Date**") and which was not subject to any variance or grandfathered code waiver exemption (but only to the extent that (i) remediation is required by a governmental authority with jurisdiction, and (ii) such governmental authority, if it had knowledge of the condition prior to the Early Access Date, would have then required remediation pursuant to then-current applicable requirements of Governmental Requirements, in their form existing as of the Early Access Date and pursuant to the then-current interpretation of such Governmental Requirements by such governmental authority as of the Early Access Date).

2.12 **Rooftop Premises**. Landlord hereby grants to Tenant the nonexclusive right to occupy a portion of the roof of the Building, as designated by Landlord in Landlord's reasonable discretion (hereinafter called the "**Rooftop Premises**") so that Tenant may install, use, operate and maintain no more than one (1) satellite dish and its appurtenant conduit and cabling (the "**Rooftop Equipment**"), for receiving purposes only until the expiration or termination of the term of this Lease. Landlord may, from time to time (but not more than twice during the Lease Term), upon not less than thirty (30) days prior written notice to Tenant, require Tenant to relocate the Rooftop Equipment to another location on the roof of the Building as designated by Landlord (which new location shall thereafter be deemed the Rooftop Premises). Tenant shall perform any such relocation at Tenant's sole cost and expense in accordance with the terms of this Section 2.12 and this Lease. Notwithstanding anything to the contrary set forth in this

Section 2.12, neither the Rooftop Equipment, nor any work or act in connection with the Rooftop Equipment, by or on behalf of Tenant may invalidate or otherwise affect the warranty relating to the roof, unless otherwise specified by Landlord in writing in its sole and absolute discretion. The Rooftop Equipment shall not exceed eighteen (18) inches in diameter and shall otherwise have commercially reasonable specifications commonly found in communications Rooftop Equipment of tenants at comparable buildings in the general vicinity of the Building (as reasonably determined by Landlord) and shall be in accordance with the additional following conditions:

2.12.1 The use of the Rooftop Equipment shall be restricted to Tenant's internal communications purposes only and shall not be used for profit making purposes or available for use by any party except Tenant.

2.12.2 Tenant shall reimburse Landlord, within thirty (30) days after receipt by Tenant of an invoice, and Tenant's receipt of reasonable supporting documentation, for all reasonable costs and expenses incurred by Landlord for any architectural, engineering, supervisory and/or reasonable legal services in connection with the Rooftop Equipment, including, without limitation, Landlord's review of the plans and specifications for the Rooftop Equipment. Without limiting the foregoing, Tenant shall promptly, at its sole cost and expense, repair any and all damage resulting from the presence and/or use of the Rooftop Equipment and pay to Landlord any and all other costs actually incurred by Landlord in connection with the Rooftop Equipment. Notwithstanding the foregoing, there shall be no monthly rental for the use of the rooftop for Tenant's satellite/communications equipment.

2.12.3 The Rooftop Equipment shall be installed, used, operated and maintained solely on the Rooftop Premises and solely at the expense of Tenant. Tenant shall perform the installation of the Rooftop Equipment in accordance with an installation program reasonably approved and supervised by Landlord or Landlord's contractor, and Tenant shall neither bring the Rooftop Equipment nor any associated equipment to the Premises or Rooftop Premises without first giving Landlord fifteen (15) Business Days' prior written notice of the date and time of the planned installation. Tenant shall ensure that the Rooftop Equipment shall in all cases be installed, used, operated, maintained and removed in compliance with the following requirements (all as determined by Landlord in its sole and absolute discretion): (i) the Rooftop Equipment shall not interfere in any way with the Building's existing engineering or other maintenance functions or duties; (ii) the Rooftop Equipment must be properly secured and installed so as not to be affected by high winds or other weather elements; (iii) the Rooftop Equipment must be properly grounded; (iv) the weight of the Rooftop Equipment shall not exceed the load limits of the Building; and (v) in no event shall the Rooftop Equipment or any appurtenant wiring or cable interfere with or otherwise adversely affect the electrical, mechanical, structural, life safety or other building systems of the Building. Tenant shall bear all costs and expenses in connection with the installation, use, operation, maintenance and removal of the Rooftop Equipment, including all costs relating to the repair of any damage to the roof or other parts of the Building caused directly or indirectly by any such installation, use, operation, maintenance or removal, including, without limitation, water damage or other damage resulting from weather elements.

2.12.4 The installation of the Rooftop Equipment, excluding any necessary penetration of the roof of the Building, shall be performed by Tenant's contractor, as reasonably approved by Landlord, and at Tenant's expense (or, at Landlord's option, by Landlord's contractor, at Tenant's expense), provided such installation is of a non-penetrating surface mount only. Tenant may not install the Rooftop Equipment in a manner that penetrates the roof membrane of the Building, without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion. Without limiting Tenant's other obligations, Tenant shall reimburse Landlord for all actual costs associated with obtaining confirmation that Landlord's roof warranty will not be affected by any penetration. All work done in connection with any permitted roof penetration shall be performed by Landlord or Landlord's agent at Tenant's sole cost and expense. The installation of the Rooftop Equipment shall not damage the Building or existing structures thereon. Landlord may obtain the services of a structural engineer to design any additional supports required to support the Rooftop Equipment, and to monitor the installation thereof, and Tenant shall reimburse Landlord, within thirty (30) days after receipt by Tenant of an invoice, and Tenant's receipt of reasonable supporting documentation, for Landlord's cost of such services and such supports. The Rooftop Equipment shall remain the personal property of Tenant and shall be removed by Tenant prior to the expiration or earlier termination of this Lease, and Tenant shall repair any damage caused by the removal of the Rooftop Equipment and its associated wiring, cables and other components and immediately, at Tenant's sole cost and expense, restore the Rooftop Premises to the condition which existed prior to the installation of the Rooftop Equipment.

2.12.5 Tenant may, at Tenant's own cost and expense, upon reasonable prior written notice to Landlord, and only when accompanied by a representative of Landlord, access the Rooftop Premises to repair, replace, reorient or remove the Rooftop Equipment, or replace it with generally similar equipment, provided that (i) any new equipment does not weigh more than the original Rooftop Equipment and can be properly accommodated on Rooftop Premises without placing materially greater demands upon the electrical, mechanical, structural, life safety or other building systems of the Building than the original Rooftop Equipment; (ii) Tenant at its cost shall restore the Building to the condition in which it was prior to such repair, reorientation, removal or replacement, and all of such repair, reorientation, removal or replacement shall be performed in accordance with Landlord's and industry standard engineering practices and by contractors or other persons approved by Landlord; and (iii) all plans and designs of Tenant relating to such repair, reorientation, removal or replacement shall in any case be subject to the prior written approval of Landlord, not to be unreasonably withheld, conditioned or delayed.

2.12.6 Tenant hereby agrees that the Rooftop Premises shall be taken "as is", "with all faults", without any representations and warranties, and Tenant hereby agrees and warrants that it has investigated and inspected the condition of the Rooftop Premises and the suitability of same for Tenant's purposes.

2.12.7 Tenant, at Tenant's sole cost and expense, will, at all times in connection with the installation, use, operation and maintenance of the Rooftop Equipment, comply with all governmental and legal requirements affecting the installation, use, operation and maintenance of the Rooftop Equipment, including, without limitation, applicable building and fire codes, and will comply with all requirements of the Federal Aviation Administration and Federal Communications Commission in respect thereof. Tenant, at Tenant's sole cost and expense, shall be obligated to secure and obtain and provide Landlord with copies of all required permits, approvals and licenses for or with respect to the installation or operation of the Rooftop Equipment prior to the commencement of any installation activities hereunder, and Tenant shall be obligated to keep in full force and effect and renew, as applicable, all required permits, approvals and licenses required hereunder.

2.12.8 During the entire period that the Rooftop Equipment is situated in the Rooftop Premises, Tenant agrees to maintain comprehensive general public liability insurance against all claims for bodily injury, death and property damage occurring in the Rooftop Premises and the area surrounding or in any way related to the Rooftop Equipment in the amounts and in accordance with the terms set forth in this Lease and as otherwise reasonably designated by Landlord; Tenant shall ensure that all insurance policies shall name Landlord and any other party reasonably designated by Landlord as additional insureds. Tenant shall pay, immediately upon demand, for the cost of any additional insurance incurred by Landlord or the increase in any premiums on insurance maintained by Landlord arising by reason of the erection or installation and maintenance of the Rooftop Equipment.

2.12.9 Landlord shall not be liable in any respect for damages to either person or property nor shall Tenant be relieved from fulfilling any covenant or agreement hereof as a result of any temporary or permanent interruption of electrical service. Landlord shall use reasonable diligence to restore any interruption in electrical service promptly, but Tenant shall have no claim for damages, consequential or otherwise, on account of any interruption. Tenant acknowledges that Landlord may, as part of its maintenance and repair obligations at the Project, require a temporary interruption of electrical service that may cause a temporary disruption of service to Tenant or the Rooftop Equipment. Except in the event of an emergency (in which case no notice shall be required), Landlord shall endeavor to give at least forty-eight (48) hours' written notice of any planned electrical interruption. Landlord shall have no obligation hereunder to provide alternate power from emergency power sources.

2.12.10 Each contractor performing any portion of Tenant's installation of the Rooftop Equipment shall be subject to Landlord's approval and shall maintain the insurance required by the terms of the Lease.

2.12.11 All work performed by or on behalf of Tenant pursuant to this Section 2.12 shall be subject to all of the terms and conditions of this Lease (including, without limitation, Section 4.4 and Section 4.5 below).

2.13 **Option to Renew**.

2.13.1 **Renewal Option**. Provided Tenant is not and has not been in default under this Lease beyond any applicable notice and cure period, and subject to the terms and conditions of this Section 2.13, Tenant shall have one (1) option to renew (the "**Option to Renew**") the Lease Term with respect to the entire Premises, for a period of sixty (60) months following the scheduled expiration date of the initial Lease Term (such sixty (60) month period, the "**Option Term**"). If the Option to Renew is exercised during any applicable cure period following an event, which with the passage of time or the giving of notice, or both, would constitute an Event of Default, then such exercise shall be void and of no further force or effect. Except as set forth in this Section 2.13 or otherwise stated as being applicable only to the initial Lease Term (or any prior portion of the Lease Term), all terms and conditions of this Lease shall remain the same during the Option Term. Monthly Base Rent during the Option Term shall be the then Fair Market Rental Rate. "**Fair Market Rental Rate**" shall mean the net effective market rental (plus any escalations thereof) then being offered and accepted by tenants for space comparable to the Premises in size, quality, utility and location in the Project and in the Westlake Village market area, taking into account the credit worthiness of the tenant, the length of the term, the base year, allowances and concessions and the quality of the existing tenant improvements. The "net effective market rental" shall equal the arithmetic average of the rental rate over the term of such comparable lease, provided that the value of the then existing improvements in the Premises shall be taken into account in determining what improvements are granted by landlords under similar circumstances, and the value of the free parking under this Lease shall also be taken into account in determining the Fair Market Rental Rate.

2.13.2 **Notice of Exercise**. In order to timely exercise the Option to Renew, Tenant shall give Landlord written notice of its intent to exercise the Option to Renew on a date which is at least two hundred seventy (270) days but not more than three hundred sixty (360) days prior to the expiration of the immediately preceding Lease Term, time being of the essence. If Tenant fails to timely notify Landlord in writing of its intent to exercise the Option to Renew, the Option to Renew shall terminate, and Landlord shall be free to enter into a lease for the Premises (or any part thereof) with a third party on any terms Landlord desires. Within twenty (20) Business Days after Landlord receives the notice described in the previous sentence, Landlord will provide Tenant with Landlord's determination of the Base Rent for the Option Term. Tenant shall have thirty (30) days from Landlord's notification of the proposed Base Rent to accept Landlord's determination of Base Rent for the Option Term or provide its own determination of Fair Market Rental Rate for Landlord's consideration accompanied by market information on which Tenant based its determination.

2.13.3 **Dispute Regarding Fair Market Rental Rate**. If Landlord and Tenant are unable to agree on the Fair Market Rental Rate for the Option Term using their best good faith efforts within thirty (30) days from Tenant's determination of the Fair Market Rental Rate pursuant to Section 2.13.2 above, Landlord shall, no more than ten (10) days thereafter, select an independent real estate broker with at least seven (7) years experience in the Westlake Village, California commercial real estate market, who shall prepare a written market report of the Fair Market Rental Rate using the assumptions described in Section 2.13.1. The report shall be completed and delivered to Tenant and Landlord within thirty (30) days from the date Landlord selects the real estate broker. Such broker's determination of Fair Market Rental Rate shall be determinative unless Tenant disputes it as provided in the next sentence. If Tenant disputes such report, Tenant shall, within seven (7) days following delivery of the report, deliver to Landlord written notice (a) that Tenant disputes such report, and (b) of the identity of another real estate broker selected by Tenant meeting the qualifications set forth in this paragraph. The broker selected by Tenant shall submit his report of the Fair Market Rental Rate using the assumptions described in Section 2.13.1 within twenty-five (25) days following the delivery of Tenant's notice to Landlord disputing the initial report. If the two (2) reports are within five percent (5%) of each other, the Fair Market Rental Rate shall be that set forth in the report of Landlord's broker. If not, then within five (5) days after the delivery of the second report, the two (2) brokers shall appoint a third broker meeting the qualifications set forth in this paragraph, and the third broker shall deliver his decision within ten (10) days following his selection and acceptance of the appraisal assignment. The third broker shall be limited in authority to selecting, in his opinion, which of the two (2) earlier reports determinations best reflects the Fair Market Rental Rate under the assumptions set forth in this paragraph. The third broker must choose one of the two (2) earlier reports, and, upon doing so, the third broker's determination shall be the controlling determination of the Fair Market Rental Rate. Each party shall pay the costs and fees of the broker it selected; if a third broker is selected, the party whose report is not selected to be the Fair Market Rental Rate by said third broker shall pay all of said third broker's costs and fees.

2.13.4 **Conditions**. The Option to Renew shall be conditioned upon the following: (i) at the time of Tenant's notice to Landlord of its intent to exercise the Option to Renew and continuing thereafter until the commencement of the Option Term, Tenant (or its Affiliate) shall have been in possession of, and occupying, the Premises for the conduct of its business therein and there shall have been no assignment of this Lease or subletting of any portion of the Premises (other than to an Affiliate); (ii) if Tenant fails to timely and properly exercise the Option to Renew then the Option to Renew, and any subsequent Option to Renew, shall immediately terminate and be of no force or effect, and (iii) the rights contained in this Section 2.13 shall be personal to the original Tenant under this Lease, (the "**Original Tenant**"), or its Affiliate, and not any other assignee or sublessee, and may be exercised only by the Original Tenant or an Affiliate and only if the Original Tenant or an Affiliate occupies the entire Premises as of the date it exercises the Option to Renew in accordance with the terms of this Section 2.13.

ARTICLE III BASE RENT, ADDITIONAL RENT AND OTHER SUMS PAYABLE UNDER LEASE

3.1. **Payment of Rental**. Tenant agrees to pay Base Rent, Additional Rent and any other sum due under this Lease to Landlord without demand, deduction, credit, adjustment or offset of any kind or nature, in lawful money of the United States when due under this Lease, at the offices of Manager at Manager's Address, or to such other party or at such other place as Landlord may from time to time designate in writing. Tenant may pay all amounts owing to Landlord under this Lease by ACH or wire transfer pursuant to written instructions furnished by Landlord to Tenant.

3.2. **Base Rent**.

3.2.1 On execution of this Lease, Tenant shall pay to Landlord the amount specified in the definition of Prepaid Rent for the month specified in the definition of that term. Tenant agrees to pay the monthly installments of Base Rent to Landlord, without demand and in advance, on or before the first day of each calendar month of the Lease Term. The monthly Base Rent installment for any partial month at the beginning or end of the Lease Term shall be prorated.

3.2.2 Subject to the terms and conditions of this Section 3.2.2, provided that no Event of Default exists and no Event of Default has occurred beyond any applicable notice and cure period, Tenant shall be credited with the payment of monthly Base Rent due under this Lease for the second (2nd) through sixth (6th) months of the initial Lease Term only (collectively, the "**Base Rent Credit**"), as and when the same become due and payable (for a total Base Rent Credit equal to Two Hundred Four Thousand Seven Hundred Fifty-Five Dollars ($204,755.00) in the aggregate, subject to the terms hereof). No such Base Rent Credit shall reduce the amount of any other amounts which are otherwise payable by Tenant under this Lease. Tenant understands and agrees that receipt of the full amount of the foregoing Base Rent Credit is conditioned upon no Event of Default occurring under this Lease beyond any applicable notice and cure period during the initial Lease Term. Accordingly, upon the occurrence of any Event of Default under this Lease beyond any applicable cure period, the foregoing Base Rent Credit shall immediately become null and void, and, following any termination of this Lease by Landlord as a result thereof, any unamortized portion of the Base Rent Credit (based upon an amortization period from the Commencement Date until the expiration of the sixty-fifth (65th) month of the initial Lease Term) shall be included in Landlord's damages under Section 5.2, and Tenant shall no longer receive any credit remaining on account of such Base Rent Credit.

3.3. **Lease Security Deposit**.

3.3.1 On execution of this Lease, Tenant shall pay to Landlord the sum specified in the definition of the term Lease Security Deposit, as security for the full and faithful payment of all sums due under this Lease and the full and faithful performance of every covenant and condition of this Lease to be performed by Tenant. If Tenant shall breach or default with respect to any payment obligation or other covenant or condition of this Lease beyond any applicable notice and cure period, Landlord may apply all or any part of the Lease Security Deposit to the payment of any sum in default or any damage suffered by Landlord as a result of such breach or default, and in such event, Tenant shall, within five (5) Business Days of Landlord's written demand, deposit with Landlord the amount so applied so that Landlord shall have the full Lease Security Deposit on hand at all times during the Lease Term. In the event Tenant defaults on its obligations to pay Base Rent, Additional Rent or any other sum as and when due under this Lease on more than two occasions during any twelve (12) month period, Landlord may, at any time thereafter require an increase in the Lease Security Deposit by an amount equal to twenty-five percent (25%) of the amount specified in the definition of the term Lease Security Deposit and Tenant shall immediately deposit such additional amount with Landlord upon Landlord's demand. Following such increase, the definition of the term Lease Security Deposit shall refer to the amount of the Lease Security Deposit prior to the increase plus the increased amount. The remedy of increasing the Lease Security Deposits for Tenant's multiple defaults shall be in addition to and not a substitute for any of Landlord's other rights and remedies under this Lease or applicable law. Additionally, Landlord's use or application of all or any portion of the Lease Security Deposit shall not preclude or impair any other rights or remedies provided for under this Lease or under applicable law and shall not be construed as a payment of liquidated damages.

3.3.2 If Tenant shall have fully complied with all of the covenants and conditions of this Lease, the remaining Lease Security Deposit shall be repaid to Tenant, without interest, within thirty (30) days after the expiration of this Lease. Tenant may not mortgage, assign, transfer or encumber the Lease Security Deposit and any such act on the part of Tenant shall be without force or effect.

3.3.3 In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Tenant, the Lease Security Deposit shall be deemed to be applied first to the payment of Base Rent, Additional Rent and all other sums payable under this Lease to Landlord for all periods prior to the institution of such proceedings and the balance, if any, may be retained by Landlord and applied against Landlord's damages.

3.3.4 In the event of a sale or transfer of Landlord's estate or interest in the Land and Building, Landlord shall have the right to transfer the Lease Security Deposit to the vendee or the transferee, and Landlord shall be considered released by Tenant from all liability for the return of the Lease Security Deposit following such transfer. Tenant shall look solely to the transferee for the return of the Lease Security Deposit, and it is agreed that all of the foregoing shall apply to every transfer or assignment made of the Lease Security Deposit to a new transferee. No mortgagee or purchaser of any or all of the Building at any foreclosure proceeding brought under the provisions of any mortgage shall (regardless of whether the Lease is at the time in question subordinated to the lien of any mortgage) be liable to Tenant or any other person for any or all of such sum (or any other or additional Lease Security Deposit or other payment made by Tenant under the provisions of this Lease), unless Landlord has actually delivered it in cash to such mortgagee or purchaser, as the case may be.

3.3.5 In the event of any rightful and permitted assignment of Tenant's interest in this Lease, the Lease Security Deposit shall be deemed to be held by Landlord as a deposit made by the assignee, and Landlord shall have no further liability to the assignor with respect to the return or the Lease Security Deposit.

3.3.6 No right or remedy available to Landlord in this Lease shall preclude or extinguish any other right to which Landlord may be entitled. It is understood that if Tenant fails to perform its obligations and to take possession of the Premises as provided in this Lease, the Prepaid Rent and the Security Deposit shall not be deemed liquidated damages. Landlord may apply such sums to reduce Landlord's damages and such application of funds shall not preclude Landlord from recovering from Tenant all additional damages incurred by Landlord. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and all other provisions of law, now or hereafter in effect, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified in this Section 3.3 above and/or those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the acts or omissions of Tenant or any of Tenant's Agents.

3.3.7 Provided that no Event of Default exists under this Lease beyond applicable notice and cure periods, and no Event of Default has occurred under this Lease beyond applicable notice and cure periods, Tenant shall be entitled to reimbursement from Landlord in an amount up to: (i) Sixty-Six Thousand Fifty Dollars ($66,050.00) (the "**2017 Allowance**") for Tenant's actual and reasonable costs and expenses paid to unaffiliated third parties for the installation of Tenant Alterations (as defined in Section 4.4 below) during the 2017 calendar year, and (ii) Sixty-Six Thousand Fifty Dollars ($66,050.00) (the "**2018 Allowance**") for Tenant's actual and reasonable costs and expenses paid to unaffiliated third parties for the installation of Tenant Alterations during the 2018 calendar year. Such Tenant Alterations, if any, must be performed by Tenant in accordance with all terms and conditions of the Lease (including, without limitation, Section 4.4 below). The disbursement of the 2017 Allowance and 2018 Allowance to Tenant shall be made by Landlord within thirty (30) days after the later to occur of: (i) Tenant's payment to Landlord of an amount equal to the 2017 Allowance and 2018 Allowance (as applicable), which amounts shall be added to the Lease Security Deposit and subject to the terms and conditions contained in this Section, (ii) completion of the Tenant Alterations (if any) for which Tenant will seek reimbursement from Landlord pursuant to the 2017 Allowance and/or 2018 Allowance, as applicable (and confirmation from

Landlord that no substandard work has been performed), (iii) Landlord's receipt of reasonably detailed invoices evidencing the actual and reasonable costs and expenses paid by Tenant to unaffiliated third parties for the performance of the subject work (if any), (iv) Landlord's receipt of unconditional lien waivers from all contractors and subcontractors who have performed work in or about the Premises, if any (and from all suppliers of materials), and (v) any other information reasonably requested by Landlord in connection therewith. Notwithstanding the foregoing, in no event shall Landlord be obligated to make disbursements pursuant to this Section in a total amount which exceeds the aggregate amount of the 2017 Allowance and the 2018 Allowance, and in no event shall Tenant be entitled to any portion of the 2017 Allowance or 2018 Allowance not requested by Tenant in writing (in accordance with the terms and conditions hereof) on or prior to June 1, 2018 (with respect to the 2017 Allowance) or June 1, 2019 (with respect to the 2018 Allowance) (nor shall the 2017 Allowance and/or the 2018 Allowance be available for any work or other alterations not completed by Tenant, or applied towards Base Rent, prior to June 1, 2018 [with respect to the 2017 Allowance] or June 1, 2019 [with respect to the 2018 Allowance]). Promptly following the conclusion of construction, if any, Tenant shall deliver to Landlord (x) final lien releases from all contractors and subcontractors who have performed work in or about the Premises, and (y) a copy of any available warranties, guaranties, and operating manuals and information relating to the Tenant Alterations. Subject to the terms and conditions contained herein, Tenant may use any unused and unallocated portion of the 2017 Allowance and/or the 2018 Allowance towards Tenant's moving costs, or the costs of Tenant's furniture, fixtures or equipment installed in the Premises, or towards the payment of monthly Base Rent due under the Lease with respect to the Premises. If any portion of the 2017 Allowance and/or the 2018 Allowance is to be used towards Tenant's moving costs, or the costs of Tenant's furniture, fixtures or equipment installed in the Premises, or the payment of monthly Base Rent due under the Lease with respect to the Premises, then in addition to any other requirements stated herein (including, without limitation, the requirement that Tenant apply any unused portion of the 2017 Allowance and/or 2018 Allowance against Base Rent on or before June 1, 2018 [with respect to the 2017 Allowance] and on or before June 1, 2019 [with respect to the 2018 Allowance]), such credit shall be subject to there being no outstanding construction projects by or for the benefit of Tenant within the Premises (if any) which, in the reasonable judgment of Landlord, will cost in excess of the balance of the 2017 Allowance and/or the 2018 Allowance (as applicable). Provided that: (i) Tenant has deposited with Landlord an amount equal to the "2017 Allowance" and an amount equal to the "2018 Allowance" (as such terms are defined in Section 4.4.2 below, and (ii) provided no Event of Default has occurred beyond applicable notice and cure periods on more than two (2) occasions during any twelve (12) month period and/or no Event of Default then exists beyond applicable notice and cure periods, the Lease Security Deposit shall be reduced in accordance with the following schedule:

Reduction Date	Reduction Amount	Security Deposit Amount after Reduction
If Tenant has deposited with Landlord an amount equal to the 2017 Allowance, the last day of the 36th month of the Lease Term	$66,050.00	$113,523.43*
If Tenant has deposited with Landlord an amount equal to the 2018 Allowance, the last day of the 48th month of the Lease Term	$66,050.00	$47,473.43

* Assumes Tenant has previously deposited with Landlord an amount equal to both the 2017 Allowance and the 2018 Allowance, thereby increasing the original Lease Security Deposit from $47,473.43 to $179,573.43.

Subject to the terms and conditions contained herein, Landlord agrees to pay to Tenant the applicable Reduction Amount within thirty (30) days following the applicable Reduction Date. Tenant agrees and acknowledges that the foregoing Security Deposit reduction schedule is conditioned upon Tenant depositing with Landlord an amount equal to the "2017 Allowance" and an amount equal to the "2018 Allowance", and no Event of Default occurring beyond applicable notice and cure periods on more than two (2) occasions during any twelve (12) month period and/or no Event of Default then existing under this Lease beyond applicable notice and cure periods at the time of such scheduled deduction. In the event Tenant fails to deposit with Landlord the 2017 Allowance and the 2018 Allowance, or an Event of Default occurs on more than two (2) occasions beyond applicable notice and cure periods during any twelve (12) month period and/or an Event of Default then exists under this Lease beyond applicable notice and cure periods at the time of such scheduled deduction, then the foregoing reduction schedule shall be null and void and Landlord shall not be required to accept (nor shall Tenant be entitled to) any further reduction of the Security Deposit. Tenant shall not be entitled to reduce the Security Deposit except as expressly set forth in this Section 3.3.7.

3.4. **Additional Rent**. Definitions of certain terms used in this paragraph are set forth in the last subparagraph of this Section 3.4. Tenant agrees to pay to Landlord, as additional rent as computed in this paragraph (individually and collectively the "Additional Rent"), all Operating Costs Allocable to the Premises in excess of the Base Amount Allocable to the Premises; provided, however, in no event shall Tenant be responsible for payment of such excess during the first twelve (12) full calendar months of the Lease Term.

3.4.1 **Estimated Operating Costs**. Landlord shall furnish Tenant a written statement of Estimated Operating Costs Allocable to the Premises for each Year following the Base Year and the amount payable monthly by Tenant for the same shall be computed as follows: one-twelfth (1/12) of the amount of Estimated Operating Costs Allocable to the Premises in excess of the Base Amount Allocable to the Premises shall be Additional Rent and shall be paid monthly by Tenant for each month during such Year after the Commencement Date. If such written statement is furnished after the commencement of the Year (or as to the first Year under this Lease, after the Commencement Date), Tenant shall also make a retroactive lump-sum payment to Landlord equal to the monthly payment amount multiplied by the number of months during the Year (or as to the first Year under this Lease, after the Commencement Date) for which no payment was paid, within thirty (30) days of Tenant's receipt of such statement. Notwithstanding the foregoing, Landlord reserves the right, from time to time during each Year, to revise the Estimated Operating Costs Allocable to the Premises and upon notice to Tenant of such revision, Tenant shall adjust its payments to Landlord accordingly. Failure of Landlord to furnish any statement hereunder shall in no event affect or impair Tenant's obligation to pay all Operating Costs Allocable to the Premises and all other amounts due under this Lease.

3.4.2 **Actual Costs**. After the close of each Year after the Base Year, Landlord shall use commercially reasonable efforts to deliver to Tenant a written statement setting forth the Operating Costs Allocable to the Premises during the preceding Year within one hundred twenty (120) days after the close of each Year. If such Operating Costs Allocable to the Premises for any Year exceed the Estimated Operating Costs Allocable to the Premises paid by Tenant to Landlord pursuant to subparagraph 3.4.1 for such Year, Tenant shall pay the amount of such excess to Landlord within twenty (20) Business Days after receipt of such statement by Tenant. If such statement shows the Operating Costs Allocable to the Premises to be less than the Estimated Operating Costs Allocable to the Premises paid by Tenant to Landlord pursuant to subparagraph 3.4.1, then the amount of such overpayment shall be paid by Landlord to Tenant within twenty (20) Business Days following the date of such statement or, at Landlord's option, shall be credited towards the installment(s) of Additional Rent next coming due from Tenant (or in the event the Lease Term is expired or terminated, Landlord shall pay any such amount to Tenant within twenty (20) Business Days following the date of such statement). The failure of Landlord to timely furnish such statement for any Year shall not preclude Landlord from subsequently enforcing its rights to collect any amounts hereunder. Notwithstanding anything herein to the contrary, if Landlord fails to charge Tenant for any particular item of Operating Costs within twelve (12) months after the end of any Year during the Lease Term for which such Operating Cost is applicable, Landlord shall be deemed to have forfeited the right to bill Tenant for such particular item of Operating Costs with respect to such Year (except to the extent of any Operating Costs related to supplemental taxes, assessments, utility surcharges or other costs or expenses attributable to such calendar year which were not reasonably known to Landlord during the Year in question, for which no such limitation shall apply).

3.4.3 **Determination**. The determination of Operating Costs Allocable to the Premises shall be made by Landlord.

3.4.4 **Operating Cost Audit**. Landlord shall maintain records concerning estimated and actual Operating Costs Allocable to the Premises for no less than two (2) years following the period covered by the statement or statements furnished Tenant, after which time Landlord may dispose of such records. Provided that Tenant is not then in default of its obligation to pay Base Rent, Additional Rent or other payments required to be made by it under this Lease and provided that Tenant is not otherwise in default under this Lease beyond any applicable notice and cure period, Tenant may, at Tenant's sole cost and expense (except as expressly set forth below), cause a Qualified Person (defined below) to inspect Landlord's records. Such inspection, if any, shall be conducted no more than once each calendar year, during Landlord's normal business hours within one hundred eighty (180) calendar days after receipt of Landlord's written statement of Operating Costs Allocable to the Premises for the applicable calendar year (or, with respect to Base Year Operating Costs, within two (2) years after the expiration of the Base Year), upon first furnishing Landlord at least twenty (20) calendar days prior written notice. Any errors disclosed by the review shall be promptly corrected by Landlord; provided, however, that if Landlord disagrees with any such claimed errors, Landlord shall have the right to cause another review to be made by an auditor reasonably chosen by Landlord. In the event the results of the review of records (taking into account, if applicable, the results of any additional review caused by Landlord) reveal that Tenant has overpaid obligations for a preceding period, the amount of such overpayment shall be credited against Tenant's subsequent installment of Base Rent, Additional Rent or other payments due to Landlord under the Lease (or in the event the Lease Term is expired or terminated, Landlord shall pay any such amount to Tenant within twenty (20) Business Days following Landlord's receipt of the audit results). In the event that such results show that Tenant has underpaid its obligations for a preceding period, the amount of such underpayment shall be paid by Tenant to Landlord with the next succeeding installment obligation of estimated Operating Costs Allocable to the Premises. If the actual Operating Costs Allocable to the Premises for any given calendar year were improperly computed and if the actual Operating Costs Allocable to the Premises are overstated by more than four percent (4%), Landlord shall promptly reimburse Tenant for the cost of its audit, up to a maximum amount of the overstatement in question.

3.4.5 **End of Term**. If this Lease shall terminate on a day other than the last day of a Year, (a) Landlord shall estimate the Operating Costs Allocable to the Premises for such Year predicated on the most recent reliable information available to Landlord; (b) the amount determined under clause (a) of this sentence shall be prorated by multiplying such amount by a fraction, the numerator of which is the number of days within the Lease Term in such Year and the denominator of which is three hundred sixty (360); (c) the Base Amounts Allocable to the Premises shall be prorated in the manner described in clause (b); (d) the clause (c) amount (i.e., the prorated Base Amount Allocable to the Premises) shall be deducted from the clause (b) amounts (i.e., the prorated Operating Costs Allocable to the Premises); (e) if the clause (d) amounts exceed the Estimated Operating Costs Allocable to the Premises paid by Tenant for the last Year in the Lease Term, then Tenant shall pay the excess to Landlord within ten (10) Business Days after Landlord's delivery to Tenant of a statement for such excess; and (f) if the Estimated Operating Costs Allocable to the Premises paid by Tenant for the last Year in the Lease Term exceeds the clause (d) amount, then Landlord shall refund to Tenant the excess within the ten (10) Business Day period described in clause (e) if Tenant is not then in default of any of its obligations under this Lease. Landlord's and Tenant's obligations under this Section 3.4.5 shall survive the expiration or other termination of this Lease.

3.4.6 **Definitions**. Each underlined term in this Section 3.4 shall have the meaning set forth next to that underlined term:

Base Amount Allocable to the Premises: Operating Costs Allocable to the Premises for the Base Year.

Estimated Operating Costs Allocable to the Premises: Landlord's written estimate of Operating Costs Allocable to the Premises for a calendar year to be given by Landlord to Tenant pursuant to Section 3.4.1.

Operating Costs: All costs and expenses paid or incurred by Landlord for maintaining, operating, replacing, owning and repairing any or all of the Land, Building, Premises, related improvements, and the personal property used in conjunction with such Land, Building, Premises and related improvements. Included, without limitation, are all expenses paid or incurred by Landlord for: (a) utilities, including electricity, water, gas, sewers, fire sprinkler charges, refuse collection, Telecommunication Services, cable television, steam, heat, cooling or any other similar service and which are not payable directly by tenants in the Building; (b) supplies; (c) cleaning, painting and janitorial services (including window washing), landscaping and landscaping maintenance (including irrigating, trimming, mowing, fertilizing, seeding and replacing plants), snow removal and other services; (d) security services, if any; (e) management fees (not to exceed 3% of the gross revenues of the Project); (f) compensation (including employment taxes and fringe benefits) of all persons and business organizations who perform duties in connection with any service, repair, maintenance, replacement or improvement or other work included in this paragraph at the senior property manager level and below; (g) license, permit and inspection fees; (h) assessments and special assessments due to deed restrictions, declarations or owners associations or other means of allocating costs of a larger tract of which the Land is a part; (i) rental of any machinery or equipment; (j) audit fees and accounting services related to the Building, and charges for the computation of the rents and charges payable by tenants in the Building (but only to the extent the cost of such fees and services are in addition to the cost of the management fee); (k) the cost of repairs or replacements; (l) charges under maintenance and service contracts; (m) legal fees and other expenses of legal or other dispute resolution proceedings; (n) maintenance and repair of the roof and roof membranes, (o) costs incurred by Landlord for compliance with any and all Governmental Requirements, including Access Laws, and to increase the efficiency of any electrical, mechanical or other system servicing the Building or the Land; (p) elevator service and repair, if any; (q) business taxes and license fees; (r) Property Taxes; (s) all insurance maintained by Landlord, together with deductibles therefor; (t) any other expense or charge which in accordance with generally accepted accounting and management principles would be considered an expense of maintaining, operating, owning or repairing the Building; (u) insurance endorsements or insurance policies purchased in order to repair, replace and re-commission the Building for re-certification pursuant to any Green Agency Rating (or, in the event the Building has not achieved any certification under any Green Agency Rating, such insurance that is purchased in order to facilitate rebuilding the building upon a casualty so as to achieve such certification) or support achieving energy and carbon reduction targets; (v) all costs of maintaining, managing, reporting, commissioning, and recommissioning the Building or any part thereof that was designed and /or built to be sustainable and conform with any Green Agency Rating, and all costs of applying, reporting and commissioning the Building or any part thereof to seek certification under any Green Agency Rating; and (w) the amortization of costs of capital improvements installed or constructed by or on behalf of Landlord, which are (A) intended to increase the operating efficiency of the Building, Project or any portion thereof, (B) required under any new or change in governmental law or regulation of any Governmental Agency implemented after the Commencement Date, and/or (C) relating to the replacement or repair of capital items that, in Landlord's reasonable judgment, have worn out, become obsolete or otherwise require replacement (including, without limitation, replacement of the roof structure and roof membranes, parking area resurfacing and resealing, and replacement of Building Systems and facilities). Costs associated with any such capital improvements installed or constructed by Landlord, whether such were constructed or installed before or after the Commencement Date, shall be amortized with interest at the Prime Rate plus four (4) percentage points over the estimated useful life of the capital improvement as reasonably determined by Landlord and the annual amortization of principal and interest attributable to the Lease Term shall be an Operating Cost. If less than ninety-five percent (95%) of the net rentable area of the Building or Project is occupied by tenants at all times during any calendar year (including, without limitation, the Base Year), then Operating Costs for such year shall include all additional costs and expenses that Landlord reasonably determines would have been incurred had ninety-five percent (95%) of the Building and Project been occupied at all times during such year by tenants. Notwithstanding anything to the contrary herein, in no event shall costs for any item of utilities included in Operating Costs for any year subsequent to the Base Year be less than the amount included in Operating Costs for the Base Year for such utility item. Notwithstanding anything to the contrary herein, when calculating Operating Costs for the Base Year, Operating Costs shall exclude (i) increases due to extraordinary circumstances including, but not limited to, labor-related boycotts and strikes, utility rate hikes, utility conservation surcharges, or other surcharges, insurance premiums resulting from terrorism coverage, catastrophic events and/or the management of environmental risks, and (ii) amortization of any capital items including, but not limited to, capital improvements, capital repairs and capital replacements (including such amortized costs where the actual improvement, repair or replacement was made in prior years). Furthermore, if a category or categories of services are provided or an unexpected increase in services are provided by Landlord in the Base Year, but not in "subsequent" calendar year(s), the Base Year shall be retroactively adjusted to reflect the Operating Costs which would have been incurred during the Base Year had such category or categories of services or unexpected increase in services not been provided during the Base Year.

Notwithstanding the foregoing, Operating Costs shall not include the following: (i) leasing commissions, attorney fees, or space planner fees incurred in connection with leasing space in the Project to tenants or in the original development of the Project, (ii) interest on debt or amortization on any mortgages or deeds of trust or any other debt instrument encumbering the Project or Landlord's interest therein, and rental under any ground lease, (iii) any "tenant allowances," "tenant concessions" and other costs or expenses incurred in fixturing, furnishing, renovating or otherwise improving, decorating or redecorating space for tenants or other occupants of the Building, or vacant leasable space in the Building, except in connection with general maintenance and repairs provided to the tenants of the Building in general, (iv) costs of litigation, negotiation or arbitration (including attorneys' fees and costs of settlement, judgments and payments in lieu thereof) arising from claims, disputes or potential disputes pertaining to Landlord or the Building, or arising from syndicating, financing, mortgaging or hypothecating any of the Landlord's interest in the Project, other than as otherwise permitted pursuant to this Article 3 and other than disputes relating to a nuisance), (v) any deduction for depreciation and amortization of debt taken on Landlord's income tax returns, (vi) advertising and space planning expenses incurred in procuring tenants and not for items of general applicability to the Building such as, but not limited to, holiday decorations and entertainment, (vii) costs or expenses (including fines, interest, penalties and legal fees) due to Landlord's failure to timely pay Operating Costs or Property Taxes, or due to the gross negligence or willful misconduct of Landlord or its employees, contractors or agents, except to the extent the same shall be due to the act or omission of Tenant, (viii) all costs associated with the operation of the business of the entity which constitutes "Landlord" (as distinguished from the costs of operating, maintaining, repairing and managing the Building) including, but not limited to, Landlord's or Landlord's managing agent's general corporate overhead and general administrative expense, (ix) profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Building but only to the extent the same exceed the competitive cost for such services rendered by persons or entities of similar skill, competence and experience (and who satisfy Landlord's union requirements), (x) reserves for equipment or capital replacement, (xi) bad debt loss, rent loss, or reserves for bad debt or rent loss, (xii) the cost of repairs or other work undertaken by reason of fire, windstorm or other casualty to the extent that Landlord actually receives reimbursement for such costs from insurance proceeds (except that insurance deductibles shall be included in Operating Costs), (xiii) costs, fees, dues, and/or contributions for political or charitable organizations, (xiv) costs incurred to remediate any Landlord's Hazardous Substances (as defined below) and (xv) costs required to remedy a condition existing prior to the Commencement Date which a governmental authority with jurisdiction, if it had knowledge of such condition prior to the Commencement Date and if such condition was not subject to a variance or a grandfathered code waiver exception, would have then required to be remedied pursuant to then-current applicable Governmental Requirements, in their form existing as of the Commencement Date (and pursuant to the then-current interpretation of such Governmental Requirements by such governmental authority as of the Commencement Date). There will be no duplication in charges to Tenant by reason of the provisions of this Lease setting forth Tenant's obligation to reimburse Landlord for Operating Costs and any other provision herein

Operating Costs Allocable to the Premises: The aggregate of (a) Tenant's Pro Rata Share of Operating Costs plus (b) Tenant's Pro Rata Share of the Building Share of Project Operating Costs.

Qualified Person: An accountant or other person experienced in accounting for income and expenses of office projects, who is engaged on terms which do not entail any compensation based or measured in any way upon any savings in Additional Rent or reduction in Operating Costs Allocable to the Premises achieved through the inspection process described in this Section 3.4.

Project Operating Costs: All expenses paid or incurred by Landlord for maintaining, operating, owning and repairing the common areas of the Project. Expenses listed as examples under the definition of Operating Costs may be Project Operating Costs if the first sentence of this paragraph is satisfied. Exclusions listed as examples under the definition of Operating Costs shall also be similarly excluded from Project Operating Costs.

Building Share of Project Operating Costs: The portion of Project Operating Costs allocated to the Building and to the tenants in the Building by Landlord in a reasonably consistent and equitable manner taking into consideration the size of the Building and other buildings in the Project, the uses to which the Building and other buildings in the Project are being put or to which they are primarily suited and the relative benefits, demands and burdens associated with each such cost item.

3.4.7 **Tenant's Costs**. Tenant agrees to reimburse or pay Landlord within thirty (30) days after invoice from Landlord for (a) any cleaning expenses incurred by Landlord, including carpet cleaning, garbage and trash removal expenses, over and above the normal cleaning provided by Landlord, if any, or due to the presence of a lunchroom or kitchen or food or beverage dispensing machines within the Premises, (b) any expense incurred by Landlord for usage in the Premises of heating, ventilating and air conditioning services, elevator services, electricity, water, janitorial services, or any other services or utilities over and above the normal usage for the Premises, (c) any expense incurred by Landlord relating to or arising out of the usage by Tenant or Tenant's Agents of the public or common areas of the Building or Project, or any of the equipment contained therein, which usage is over and above the normal usage for such public or common areas or equipment, and (d) any other direct expense incurred by Landlord on Tenant's behalf. In the event Landlord reasonably believes that Tenant is utilizing a disproportionate amount of electricity and/or other utilities (as compared to other tenants in the Building and/or the Project), then Landlord reserves the right to install and activate separate metering of electricity, water or other utilities to the Premises, and Tenant agrees to reimburse or pay Landlord within thirty (30) days after invoice from Landlord for all costs of such separate metering, in which case the Base Amount Allocable to the Premises and Operating Costs may, in Landlord's reasonable judgment, be adjusted by Landlord accordingly.

3.4.8 **Payments Deemed Additional Rent**. Any sums payable under this Lease pursuant to this Section 3.4 or otherwise shall be Additional Rent and, in the event of nonpayment of such sums, Landlord shall have the same rights and remedies with respect to such nonpayment as it has with respect to nonpayment of the Base Rent due under this Lease.

3.5. **Utilities**.

3.5.1 Landlord shall have the right from time to time to select the company or companies providing electricity, gas, fuel, local telephone, telecommunication and any other utility services to the Building and to purchase green or renewable energy. Landlord shall, as part of Operating Costs, cause to be furnished (a) electricity and HVAC to the Premises, all in such reasonable quantities as in the judgment of Landlord is reasonably necessary for the comfortable occupancy of the Premises, Monday through Friday from 8:00 a.m. to 5:00 p.m., and Saturday from 9:00 a.m. to 1:00 p.m., excluding local and national holidays (the "**Regular Business Hours**"), and (b) janitorial services to the Premises five (5) days per week pursuant to Landlord's janitorial specifications attached hereto as Exhibit F, as the same may be updated or amended from time to time, excepting local and national holidays. If Tenant requires utilities that Landlord provides to the Premises during times other than the Regular Business Hours, Tenant shall give Landlord such advance notice as Landlord shall reasonably require and shall pay Landlord's then-standard charge for such after-hours use. The current charge for after-hours HVAC use is Thirty-Five and 00/100 Dollars ($35.00) per hour (subject to change by Landlord from time to time to the extent that the costs or expenses of providing such service actually increase).

Tenant shall contract directly and pay for all telephone and telecommunications charges used on or from the Premises together with any taxes, penalties, surcharges or similar charges relating to the same. If Tenant desires to use the services of a provider of local telephone or telecommunication services whose equipment is not then servicing the Building, no such provider shall be permitted to install its lines or other equipment within the Building without the prior written consent of Landlord. Landlord reserves the right to install and activate separate metering of electricity, water or other utilities to the Premises, and Tenant agrees to reimburse or pay Landlord within thirty (30) days after invoice from Landlord for all costs of such separate metering in which case the Base Amount Allocable to the Premises and the Operating Costs may be equitably adjusted by Landlord accordingly. Notwithstanding anything to the contrary contained in this Section 3.5, Landlord shall not be liable for any loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits however occurring, and there shall be no rent abatement as a result of, any stoppage, reduction or interruption of any such utilities and/or services caused by Governmental Requirements, riot, strike, labor disputes, breakdowns, accidents, necessary repairs or other cause. Landlord shall in no case be liable or in any way be responsible for damages or loss to Tenant arising from the failure of, diminution of or interruption in electrical power, natural gas, fuel, telecommunications services, sewer, water, or garbage collection services, other utility service or building service of any kind to the Premises.

Notwithstanding anything to the contrary herein, if Tenant is prevented from using, and does not use, the Premises or a portion thereof as a result of any grossly negligent failure by Landlord to provide services to the Premises and such failure did not result from a casualty covered by Section 4.9 below and/or was not caused directly or indirectly by the negligence or willful misconduct of Tenant or Tenant's Agents (an "**Abatement Event**"), then Tenant shall give written notice of such Abatement Event to Landlord. If the Abatement Event continues for five (5) consecutive Business Days (the "**Abatement Period**") after Landlord's receipt of Tenant's written notice, then rent shall be abated or reduced beginning on the day after the Abatement Period, for such time that Tenant continues (as a result of the Abatement Event) to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises.

3.5.2 Except as expressly provided in Section 2.12 above with respect to the Rooftop Premises, Tenant acknowledges that space on the Building rooftop and in Building risers, equipment rooms and equipment closets is limited and may not be used or accessed without the prior written consent of Landlord (in Landlord's reasonable discretion). Tenant shall have no right to obtain Telecommunication Services for the Premises from providers other than those selected by Landlord without the prior written consent of Landlord (in Landlord's reasonable discretion). Unless otherwise required by law, neither Tenant, nor a provider of Telecommunication Services to Tenant, in shall be entitled to locate or install Telecommunication Facilities in, on or about the Building without (a) first obtaining Landlord's advance, written consent and (b) the advance execution by Landlord and Tenant of a satisfactory agreement granting a license to Tenant for such purposes and setting forth the scope, the additional rent, if any, royalties and the other terms and conditions of that license, and (c) Tenant negotiating and obtaining the right, if any is required, to bring such Telecommunication Facilities across public or private property to an approved entry point to the Building. The license agreement referred to above is hereby incorporated into this Lease. Any future application by Tenant for permission to locate or install Telecommunication Facilities shall (1) be in such form and shall be accompanied by such supporting information as the Landlord may reasonably require, (2) be subject to such procedures, regulations and controls as the Landlord may reasonably specify and (3) be accompanied by such payment as the Landlord may reasonably request to reimburse Landlord for its costs of evaluating and processing the application and in negotiating and preparing the agreement described earlier in this Section 3.5.2.

3.5.3 Landlord's Right to Audit Utility Usage. Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Landlord, at its election, may contact any utility company providing utility services to the Premises in order to obtain data on the energy being consumed by the occupant of the Premises. Furthermore, Tenant agrees to provide Landlord with Tenant's energy consumption data within thirty (30) days after Landlord's written request for the same in a form reasonably requested by Landlord. Tenant agrees to take such further actions as are necessary in order to further the purpose of this paragraph, including, without limitation, providing to Landlord the names and contact information for all utility providers serving the Premises, copies of utility bills, written authorization from Tenant to any such utility company to release information to Landlord, and any other relevant information reasonably requested by Landlord or the applicable utility company.

3.6. **Holdover**. If Landlord consents in writing to a holdover and no other agreement is reached between Tenant and Landlord concerning the duration and terms of the holdover, Tenant's holdover shall be a month-to-month tenancy subject to termination by Landlord or Tenant at any time upon not less than thirty (30) days' prior written notice. If Tenant holds over without the written consent of Landlord, Landlord shall have all the rights and remedies provided for by law and this Lease, and the same shall be a tenancy at will, terminable at any time. During any holding over without the written consent of Landlord (which consent shall be given or withheld in Landlord's sole and absolute discretion), Tenant shall pay to Landlord 125% of the rate of Base Rent in effect on the expiration or termination of the Lease Term during the three (3) months immediately following the expiration or termination of the Lease Term and 150% of the rate of Base Rent in effect on the expiration or termination of the Lease Term thereafter, plus, in all cases, all Additional Rent and other sums payable under this Lease, and shall be bound by all of the other covenants and conditions specified in this Lease, so far as applicable. In addition, in the event Tenant does not vacate the Premises in accordance with the terms of Section 4.6 below on or before the date which is the earlier to occur of (i) thirty (30) days after the expiration or earlier termination of the Lease Term (or such later date that Landlord has consented in writing, in its sole and absolute discretion, for Tenant to hold over within the Premises), or (ii) the thirtieth (30th) day after receiving written notice from Landlord demanding that Tenant vacate the Premises ("**Vacation Notice**") (which Vacation Notice may be delivered by Landlord during the Lease Term), Tenant shall be liable to Landlord for, and Tenant shall indemnify, protect, defend and hold Landlord harmless from and against, any damages, liabilities, losses, costs, expenses or claims suffered or caused by any holdover (including the right to recover consequential damages suffered by Landlord in the event of Tenant's refusal to relinquish possession of the Premises at the end of the Lease Term), including, without limitation, damages and costs related to any successor tenant of the Premises to whom Landlord could not deliver possession of the Premises when promised. Tenant is not authorized to hold over beyond the expiration or earlier termination of the Lease Term, and nothing contained herein shall authorize Tenant to do so and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or earlier termination of the Lease Term.

3.7. **Late Charge**. If Tenant fails to make any payment of Base Rent, Additional Rent or other amount when due under this Lease, a late charge is immediately due and payable by Tenant equal to five percent (5%) of the amount of any such payment; provided, however, that Landlord shall waive the imposition of the late charge for the first late payment in any twelve (12) month period during the Term provided Tenant pays such overdue amounts within three (3) Business Days following written notice from Landlord that such amounts are past due. Landlord and Tenant agree that this charge compensates Landlord for the administrative costs caused by the delinquency. The parties agree that Landlord's damage would be difficult to compute and the amount stated in this Section 3.7 represents a reasonable estimate of such damage. Assessment or payment of the late charge contemplated in this Section 3.7 shall not excuse or cure any Event of Default or breach by Tenant under this Lease or impair any other right or remedy provided under this Lease or under law.

3.8. **Default Rate**. Any Base Rent, Additional Rent or other sum payable under this Lease which is not paid when due shall bear interest at a rate equal to the lesser of: (a) the published prime or reference rate of Bank of America, N.A., or such other national banking institution designated by Landlord if such bank ceases to publish such rate (the "**Prime Rate**"), then in effect, plus four (4) percentage points, or (b) the maximum rate of interest per annum permitted by applicable law (the "**Default Rate**"), but the payment of such interest shall not excuse or cure any Event of Default or breach by Tenant under this Lease or impair any other right or remedy provided under this Lease or under law.

ARTICLE IV MANAGEMENT AND LEASING PROVISION

4.1. **Maintenance and Repair by Landlord**. Subject to the Sections captioned "Damage or Destruction" and "Condemnation", Landlord shall maintain the structural elements of the Building, including foundation, exterior walls, roof structure and roof membranes, the base Building mechanical, electrical, life safety, plumbing, sprinkler systems and heating, ventilating and air-conditioning systems serving the Premises (specifically excluding any supplemental systems installed by or at the request of Tenant that were not part of the base Building), and the common areas of the Building and the Project in reasonably good order and condition subject to reasonable wear and tear and causes beyond Landlord's reasonable control. Landlord shall make such repairs thereto as become necessary after obtaining actual knowledge of the need for such repairs. Except as otherwise expressly provided in Section 3.4 above, all repair costs shall be included in Operating Costs, except for damage occasioned by the act or omission of Tenant or Tenant's Agents which shall be paid for entirely by Tenant upon demand by Landlord. In the event Tenant becomes aware that any or all of the Building becomes in need of maintenance or repair which Landlord is required to make under this Lease, Tenant shall promptly give written notice to Landlord, and Landlord shall not be obligated in any way to commence such maintenance or repairs until a reasonable time elapses after Landlord's receipt of such notice. Tenant hereby waives the benefit of Sections 1941 and 1942 of the California Civil Code and any other statute providing a right to make repairs and deduct the cost thereof from the Rent. Tenant waives any right to terminate this Lease or offset or abate Rent by reason of any failure of Landlord to make repairs to the Premises.

4.2. **Maintenance and Repair by Tenant**. Except as is expressly set forth as Landlord's responsibility pursuant to the Section captioned "Maintenance and Repair by Landlord," Tenant shall at Tenant's sole cost and expense clean, keep and maintain the Premises in good condition and repair, including interior painting, clean the interior side of all exterior glass, plumbing and utility fixtures and installations, carpets and floor coverings, all interior wall surfaces and coverings (including tile and paneling), window cleaning and replacement, exterior and interior doors, roof penetrations and membranes in connection with any Tenant installations on the roof, light bulb replacement (which lighting purchases must comply with Landlord's sustainability practices and shall be reported to Landlord in a format suitable to Landlord) and interior preventative maintenance. All maintenance and repairs made by Tenant must comply with Landlord's sustainability practices and any applicable Green Agency Rating, as the same may change from time to time. If Tenant fails to maintain or repair the Premises in accordance with this Section 4.2, then Landlord may, but shall not be required to, enter the Premises upon two (2) Business Days prior written notice to Tenant (or immediately without any notice in the case of an emergency) to perform such maintenance or repair at Tenant's sole cost and expense. Tenant shall pay to Landlord the cost of such maintenance or repair plus a five percent (5%) administration fee within ten (10) Business Days of written demand from Landlord. Tenant shall, at its sole cost and expense, enter into a regularly scheduled preventative maintenance/service contract with a maintenance contractor for servicing all hot water, heating, ventilation and air conditioning systems and equipment located within or dedicated solely to the Premises. The maintenance contractor and the contract must be approved in advance by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. The service contracts must include all services recommended by the equipment manufacturer within the operation/maintenance manual and shall become effective (and a copy of such contract or contracts delivered to Landlord) within thirty (30) days following the date Tenant takes possession of the Premises.

4.3. **Common Areas/Fitness Center/Security**.

4.3.1 The common areas of the Building and the Project shall be subject to Landlord's sole management and control. Without limiting the generality of the immediately preceding sentence, Landlord reserves the exclusive right as it deems necessary or desirable to install, construct, remove, maintain and operate lighting systems, facilities, improvements, equipment, Telecommunication Facilities and signs on, in or to all parts of the common areas; change the number, size, height, layout, or locations of walks, driveways and truckways or parking areas now or later forming a part of the Land, Building or Project; make alterations or additions to the Building, the Land or the Project; close temporarily all or any portion of the common areas to make repairs, changes or to avoid public dedication; grant easements to which the Land or the Project will be subject; replat, subdivide, or make other changes to the Land or the Project; place or relocate or cause to be placed or located utility lines and Telecommunication Facilities through, over or under the Land, Building or Project; and use or permit the use of all or any portion of the roof of the Building. Landlord reserves the right to relocate parking areas and driveways and to build additional improvements in the common areas. Notwithstanding the foregoing rights of Landlord regarding changes to the Building, the Project and the common areas serving the same, except to the extent required by Governmental Requirements, Landlord agrees it shall not make any change to the Building, the Project or the common areas which would have a material adverse effect on Tenant's access to and use of the Premises.

4.3.2 To the extent that during the Lease Term, Landlord, in its sole and absolute discretion, chooses to offer the use of the Project's fitness center (the "**Fitness Center**") on a non-exclusive basis to the tenants and occupants of the Project as part of the common areas, Tenant and its employees shall have a non-exclusive right to use the Fitness Center. Tenant shall not be charged a fee to use the Fitness Center (except for a one-time fee of $20.00 per person that will use the Fitness Center); provided, however, that Landlord shall have the right to include all costs to operate, repair and maintain as Operating Costs pursuant to Section 3 above (and subject to any express limitations set forth therein). Tenant's continued right to use the Fitness Center is conditioned upon Tenant abiding by all reasonable, non-discriminatory rules and regulations which are prescribed from time to time by Landlord for the orderly operation and use of such facilities, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations, and Tenant not being in default under this Lease beyond all applicable notice and cure periods. Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Fitness Center at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of rent under this Lease, from time to time, close-off or restrict access to the Fitness Center to all tenants of the Project, as determined by Landlord to be reasonably necessary.

4.3.3 Landlord has no duty or obligation to provide any security services in, on or around the Premises, Land or Building, and Tenant recognizes that security services, if any, provided by Landlord will be for the sole benefit of Landlord and the protection of Landlord's property and under no circumstances shall Landlord be responsible for, and Tenant waives any rights with respect to, Landlord providing security or other protection for Tenant or Tenant's Agents or property in, on or about the Premises, Land, Building or Project. Subject to Landlord's prior approval (not to be unreasonably withheld, conditioned or delayed), Tenant may, at its sole cost and expense, install, establish and maintain security services within the Premises; provided that, such security services (including any apparatus, facilities, equipment or people utilized in connection with the provision of such security services) comply with the Governmental Requirements and shall not cause the Building to be out of compliance with the Governmental Requirements. Notwithstanding the foregoing, any such security services installed, established or maintained by Tenant must not affect or impact any portion of the Building or the Land other than the Premises and shall not in any way limit or interfere with Landlord's ability to exercise its rights as provided in the Section captioned "Access". Tenant's rights under this Section 4.3 are subject to all the obligations, limitations and requirements as set forth in the Sections captioned "Tenant Alterations" and "Tenant's Work Performance".

4.4. **Tenant Alterations; Allowances**. Tenant shall not make any alterations, additions or improvements in or to the Premises, or make changes to locks on doors, or add, disturb or in any way change the roof of the Premises, any floor covering, wall covering, fixtures, plumbing or wiring (individually and collectively "**Tenant Alterations**"), without first obtaining the consent of Landlord which shall not be unreasonably withheld, conditioned or delayed (except to the extent that the subject Tenant Alterations could impact the structure, systems, or exterior appearance of the Building or the Premises, in which event Landlord's consent shall be in its sole and absolute discretion). Notwithstanding the foregoing, Tenant may make strictly cosmetic changes to the finish work in the Premises, not including any changes affecting the Premises' or Building's roof, structure, systems, equipment, or exterior appearance ("**Cosmetic Alterations**"), without Landlord's consent (but subject to all other terms of this Lease), provided that (i) the aggregate cost of any such Cosmetic Alterations does not exceed Fifty Thousand Dollars ($50,000.00) in any twelve (12) month period, and (ii) such Cosmetic Alterations do not require any substantial modifications to the Premises and do not require issuance of a building permit. Tenant shall give Landlord at least twenty (20) Business Days prior written notice of such Cosmetic Alterations ("**Cosmetic Alterations Notice**"), which Cosmetic Alterations Notice shall be accompanied by reasonably adequate evidence that such Cosmetic Alterations meet the criteria contained in this Section 4.4. Cosmetic Alterations shall be deemed to constitute Tenant Alterations for all purposes under this Lease (except that Landlord's consent shall not be required so long as the foregoing provisions have been satisfied). Tenant shall cause, at its expense, all Tenant Alterations to comply with insurance requirements and with Governmental Requirements and shall construct at its expense any alteration or modification required by Governmental Requirements as a result of any Tenant Alterations. Tenant shall deliver to Landlord full and complete plans and specifications for any proposed Tenant Alterations and, if consent by Landlord is given, all such work shall be performed at Tenant's expense by Landlord or by Tenant, at Landlord's election. Tenant shall pay to Landlord all actual out-of-pocket costs incurred by Landlord for any architectural, engineering, supervisory and/or legal services in connection with any Tenant Alterations including, without limitation, Landlord's review of the plans and specifications for the Tenant Alterations, not to exceed ten percent (10%) of the aggregate cost of such Tenant Alterations. Without limiting the generality of the foregoing, Landlord may require Tenant (if Landlord has elected to require Tenant to perform the Tenant Alterations), at Tenant's sole cost and expense, to obtain and provide Landlord with proof of insurance coverage and a payment and performance bond, in forms, amounts and by companies reasonably acceptable to Landlord. Should Tenant make any Tenant Alterations without Landlord's prior written consent, or without satisfaction of any conditions established by Landlord, Landlord shall have the right, in addition to and without limitation of any right or remedy Landlord may have under this Lease, at law or in equity, to require Tenant to remove some or all of the Tenant Alterations at Tenant's sole cost and expense and restore the Premises to the same condition existing prior to undertaking the Tenant Alterations, or, at Landlord's election, Landlord may remove such Tenant Alterations and restore the Premises at Tenant's expense. All Tenant Alterations to the Premises, regardless of which party constructed them or paid for them, shall become the property of Landlord and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of this Lease; provided, however, at Landlord's sole election (to be made in writing at the time Landlord provides its consent to the subject Tenant Alterations or, with respect to Cosmetic Alterations, to be made in writing within ten (10) Business Days following Landlord's receipt of a Cosmetic Alterations Notice), Tenant shall be obligated, at its sole cost and expense, to remove all (or such portion as Landlord shall designate) of the Tenant Alterations and repair any damage resulting from such removal (including any damage and/or discoloration to any surfaces covered by such Tenant Alterations) and return the Premises to the same condition existing prior to the undertaking upon the expiration or earlier termination of this Lease, subject to ordinary wear and tear, casualty, and condemnation. If Tenant fails to remove any such Tenant Alterations as required hereunder, Landlord may do so and Tenant shall pay the entire cost thereof to Landlord within ten (10) Business Days after Tenant's receipt of Landlord's written demand therefor. Tenant shall reimburse Landlord, upon receipt of demand therefor, for all out of pocket costs and expenses incurred by Landlord during its review of Tenant's plans and specifications (regardless of whether Landlord approves Tenant's request) and Tenant's construction. Nothing contained in this Section 4.4 or the Section captioned "Tenant's Work Performance" shall be deemed a waiver of the provisions of the Section captioned "Mechanic's Liens."

4.5. **Tenant's Work Performance**. If Landlord elects to require Tenant to perform any Tenant Alterations, Landlord may, in its absolute discretion, require that Tenant provide a payment and performance bond to cover the entire work to be performed, which bond must be in form, amount and by a company acceptable to Landlord. Any Tenant Alterations or any other work to be performed by or on behalf of Tenant in the Premises (including, without limitation, any racking) shall be performed by contractors employed by Tenant under one or more construction contracts, in form and content approved in advance in writing by Landlord, which approval shall be subject to Landlord's discretion. Unless otherwise specified by Landlord in writing (in its sole and absolute discretion), with respect to any Tenant Alterations or any other work performed by or at the request of Tenant in the Premises (including, without limitation, any racking), the prime contractor and the respective subcontractors of any tier shall: (a) be parties to, and bound by, a collective bargaining agreement with a labor organization affiliated with the Building and Construction Trades Council of the AFL CIO applicable to the geographic area in which the Building is located and to the trade or trades in which the work under the contract is to be performed, (b) employ only members of such labor organizations to perform work within their respective jurisdictions, and (c) satisfy any of Landlord's other union requirements imposed at any time by Landlord; any violation of this sentence shall be a material default under this Lease, without any notice and cure period whatsoever, and Landlord shall be entitled to immediately exercise all of its available remedies at law and in equity. Tenant's contractors, workers and suppliers shall work in harmony with and not interfere with workers or contractors of Landlord or other tenants of Landlord. If Tenant's contractors, workers or suppliers do, in the reasonable opinion of Landlord, cause such disharmony or interference, Landlord's consent to the continuation of such work may be withdrawn upon written notice to Tenant. All Tenant Alterations shall be (1) completed in accordance with the plans and specifications approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed); (2) completed in accordance with all Governmental Requirements; (3) carried out promptly in a good and workmanlike manner; (4) of all new materials; and (5) free of defect in materials and workmanship. Any and all Tenant Alterations that affects at least fifty percent (50%) of the Premises will be performed in accordance with Landlord's sustainability practices, (as same may be in effect or amended or supplemented from time to time) and any Green Agency Ratings, as the same may change from time to time. Tenant further agrees to engage a qualified third party LEED or Green Globe Accredited Professional or similarly qualified professional during the design phase through implementation of any Tenant Alterations covered by the preceding sentence, in order to review all plans, material procurement, demolition, construction and waste management procedures to ensure they are in full conformance to Landlord's sustainability practices, as aforesaid, and Tenant agrees to seek and maintain LEED for Commercial Interiors certification for such Tenant Alterations. Tenant shall pay for all damage to the Premises, Building and Land caused by Tenant or Tenant's Agents. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents from any Claims arising as a result of the Tenant Alterations or any defect in design, material or workmanship of any Tenant Alterations.

4.6. **Surrender of Possession**. Tenant shall, at the expiration or earlier termination of this Lease, surrender and deliver the Premises to Landlord in broom-clean, good and tenantable condition as when received by Tenant from Landlord or as later improved, reasonable use and wear, casualty and condemnation excepted, and free from all tenancies or occupancies by any person.

4.7. **Removal of Property**. Tenant may remove its personal property, office supplies and office furniture and equipment at any time during the Lease Term if (a) such items are readily moveable and are not permanently attached to the Premises; (b) such removal is completed prior to the expiration or earlier termination of this Lease; and (c) Tenant immediately repairs all damage caused by or resulting from such removal. All of Tenant's personal office supplies and office furniture and equipment shall at all times during the Lease Term remain Tenant's property and may be disposed of, transferred or replaced at any time in Tenant's sole and absolute discretion. All other property in the Premises and any Tenant Alterations (including, wall-to-wall carpeting, paneling, wall covering, lighting fixtures and apparatus or Telecommunication Facilities or any other article affixed to the floor, walls, ceiling or any other part of the Premises or Building) shall become the property of Landlord and shall remain upon and be surrendered with the Premises; provided, however, at Landlord's sole election made in accordance with Section 4.4, Tenant shall be obligated, at its sole cost and expense, to remove all (or such portion as Landlord shall designate) of the Tenant Alterations (including Telecommunication Facilities), repair any damages resulting from such removal and return the Premises to the same condition as existed prior to such Tenant Alterations. Tenant waives all rights to any payment or compensation for such Tenant Alterations (including Telecommunication Facilities). If Tenant shall fail to remove any of its property from the Premises, Building or Land at the expiration or earlier termination of this Lease or when Landlord has the right of re-entry, Landlord may, at its option, remove and store such property at Tenant's expense without liability for loss of or damage to such property, such storage to be for the account and at the expense of Tenant. Tenant shall pay all costs incurred by Landlord within ten (10) Business Days after demand for such payment. If Tenant fails to pay the cost of storing any such property, Landlord may, at its option, after it has been stored for a period of twenty (20) Business Days or more, sell or permit to be sold, any or all such property at public or private sale (and Landlord may become a purchaser at such sale), in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to Tenant, and Landlord shall apply the proceeds of such sale: *first*, to the cost and expense of such sale, including reasonable attorney's fees actually incurred; *second*, to the payment of the costs or charges for storing any such property; *third*, to the payment of any other sums of money which may then be or later become due Landlord from Tenant under this Lease; and, *fourth*, the balance, if any, to Tenant.

4.8. **Access**. Tenant shall permit Landlord and Landlord's Agents to enter into the Premises at any reasonable time on at least one (1) Business Day's written notice (except in case of emergency in which case no notice shall be required), for the purpose of inspecting the same, for the purpose of showing the same to prospective purchasers or lenders, for the purpose of providing janitorial services (if Landlord is to provide the same pursuant to the terms of this Lease), for the purpose of repairing, altering or improving the Premises or the Building or, during the last twelve (12) months of the Lease Term or if an Event of Default exists, for purposes of showing the Premises to prospective tenants and to erect on the Premises a suitable sign indicating the Premises are available. Nothing contained in this Section 4.8 shall be deemed to impose any obligation upon Landlord not expressly stated elsewhere in this Lease. When reasonably necessary, Landlord may temporarily close Building or Land entrances, Building doors or other facilities and access to and within the Project, without liability to Tenant by reason of such closure and without such action by Landlord being construed as an eviction of Tenant or as relieving Tenant from the duty of observing or performing any of the provisions of this Lease. Tenant shall arrange to meet with Landlord at least twenty (20) Business Days prior to vacating the Premises for purposes of a joint inspection of the Premises prior to vacating. In the event of Tenant's failure to give such notice or arrange such joint inspection, such failure shall not constitute a default under this Lease, but Landlord's inspection at or after Tenant's vacating the Premises shall be conclusively deemed correct for purposes of determining Tenant's responsibility for repairs and restoration. Landlord shall not be liable for the consequences of admitting by passkey, or refusing to admit to the Premises, Tenant or any of Tenant's Agents, or other persons claiming the right of admittance.

4.9. **Damage or Destruction**.

4.9.1 If Tenant becomes aware that the Premises are damaged by fire, earthquake or other casualty, Tenant shall give prompt written notice thereof to Landlord. If Landlord estimates that the damage can be repaired in accordance with the then-existing Governmental Requirements within two hundred seventy (270) days after Landlord is notified by Tenant of such damage and if there are sufficient insurance proceeds available to repair such damage, then Landlord shall proceed with reasonable diligence to restore the Premises to substantially the condition which existed prior to the damage and this Lease shall not terminate. If, in Landlord's estimation, the damage cannot be repaired within such 270 day period or if there are insufficient insurance proceeds available to repair such damage, Landlord may elect in its absolute discretion to either: (a) terminate this Lease or (b) restore the Premises to substantially the condition which existed prior to the damage and this Lease will continue. Landlord shall notify Tenant if it estimates that the damage cannot be repaired within the 270 day period, and Tenant may elect, in its sole discretion, to terminate this Lease by providing Landlord with written notice to terminate within twenty (20) Business Days after receipt of Landlord's notice. If Tenant makes such election, the Term shall expire as of the day after written notice of such election is given by Tenant with the same effect as if that were the scheduled expiration date of the Term, and the Base Rent shall be apportioned as of such date. If Landlord restores the Premises under this Section 4.9, then Landlord shall use diligent and commercially reasonable efforts to proceed toward completion of the restoration and (1) the Lease Term shall be extended for the time required to complete such restoration, (2) Tenant shall pay to Landlord, upon demand, Tenant's Pro Rata Share of any applicable deductible amount specified under

Landlord's insurance, and (3) Landlord shall not be required to repair or restore any Tenant Alterations (including Telecommunication Facilities), or any or all furniture, fixtures, equipment, inventory, improvements or other property which was in or about the Premises at the time of the damage and was not owned by Landlord. Base Rent and Additional Rent accruing during any reconstruction period shall be abated in proportion to the part of the Premises which is unusable (and not used) by Tenant in the conduct of its business (but there shall be no abatement of rent by reason of any portion of the Premises being unusable for a period equal to one (1) day or less). Except as expressly provided for in the preceding sentence, Tenant agrees to look to the provider of Tenant's insurance for coverage for the loss of Tenant's use of the Premises and any other related losses or damages incurred by Tenant during any reconstruction period.

4.9.2 If the Building is damaged by fire, earthquake or other casualty and more than fifty percent (50%) of the Building is rendered untenantable, without regard to whether the Premises are affected by such damage, Landlord may in its absolute discretion and without limiting any other options available to Landlord under this Lease or otherwise, elect to terminate this Lease by notice in writing to Tenant within forty (40) Business Days after the occurrence of such damage, and this Lease shall terminate thirty (30) Business Days after receipt of such notice by Tenant.

4.9.3 Notwithstanding anything contained in this Lease to the contrary, if there is damage to the Premises or Building and the holder of any indebtedness secured by a mortgage or deed of trust covering any such property requires that the insurance proceeds be applied to such indebtedness or if the insurance proceeds are otherwise inadequate to complete the repair of the damages to the Premises, the Building or both, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) Business Days after Landlord is notified of such requirement, and this Lease shall terminate thirty (30) Business Days after receipt of such notice by Tenant.

4.9.4 Notwithstanding the foregoing, if the Premises or the Building are wholly or partially damaged or destroyed within the final six (6) months of the Term, Landlord or Tenant may, at its option, elect to terminate this Lease upon written notice to the other within thirty (30) days following such damage or destruction.

4.9.5 **Waiver.** Tenant waives the provisions of any statutes presently existing or hereafter enacted (including, without limitation, California Civil Code sections 1932 and 1933) which relate to termination of leases when the thing leased is destroyed and agrees that such event will be governed by the terms of this Lease.

4.10. **Condemnation**. If all of the Premises, or such portions of the Building as may be required for the Tenant's reasonable use of the Premises, are taken by eminent domain or by conveyance in lieu thereof, this Lease shall automatically terminate as of the date the physical taking occurs, and all Base Rent, Additional Rent and other sums payable under this Lease shall be paid to the date of the taking. In case of taking of a part of the Premises or a portion of the Building not required for the Tenant's reasonable use of the Premises, then this Lease shall continue in full force and effect and the Base Rent shall be equitably reduced based on the proportion by which the floor area of the Premises is reduced, such reduction in Base Rent to be effective as of the date the physical taking occurs. Additional Rent and all other sums payable under this Lease shall not be abated but Tenant's Pro Rata Share may be redetermined as equitable under the circumstances. Landlord reserves all rights to damages or awards for any taking by eminent domain relating to the Premises, Building, Land and the unexpired term of this Lease. Tenant assigns to Landlord any right Tenant may have to such damages or award and Tenant shall make no claim against Landlord for damages for termination of its leasehold interest or interference with Tenant's business. Tenant shall have the right, however, to claim and recover from the condemning authority compensation for any loss to which Tenant may be entitled for Tenant's moving expenses or other relocation costs; provided that, such expenses or costs may be claimed only if they are awarded separately in the eminent domain proceedings and not as a part of the damages recoverable by Landlord. Tenant waives all rights it may have under California Code of Civil Procedure section 1265.130, or otherwise, to terminate this Lease based on a partial condemnation.

4.11. **Parking**. Tenant shall have the right (at no charge during the initial Lease Term), to use the unreserved and reserved parking passes allocated to Tenant under Article 1 above, but only with respect to areas (at and/or near the Project) designated by Landlord, which areas may, at Landlord's reasonable discretion, be modified from time to time and at any time throughout the Lease Term. The parking passes issued to Tenant under this Lease shall be only for the use of Tenant and its employees and customers. Landlord shall have the right to grant designated, reserved parking stalls to other tenants in the Building and/or Project. In no event shall the number or types of parking stalls used by Tenant and Tenant's Agents exceed the number of passes allocated to Tenant in the definition of the Parking in Article 1 above. Landlord shall have no obligation whatsoever to monitor, secure or police the use of the parking or other common areas. Landlord may (but shall not be obligated to) install gates and/or other monitoring devices at the parking facilities. Tenant's continued right to use the parking passes is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time, in writing and delivered to Tenant, for the orderly operation and use of the parking facility where the parking spaces are located, including any sticker or other identification system established by Landlord or any other party, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations, and Tenant not being in default under this Lease beyond any applicable notice and cure period. Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the parking facilities at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of rent under this Lease, from time to time, temporarily close-off or restrict access to the parking facilities for purposes of permitting or facilitating any such construction, alteration or improvements, provided that Landlord uses commercially reasonable efforts to minimize material and adverse interruption of Tenant's use of the parking facilities, Landlord diligently pursues such construction to completion and that such construction does not materially and adversely interfere with Tenant's use or access to the Premises. Landlord may, from time to time, by written notice to Tenant, relocate any reserved parking spaces rented by Tenant (if any) to another location in the parking facilities. Landlord may delegate its responsibilities hereunder to a parking operator or a lessee of the parking facility in which case such parking operator or lessee shall have all the rights of control attributed hereby to the Landlord. Notwithstanding anything to the contrary contained in this Lease (including, without limitation, this Section 4.11), Tenant acknowledges and agrees that throughout the Lease Term, forty (40) of the parking stalls that are located on the Land must be made available for the benefit of an adjacent property and its restaurant and hotel patrons after 6:00 p.m., as more particularly set forth on Schedule 4.11 attached hereto (the "**Parking Encumbrance**"), and as such, Tenant agrees that the Project (and Tenant's parking rights therein) shall be subject and subordinate to the Parking Encumbrance and Tenant shall comply with the terms and conditions of the Parking Encumbrance.

4.12. **Indemnification**.

4.12.1 Except to the extent arising from the gross negligence or willful misconduct of Landlord or Landlord's Agents, Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents from and against any and all Claims, arising in whole or in part out of (a) the possession, use or occupancy of the Premises or the business conducted in the Premises, (b) any act, omission or negligence of Tenant or Tenant's Agents, or (c) any breach or default under this Lease by Tenant.

4.12.2 Except as specified in the next sentence, neither Landlord nor Landlord's Agents shall, to the extent permitted by law, have any liability to Tenant, or to Tenant's Agents, for (1) any Claims arising out of any cause whatsoever, including repair to any portion of the Premises; (2) interruption in or interference with the use of the Premises or any equipment therein; (3) any accident or damage resulting from any use or operation by Landlord, Tenant or any person or entity of heating, cooling, electrical, sewerage or plumbing equipment or apparatus or Telecommunication Facilities; (4) termination of this Lease by reason of damage to the Premises or Building; (5) fire, robbery, theft, vandalism, mysterious disappearance or a casualty of any kind or nature; (6) actions of any other tenant of the Building or of any other person or entity; (7) inability to furnish any service required of Landlord as specified in this Lease; or (8) leakage in any part of the Premises or the Building from rain, ice or snow, or from drains, pipes or plumbing fixtures in the Premises or the Building. Landlord shall be responsible only for Claims arising solely out of the gross negligence or willful misconduct of Landlord or Landlord's Agents in failing to repair or maintain the Building as required by this Lease after notice by Tenant. Notwithstanding anything to the contrary set forth in this Lease, in no event shall Landlord's responsibility extend to any interruption to Tenant's business or any indirect or consequential damages (including, without limitation, loss of business or lost profits) suffered by Tenant or Tenant's Agents.

4.12.3 Subject to Section 4.15 below, and except for Claims to the extent arising out of the negligence or willful misconduct of Tenant or Tenant's Agents, Landlord shall indemnify, protect, defend and hold Tenant harmless from and against any and all Claims to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents. Notwithstanding anything to the contrary set forth in this Lease, in no event shall Landlord's responsibility (including, without limitation, pursuant to Section 4.12.2 above or this Section 4.12.3) extend to any interruption to Tenant's business or any indirect or consequential damages (including, without limitation, loss of business or lost profits) suffered by Tenant or Tenant's Agents.

4.12.4 The provisions of this Section 4.12 shall survive the expiration or earlier termination of this Lease.

4.13. **Tenant Insurance**.

4.13.1 Tenant shall, throughout the Lease Term, at its own expense, keep and maintain in full force and effect the following policies, each of which shall be endorsed as needed to provide that the insurance afforded by these policies is primary and that all insurance carried by Landlord is strictly excess and secondary and shall not contribute with Tenant's liability insurance:

(a) A policy of commercial general liability insurance, including a contractual liability endorsement covering Tenant's obligations under Section 4.12, insuring against claims of bodily injury and death or property damage or loss with a combined single limit at the Commencement Date of this Lease of not less than Two Million Dollars ($2,000,000.00), which limit shall be reasonably increased during the Lease Term at Landlord's request to reflect both increases in liability exposure arising from inflation as well as from changing use of the Premises or changing legal liability standards, which policy shall be payable on an "occurrence" rather than a "claims made" basis, and which policy names Landlord and Manager and, at Landlord's request Landlord's mortgage lender(s) or investment advisors, as additional insureds;

(b) A policy of extended property insurance (which is commonly called "all risk") covering Tenant Alterations (including Telecommunication Facilities), and any and all furniture, fixtures, equipment, machinery, inventory, improvements and other property in or about the Premises which is not owned by Landlord, for one hundred percent (100%) of the then current replacement cost of such property;

(c) Business interruption insurance in an amount sufficient to cover costs, damages, lost income, expenses, Base Rent, Additional Rent and all other sums payable under this Lease, should any or all of the Premises not be usable for a period of up to twelve (12) months;

(d) A policy or worker's compensation insurance as required by applicable law and employer's liability insurance with limits of no less than One Million Dollars ($1,000,000.00); and

(e) A policy of comprehensive automobile liability insurance covering owned, non-owned and hired vehicles, with limits of no less than One Million Dollars ($1,000,000.00) per occurrence.

4.13.2 All insurance policies required under this Section 4.13 shall be with companies reasonably approved by Landlord and each policy shall provide that it is not subject to cancellation, lapse or reduction in coverage except after thirty (30) days' written notice to Landlord prior to any cancellation, non-renewal or reduction in coverage. Deductibles under this Section 4.13 shall not exceed Ten Thousand Dollars ($10,000.00). Tenant shall deliver to Landlord and, at Landlord's written request Landlord's mortgage lender(s), prior to the Commencement Date and from time to time thereafter upon Landlord's written request, certificates evidencing the existence and amounts of all such policies. Tenant shall carry and maintain during the entire Lease Term (including any option periods, if applicable), at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Section 4.13 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably required by Landlord.

4.13.3 If Tenant fails to acquire or maintain any insurance or provide any certificate required by this Section 4.13, Landlord may, but shall not be required to, obtain such insurance or certificates and the costs associated with obtaining such insurance or certificates shall be payable by Tenant to Landlord on demand.

4.14. **Landlord's Insurance**. Landlord may, but shall not be required to, maintain such types and amounts of insurance as Landlord deems reasonably appropriate (with such deductibles as Landlord deems reasonably appropriate), including but not limited to, commercial general liability insurance, property insurance, earthquake and flood insurance, rent loss insurance and such other insurance in amounts as Landlord deems reasonably appropriate. Such policies may be "blanket" policies which cover other properties owned by Landlord.

4.15. **Waiver of Subrogation**. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby each waive and release the other from any and all Claims or any loss or damage that may occur to the Land, Building, Premises, or personal property located therein, by reason of fire or other casualty regardless of cause or origin, including the negligence or misconduct of Landlord, Tenant, Landlord's Agents or Tenant's Agents, but only to the extent of the insurance proceeds paid to such releasor under its policies of insurance or, if it fails to maintain the required policies, the insurance proceeds that would have been paid to such releasor if it had maintained such policies. Each party to this Lease shall promptly give to its insurance company written notice of the mutual waivers contained in this Section 4.15, and shall cause its insurance policies to be properly endorsed, if necessary, to prevent the invalidation of any insurance coverages by reason of the mutual waivers contained in this Section 4.15.

4.16. **Assignment and Subletting by Tenant**.

4.16.1 Tenant shall not have the right to assign, transfer, mortgage or encumber this Lease in whole or in part, nor sublet the whole or any part of the Premises, nor allow the occupancy of all or any part of the Premises by another, without first obtaining Landlord's consent, which consent may not be unreasonably withheld, conditioned or delayed. Notwithstanding any permitted assignment or subletting, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of all sums payable under this Lease and for compliance with all of its other obligations as tenant under this Lease. Landlord's acceptance of Base Rent, Additional Rent or any other sum from any assignee, sublessee, transferee, mortgagee or encumbrance holder shall not be deemed to be Landlord's approval of any such conveyance. Upon the occurrence of an Event of Default, in addition to any other remedies provided in this Lease or by law, if the Premises or any part of the Premises are then subject to an assignment or subletting, Landlord may, at its option, collect directly from such assignee or subtenant all rents becoming due to Tenant under such assignment or sublease and apply such rents against any sums due to Landlord from Tenant under this Lease. No such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease. Landlord's right of direct collection shall be in addition to and not in limitation of any other rights and remedies provided for in this Lease or at law. Tenant makes an absolute assignment to Landlord of such assignments and subleases and any rent, security deposits (or letters of credit) and other sums payable under such assignments and subleases as collateral to secure the performance of the obligations of Tenant under this Lease.

4.16.2 In the event Tenant desires to assign this Lease or to sublet all or any portion of the Premises, Tenant shall give written notice of such desire to Landlord setting forth the name of the proposed subtenant or assignee, the proposed term, the nature of the proposed subtenant's or assignee's business to be conducted on the Premises, the rental rate, and any other particulars of the proposed subletting or assignment that Landlord may reasonably request. Without limiting the preceding sentence, Tenant shall also provide Landlord with: (a) such financial information as Landlord may reasonably request concerning the proposed subtenant or assignee, including recent financial statements certified as accurate and complete by a certified public accountant and by the president, managing partner or other appropriate officer of the proposed subtenant or assignee; (b) proof satisfactory to Landlord that the proposed subtenant or assignee will immediately occupy and thereafter use the entire Premises (or any sublet portion of the Premises) for the remainder of the Lease Term (or for the entire term of the sublease, if shorter) in compliance with the terms of this Lease; and (c) a copy of the proposed sublease or assignment or letter of intent and a completed Environmental Questionnaire prepared by the sublessee or assignee. Tenant shall pay to Landlord, within ten (10) Business Days of Landlord's written demand therefor, Landlord's reasonable attorneys' fees incurred in the review of such documentation and in documenting Landlord's consent (not to exceed $2,000 per request), plus an administrative fee of $750.00 as Landlord's fee for processing such proposed assignment or sublease. Receipt of such fee shall not obligate Landlord to approve the proposed assignment or sublease.

4.16.3 In determining whether to grant or withhold consent to a proposed assignment or sublease, Landlord may consider, and weigh, any factor it reasonably deems relevant. Without limiting what may be construed as a factor considered by Landlord, Tenant agrees that any one or more of the following will be proper grounds for Landlord's disapproval of a proposed assignment or sublease:

(a) Landlord believes that the proposed assignment or sublease may constitute or may cause this Lease to be a prohibited transaction under or otherwise violate ERISA or the Landlord is unable to determine whether the proposed assignment or this Lease may be a non-exempt prohibited transaction under ERISA;

(b) The proposed assignee or subtenant does not, in Landlord's good faith judgment, have financial worth or creditworthiness sufficient financial worth to insure full and timely performance under this Lease;

(c) Landlord has received insufficient evidence of the financial worth or creditworthiness of the proposed assignee or subtenant to make the determination set forth in clause (b);

(d) The proposed assignee or subtenant has, in Landlord's commercially reasonably judgment, a reputation for disputes in contractual relations, for failure to observe and perform its contractual obligations in a timely and complete manner or for negative business relations in the business community as a tenant of property or otherwise;

(e) Landlord has received from any prior lessor of the proposed assignee or subtenant a negative report concerning such prior lessor's experience with the proposed assignee or subtenant;

(f) Landlord has had prior negative leasing experience with the proposed assignee or subtenant or an affiliate;

(g) The use of the Premises by the proposed assignee or subtenant will not be permitted under the Permitted Uses;

(h) In Landlord's commercially reasonable judgment, the proposed assignee or subtenant is engaged in a business, or the Premises or any part of the Premises will be used in a manner, that is not in keeping with the then standards of the Building, or that is not compatible with the businesses of other tenants in the Building, or that is inappropriate for the Building, or that will violate any negative covenant as to use contained in any other lease of space in the Building;

(i) The use of the Premises by the proposed assignee or subtenant will violate any Governmental Requirement or Restriction or create a violation of Access Laws;

(j) Tenant is in default of any obligation of Tenant under this Lease beyond any applicable notice and cure period, or Tenant has defaulted under this Lease on three (3) or more occasions during the twenty-four (24) months preceding the date that Tenant shall request such consent;

(k) Landlord does not approve of any of the tenant improvements required for the proposed assignee or subtenant;

(l) Landlord has had written negotiations with the proposed assignee or subtenant, in the six (6) months preceding Tenant's request, regarding the leasing of space by such proposed assignee or subtenant in the Building or any other buildings owned by Landlord in the metropolitan area in which the Land is located;

(m) The proposed assignee or subtenant will introduce one or more Hazardous Substances to the Premises (other than de minimis amounts of office and cleaning supplies used in the ordinary course of business by typical office tenants) or will increase the risk of loss or damage to the Premises, Building or Land or Project or the risk of Landlord liability to any Governmental Agency or third party under any applicable statute or common law theory; or

(n) The proposed assignee or subtenant has a proposed use or operation in the Premises which may or will cause the Building or any part thereof not to conform with the environmental and green building clauses in this Lease.

4.16.4 Within thirty (30) days after Landlord's receipt of all required information to be supplied by Tenant pursuant to this Section 4.16, Landlord shall notify Tenant in writing of Landlord's approval, disapproval or conditional approval of any proposed assignment or subletting or of Landlord's election to recapture as described below. Landlord shall have no obligation to respond unless and until all required information has been submitted. In the event Landlord has received all required information in connection with the proposed assignment or subletting, and Landlord fails to approve, disapprove, or conditionally approve the proposed assignment or subletting within such thirty (30) day period, then Tenant may send a written notice to Landlord (a "**Tenant Assignment Consent Notice**") stating that if Landlord does not approve or disapprove (whether conditional or otherwise) of the subject assignment or subletting for which Landlord has already received all of the required information in connection with same, or if Landlord does not reasonably request additional information in connection therewith, within ten (10) Business Days after Landlord receives the Tenant Assignment Consent Notice, the proposed assignment or sublease in question will be deemed approved. Any such Tenant Assignment Consent Notice must include conspicuous language in the subject line of the first page, in 18 point ALL CAPS and bold font, stating: **IMPORTANT, ATTENTION REQUIRED: IF LANDLORD DOES NOT RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS, THEN LANDLORD WILL BE DEEMED TO HAVE CONSENTED TO THAT CERTAIN PROPOSED ASSIGNMENT [OR SUBLEASE] PURSUANT TO SECTION 4.16.4 OF THE LEASE**). If Landlord does not approve or disapprove (whether conditional or otherwise) of the proposed assignment or sublease in question, or reasonably request additional information, within such ten (10) Business Day period following receipt of a Tenant Assignment Consent Notice that complies with the terms and conditions described above, then the proposed assignment or sublease in question will be deemed approved. In no event may Tenant deliver a Tenant Assignment Consent Notice unless Landlord has failed to respond to an initial request for approval within thirty (30) days following Landlord's receipt of all of the required information with respect to the proposed assignment and/or sublease (and such other information as may be reasonably requested by Landlord). In the event Landlord approves (or is deemed to have approved) of any proposed assignment or subletting, Tenant and the proposed assignee or sublessee shall execute and deliver to Landlord an assignment (or subletting) and assumption agreement in form and content reasonably satisfactory to Landlord.

4.16.5 Any transfer, assignment or hypothecation of any of the stock or interest in Tenant, or the assets of Tenant, or any other transaction, merger, reorganization or event, however constituted which (a) results in fifty percent (50%), or more of such stock, interest or assets going into different ownership, or (b) is a subterfuge denying Landlord the benefits of this Section 4.16, shall be deemed to be an assignment within the meaning and provisions of this Section 4.16 and shall be subject to the provisions of this Section 4.16.

4.16.6 If Landlord consents to any assignment or sublease and Tenant receives rent or any other consideration, either initially or over the term of the assignment or sublease, in excess of the Base Rent and Additional Rent (or, in the case of a sublease of a portion of the Premises, in excess of the Base Rent paid by Tenant on a square footage basis under this Lease), after deducting Tenant's actual and reasonable legal fees, market brokerage commissions and any tenant allowance in connection with the procurement of the assignment or sublease, Tenant shall pay to Landlord fifty percent (50%) of such excess.

4.16.7 Notwithstanding Section 4.16.1, an assignment or subletting of all or a portion of the Premises to an "Affiliate" of Tenant (defined below) shall deemed permitted hereunder without the requirement of obtaining Landlord's consent, provided that (i) Tenant notifies Landlord of any such assignment or sublease at least fifteen (15) days prior to its effective date and promptly supplies Landlord with any documents or information requested by Landlord regarding such assignment or sublease or such Affiliate, (ii) the transfer does not have the effect of materially reducing the tangible net worth of Tenant from that which existed immediately prior to the date of transfer, (iii) such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease, (iv) the assignee or subtenant assumes, in full, the obligations of Tenant under this Lease, (v) Tenant remains fully liable under this Lease, and (vi) the use of the Premises remains unchanged and consistent with the character of a first-class office building. The term "**Affiliate**" of Tenant shall mean an entity which is (x) controlled by, controls, or is under common control with Tenant; (y) any entity with which Tenant has merged or consolidated, or (z) any entity which acquires all or substantially all of the assets and/or shares of stock or assets of Tenant, and which continues to operate substantially the same business at the Premises as had been maintained by Tenant. The term "**control**," or "**controlled**" as used in this Section 4.16.5, shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, an entity.

4.17. **Assignment by Landlord**. Landlord shall have the right to transfer and assign, in whole or in part, its rights and obligations under this Lease and in any and all of the Land or Building. If Landlord sells or transfers any or all of the Building, including the Premises, Landlord and Landlord's Agents shall, upon consummation of such sale or transfer, be released automatically from any liability relating to obligations or covenants under this Lease to be performed or observed after the date of such transfer, and in such event, Tenant agrees to look solely to Landlord's successor-in-interest with respect to such liability.

4.18. **Estoppel Certificates and Financial Statements**. Tenant shall, from time to time, upon the written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement stating: (a) the date this Lease was executed and the date it expires; (b) the date Tenant entered into occupancy of the Premises; (c) the amount of monthly Base Rent and Additional Rent and the date to which such Base Rent and Additional Rent have been paid; and (d) certifying (i) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date of the agreement so affecting this Lease); (ii) to the best of Tenant's knowledge, Landlord is not in breach of this Lease (or, if so, a description of each such breach) and that no event, omission or condition has occurred which would result, with the giving of notice or the passage of time, in a breach of this Lease by Landlord; (iii) that this Lease represents the entire agreement between the parties with respect to the Premises; (iv) whether all required contributions by Landlord to Tenant on account of tenant improvements have been received; (v) whether, to the best of Tenant's knowledge, on the date of execution, there exist any defenses or offsets which the Tenant has against the enforcement of this Lease by the Landlord; (vi) that no Base Rent, Additional Rent or other sums payable under this Lease have been paid in advance except for Base Rent and Additional Rent for the then current month; (vii) that no security has been deposited with Landlord (or, if so, the amount of such security); (viii) that it is intended that any Tenant's statement may be relied upon by a prospective purchaser or mortgagee of Landlord's interest or an assignee of any such mortgagee; and (ix) such other factual information as may be reasonably requested by Landlord. If Tenant fails to respond within ten (10) Business Days of its receipt of a written request by Landlord as provided in this Section 4.18, such shall be a breach of this Lease and Tenant shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser, mortgagee or assignee. In addition, Tenant shall, from time to time, upon the written request of Landlord, deliver to or cause to be delivered to Landlord or its designee then current financial statements (including a statement of operations and balance sheet and statement of cash flows) certified as accurate by a certified public accountant and prepared in conformance with generally accepted accounting principles for (1) Tenant, (2) any entity which owns a controlling interest in Tenant, (3) any entity the controlling interest of which is owned by Tenant, (4) any successor entity to Tenant by merger or operation of law, and (5) any guarantor of this Lease. Notwithstanding the foregoing, Tenant shall not be required to provide financial information as required under this Section 4.18 so long as Tenant's financial information is publicly available.

4.19. **Modification for Lender**. If, in connection with obtaining construction, interim or permanent financing for the Building or Land, Landlord's lender, if any, shall request reasonable modifications to this Lease as a condition to such financing, Tenant will not unreasonably withhold or delay its consent to such modifications; provided that, such modifications do not increase the obligations of Tenant under this Lease or materially adversely affect Tenant's rights under this Lease.

4.20. **Hazardous Substances**.

4.20.1 Tenant is authorized and permitted to store, handle and use reasonable quantities and types of cleaning fluids and office supplies in the Premises for prudent, usual and customary cleaning and maintenance of bathrooms, windows, kitchens and administrative offices and for functions customarily performed in an administrative office.

4.20.2 Except as described above in this Section 4.20, Tenant shall neither cause or permit any Hazardous Substance to be stored, placed, manufactured, refined, handled, generated, blended, recycled, used, located, disposed of, or released from on, in, under or about the Premises, the Building, the Land or the Project.

4.20.3 If Tenant proposes to do or cause to be done anything which would be prohibited by this Section 4.20, Tenant shall solicit and obtain the Landlord's specific, written authorization for that activity, which approval may be withheld in Landlord's absolute discretion and Landlord may require Tenant to execute a rider to the lease setting forth additional and specific conditions and requirements relating to the otherwise prohibited activities which Tenant proposes to carry out. If that rider has not been prepared and executed at the time this Lease is executed, Tenant shall execute such rider within ten (10) Business Days after the date of this Lease. Execution of the rider shall be a condition subsequent to this lease for the Landlord's benefit and Tenant's failure to execute the rider shall authorize Landlord to terminate the Lease without liability to Tenant.

4.20.4 Tenant agrees that (a) the storage, handling and use of all permitted Hazardous Substances by Tenant or Tenant's Agents must at all times conform to all Governmental Requirements and to applicable fire, safety and insurance requirements; (b) the types and quantities of permitted Hazardous Substances which are stored in the Premises must be reasonable and appropriate to the nature and size of Tenant's operation in the Premises and reasonable and appropriate for a first-class building of the same or similar use and in the same market area as the Building; and (c) no Hazardous Substance shall be spilled or disposed of on, in, under or around the Land, Building or Project or discharged from the Premises by Tenant or Tenant's Agents. In no event will Tenant be permitted to store, handle or use on, in, under or around the Premises any Hazardous Substance which will increase the rate of fire or extended coverage insurance on the Land or Building, unless (a) such Hazardous Substance and the expected rate increase have been specifically disclosed in writing to Landlord; and (b) Tenant has agreed in writing to pay any rate increase related to each such Hazardous Substance.

4.20.5 Tenant shall not excavate, disturb or conduct any testing of any soils on or about the Land or the Project without obtaining Landlord's prior written consent, and any investigation or remediation on or about the Land or Project shall be conducted only by a consultant approved in writing by Landlord and pursuant to a work letter, approved in writing by Landlord. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents from and against any and all Claims and damages arising out of any breach of any provision of this Section 4.20. Landlord's expenses shall include laboratory testing fees, personal injury claims, clean-up costs and environmental consultants' fees.

4.20.6 Subject to Section 4.8, Landlord shall have the right (but not the obligation) to enter upon the Premises and cure any non-compliance by Tenant with: (i) the terms of this Section 4.20 or (ii) any Governmental Requirements applicable to Hazardous Substances or any release, discharge, spill, improper use, storage, handling or disposal of Hazardous Substances on, under, from, or about the Premises, the Building, the Land or Project, regardless of the quantity of such release, discharge, spill, improper use, storage, handling or disposal of Hazardous Substances, the full cost of which shall be deemed to be Rent and shall be due and payable by Tenant to Landlord within ten (10) Business Days of Landlord's written demand therefore. If Landlord elects to enter upon the Premises and cure any such non-compliance or release, discharge, spill, improper use, storage, handling or disposal of Hazardous Substances, Tenant shall not be entitled to participate in Landlord's activities on the Premises.

4.20.7 Tenant agrees that Landlord may be irreparably harmed by Tenant's breach of this Section 4.20 and that a specific performance action may appropriately be brought by Landlord; provided that, Landlord's election to bring or not bring any such specific performance action shall in no way limit, waive, impair or hinder Landlord's other remedies against Tenant.

4.20.8 Without limiting in any way Tenant's obligations under other provisions of this Lease, Landlord's damages shall include (a) damages arising out of the diminution in value of the Premises, Building, Land or Project or any portion thereof, (b) damages for the loss of the Premises, Building, Land or Project, and (c) damages arising from any adverse impact on the marketing of space in the Building or Project, which arise during or after the Term in whole or in part as a result of a violation or suspected violation of this Section 4.20.

4.20.9 Notwithstanding anything to the contrary herein, Tenant shall not be responsible to remediate nor otherwise be liable or responsible for (nor shall Tenant be responsible to indemnify Landlord with respect to) any Landlord's Hazardous Substances (defined below). "**Landlord's Hazardous Substances**" shall mean any Hazardous Materials (A) located in, on, under or about the Project prior to the date of mutual execution of this Lease, (B) brought upon the Project by Landlord or Landlord's Agents, or (C) that have migrated onto the Premises or Project from other properties (except to the extent any of the Hazardous Materials described in items (A), (B) or (C) are generated, used, transported, exacerbated, released or disturbed, by Tenant or Tenant's Agents). To the extent that any Landlord's Hazardous Substances are discovered at the Project and the remediation of the same is required a governmental authority with jurisdiction (which remediation is not triggered because of the particular use of the Premises by Tenant or its subtenants or assigns), then Landlord shall remediate the Landlord's Hazardous Substances (to the extent required by the applicable governmental authority) at Landlord's sole cost and expense, which shall be Tenant's sole and exclusive remedy against Landlord in connection therewith except as provided in the immediately following sentence.

4.21. **Intentionally Omitted**.

4.22. **Quiet Enjoyment**. Landlord covenants that Tenant, upon paying Base Rent, Additional Rent and all other sums payable under this Lease and performing all covenants and conditions required of Tenant under this Lease shall and may peacefully have, hold and enjoy the Premises without hindrance or molestation by Landlord subject to the provisions of this Lease, any ground lease, mortgage or deed of trust and all matters of record now or hereafter encumbering the Premises or the Project.

4.23. **Signs**. Subject to compliance with all Governmental Requirements and all matters of record, Tenant shall have the right to install, (i) at Tenant's sole cost and expense, one (1) freeway visible "Building Top Sign" in accordance with Landlord's approved master signage plan, so long as Tenant or a Affiliate leases and occupies at least fifty percent (50%) of the floor area contained on the third (3rd) floor of the Building, and (ii) at Landlord sole cost and expense, initial Building standard suite entrance signage (with any modifications requested by Tenant to be at Tenant's sole cost and expense). Tenant shall not be entitled to any other signage whatsoever (other than a Building standard entry in the lobby directory). The exact size, appearance and location of such signs shall be subject to Landlord's prior written approval (not to be unreasonably withheld, conditioned or delayed) and shall be consistent with Landlord's existing sign criteria then in existence for the Building. Any and all costs in connection with the permitting, fabrication, installation, maintenance and removal of Tenant's signs (including the cost of removal of the signs and repair to the Building caused by such removal) shall be borne by Tenant. Tenant agrees to maintain each such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved, in good condition at all times, reasonable wear and tear, casualty and condemnation excepted. Tenant shall not inscribe an inscription, or post, place, or in any manner display any sign, notice, picture, placard or poster, or any advertising matter whatsoever, anywhere in or about the Land or Building at places visible (either directly or indirectly as an outline or shadow on a glass pane) from anywhere outside the Premises without first obtaining Landlord's consent (not to be unreasonably withheld, conditioned or delayed). Upon vacation of the Premises on the expiration or earlier termination of this Lease, Tenant shall be responsible, at its sole cost, for the removal of such sign and the repair, painting and/or replacement of the structure to which the sign is attached including discoloration caused by such installation or removal. If Tenant fails to perform such work, Landlord may cause the same to be performed, and the cost thereof shall be Additional Rent immediately due and payable upon rendition of a bill therefor.

4.24. **Subordination**. Tenant subordinates this Lease and all rights of Tenant under this Lease to any mortgage, deed of trust, ground lease or vendor's lien, or similar instrument which may from time to time be placed upon the Premises (and all renewals, modifications, replacements and extensions of such encumbrances), and each such mortgage, deed of trust, ground lease or lien or other instrument shall be superior to and prior to this Lease; (provided, however, the subordination of this Lease to the lien of any future deed of trust, mortgage or ground lease shall be subject to Tenant's receipt of a commercially reasonable subordination, non-disturbance and attornment agreement from the holder of such future lien. Notwithstanding the foregoing, the holder or beneficiary of such mortgage, deed of trust, ground lease, vendor's lien or similar instrument shall have the right to subordinate or cause to be subordinated any such mortgage, deed of trust, ground lease, vendor's lien or similar instrument to this Lease or to execute a commercially reasonable non-disturbance agreement in favor of Tenant on the standard form utilized by such lender or ground lessor. At the request of Landlord, the holder of such mortgage or deed of trust or any ground lessor, Tenant shall execute, acknowledge and deliver promptly in recordable form a commercially reasonable subordination agreement that Landlord or such holder may request within ten (10) Business Days after receipt of the request. Tenant further covenants and agrees that if the lender or ground lessor acquires the Premises as a purchaser at any foreclosure sale or otherwise, Tenant shall recognize and attorn to such party as landlord under this Lease, and shall make all payments required hereunder to such new landlord without deduction or set-off and, upon the request of such purchaser or other successor, execute, deliver and acknowledge commercially reasonable documents confirming such attornment. Tenant waives the provisions of any law or regulation, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease or the obligations of Tenant hereunder in the event that any such foreclosure or termination or other proceeding is prosecuted or completed. Upon Tenant's request, Landlord will use commercially reasonable efforts to obtain a commercially reasonable subordination and non-disturbance agreement in favor of Tenant from any lender to whom Landlord grants a security interest in the Building.

4.25. **Brokers**. In connection with this Lease, each of Landlord and Tenant warrants and represents to the other that it has had dealings only with firm(s) set forth in Section 1 of this Lease and that it knows of no other person or entity who is or might be entitled to a commission, finder's fee or other like payment in connection herewith and does hereby indemnify and agree to hold the other party and Landlord's Agents or Tenant's Agents, as applicable, harmless from and against any and all loss, liability and expenses that such indemnified party may incur should such warranty and representation prove incorrect, inaccurate or false.

4.26. **Limitation on Recourse**. Landlord has executed this Lease by its trustee signing solely in a representative capacity. Notwithstanding anything contained in this Lease to the contrary, Tenant confirms that the covenants of Landlord are made and intended, not as personal covenants of the trustee, or for the purpose of binding the trustee personally, but solely in the exercise of the representative powers conferred upon the trustee by its principal. Liability with respect to the entry and performance of this Lease by or on behalf of Landlord, however it may arise, shall be asserted and enforced only against Landlord's estate and equity interest in the Building. Neither Landlord nor any of Landlord's Agents shall have any personal liability in the event of any claim against Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Premises. Further, in no event whatsoever shall any Landlord's Agent have any liability or responsibility whatsoever arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Premises. Any and all personal liability, if any, beyond that which may be asserted under this Section 4.26, is expressly waived and released by Tenant and by all persons claiming by, through or under Tenant.

4.27. **Mechanic's Liens and Tenant's Personal Property Taxes**.

4.27.1 Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises or to charge the rentals payable under this Lease for any Claims in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant shall immediately pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises and Tenant shall indemnify, defend and hold harmless Landlord from any and all Claims arising out of any such asserted Claims. Tenant agrees to give Landlord immediate written notice of any such Claim. Tenant shall notify Landlord in writing at least ten (10) Business Days in advance of any work to be done on, in, or about the Premises. In the event of such scheduled work, whether Landlord received notice from Tenant or not, Landlord shall have the right, at any time and from time to time, to enter the Premises to post notices of non-responsibility in such locations as Landlord deems appropriate. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to notify Tenant in advance of entering the Premises for the purpose of posting the notices of non-responsibility.

4.27.2 Tenant shall be liable for all taxes levied or assessed against personal property, furniture or fixtures placed by Tenant in the Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and Landlord elects to pay them or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, Tenant shall reimburse Landlord for the sums so paid by Landlord, within ten (10) Business Days of Landlord's written demand therefore.

ARTICLE V DEFAULT AND REMEDIES

5.1. **Events of Default**.

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

(a) vacation or abandonment of all or any portion of the Premises together with non-payment of Base Rent and/or Additional Rent as and when due;

(b) failure by Tenant to make any payment of Base Rent, Additional Rent or any other sum payable by Tenant under this Lease within three (3) Business Days after its due date, provided that for the first failure to pay in any twelve (12) month period, an Event of Default shall not be considered to have occurred until Tenant has failed to pay within three (3) Business Days after notice thereof from Landlord;

(c) failure by Tenant to observe or perform any covenant or condition of this Lease, other than the making of payments, where such failure shall continue for a period of ten (10) Business Days after written notice from Landlord; provided, however, that if, by the nature of such agreement, covenant or condition, such failure cannot reasonably be cured within such period of ten (10) Business Days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure within such period of ten (10) Business Days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure within a reasonable time (not to exceed 60 days in the aggregate);

(d) the failure of Tenant to surrender possession of the Premises at the expiration or earlier termination of this Lease in the condition required by this Lease;

(e) (i) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; (ii) the filing by or against Tenant of a petition in bankruptcy, including reorganization or arrangement, unless, in the case of a petition filed against Tenant, unless the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant’s assets located in the Premises or of Tenant’s interest in this Lease; (iv) any execution, levy, attachment or other process of law against any property of Tenant or Tenant’s interest in this Lease, unless the same is dismissed within sixty (60) days; (v) adjudication that Tenant is bankrupt; or (vi) the making by Tenant of a transfer in fraud of creditors;

(f) any information furnished by or on behalf of Tenant to Landlord in connection with the entry of this Lease is determined to have been knowingly false, misleading or materially incomplete when made;

(g) the event of default referred to in the Section entitled “Hazardous Substances”;

(h) any assignment, subletting or other transfer for which the prior consent of Landlord is required under this Lease and has not been obtained;

(i) any use of non-union labor at the Premises in violation of the terms of this Lease;

(j) any failure of Tenant to timely submit documents under Section 4.18 and/or Section 4.24 of this Lease within the time periods set forth therein, if any; or

(k) Tenant’s failure to cause to be released any mechanics liens filed against the Premises, Building or Project within twenty (20) days after the date the same shall have been filed or recorded.

5.1.2 When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Section 6.1 shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure section 1162 or any similar or successor statute.

5.1.3 If a petition in bankruptcy is filed by or against Tenant, and if this Lease is treated as an "unexpired lease" under applicable bankruptcy law in such proceeding, then Tenant agrees that Tenant shall not attempt nor cause any trustee to attempt to extend the applicable time period within which this Lease must be assumed or rejected.

5.2. **Remedies**. If any Event of Default occurs, Landlord may at any time after such occurrence, with or without notice or demand except as stated in this Section 5.2, and without limiting Landlord in the exercise of any right or remedy at law which Landlord may have by reason of such Event of Default, exercise the rights and remedies, either singularly or in combination, as are specified or described in the subparagraphs of this Section 5.2.

5.2.1 Landlord may terminate this Lease and recover possession of the Premises, in which case Tenant shall immediately surrender possession of the Premises to Landlord and, in addition to any other rights and remedies Landlord may have at law and in equity, Landlord shall have the following rights:

(a) To re-enter the Premises then or at any time thereafter and remove all persons and property and possess the Premises, without prejudice to any other remedies Landlord may have by reason of Tenant's default or of such termination, and Tenant shall have no further claim hereunder.

(b) To recover all damages incurred by Landlord by reason of the default, including without limitation (i) the worth at the time of the award of the payments, including interest, owed by Tenant to Landlord under this Lease that were earned or accrued but unpaid at the time of termination; (ii) the worth at the time of the award of the amount by which the payments owed by Tenant to Landlord under this Lease that would have been earned or accrued after the date of termination until the time of the award exceeds the amount of the loss of payments owed by Tenant to Landlord under this Lease for the same period that Tenant affirmatively proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the payments owed by Tenant to Landlord for the balance of the Term after the time of the award exceeds the amount of the loss of payments owed by Tenant for the same period that Tenant proves could have been reasonably avoided; (iv) all costs incurred by Landlord in retaking possession of the Premises and restoring them to good order and condition; (v) all costs, including without limitation brokerage commissions, advertising costs and restoration and remodeling costs, incurred by Landlord in reletting the Premises; plus (vi) any other amount, including without limitation reasonable attorneys' fees and audit expenses, necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. "The worth at the time of the award," as used in clauses (i) and (ii) of this paragraph, is to be determined by computing interest as to each unpaid payment owed by Tenant to Landlord under this Lease, at the Default Rate. "The worth at the time of the award," as referred to in clause (iii) of this paragraph, is to be determined by discounting such amount, as of the time of award, by the discount rate of the Federal Reserve Bank at the time of the award plus one percent (1%).

(c) To remove, at Tenant's sole risk, any and all personal property in the Premises and place such in a public or private warehouse or elsewhere at the sole cost and expense and in the name of Tenant. Any such warehouser shall have all of the rights and remedies provided by law against Tenant as owner of such property. If Tenant shall not pay the cost of such storage within thirty (30) days following Landlord's demand, Landlord may, subject to the provisions of applicable law, sell any or all such property at a public or private sale in such manner and at such times and places as Landlord deems proper, without notice to or demand upon Tenant. Tenant waives all claims for damages caused by Landlord's removal, storage or sale of the property and shall indemnify and hold Landlord free and harmless from and against any and all loss, cost and damage, including without limitation court costs and attorneys' fees. Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, with all rights and powers necessary to effectuate the provisions of this Section 5.2.

5.2.2 Landlord may elect, in its absolute discretion, to maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due hereunder, and, at Landlord's election, to re-enter and relet the Premises on such terms and conditions as Landlord deems appropriate. Without limiting the generality of the foregoing, Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Landlord may execute any lease made pursuant hereto in its own name, and Tenant shall have no right to collect any such rent or other proceeds. Landlord's re-entry and/or reletting of the Premises, or any other acts, shall not be deemed an acceptance of surrender of the Premises or Tenant's interest therein, a termination of this Lease or a waiver or release of Tenant's obligations hereunder. Landlord shall have the same rights with respect to Tenant's improvements and personal property as under Section 5.2.1 above, even though such re-entry and/or reletting do not constitute acceptance of surrender of the Premises or termination of this Lease.

5.2.3 Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, Landlord may:

(a) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Premises.

(b) Choose to succeed to Tenant's interest in such an arrangement. If Landlord elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by Landlord of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

5.2.4 None of the following remedial actions, singly or in combination, shall be construed as an election by Landlord to terminate this Lease unless Landlord has in fact given Tenant written notice that this Lease is terminated: (a) an act by Landlord to maintain or preserve the Premises; (b) any efforts by Landlord to relet the Premises; (c) any repairs or alterations made by Landlord to the Premises; (d) re-entry, repossession or reletting of the Premises by Landlord; or (e) the appointment of a receiver, upon the initiative of Landlord, to protect Landlord's interest under this Lease. If Landlord takes any of the foregoing remedial action without terminating this Lease, Landlord may nevertheless at any time after taking any such remedial action terminate this Lease by written notice to Tenant.

5.2.5 If Landlord relets the Premises, Landlord shall apply the revenue from such reletting as follows: ***first***, to the payment of any indebtedness of Tenant to Landlord other than Base Rent, Additional Rent or any other sums payable by Tenant under this Lease; ***second***, to the payment of any cost of reletting (including finders' fees and leasing commissions); ***third***, to the payment of the cost of any alterations, improvements, maintenance and repairs to the Premises; and ***fourth***, to the payment of Base Rent, Additional Rent and other sums due and payable and unpaid under this Lease. Landlord shall hold and apply the residue, if any, to payment of future Base Rent, Additional Rent and other sums payable under this Lease as the same become due, and shall deliver the eventual balance, if any, to Tenant. Should revenue from letting during any month, after application pursuant to the foregoing provisions, be less than the sum of the Base Rent, Additional Rent and other sums payable under this Lease and Landlord's expenditures for the Premises during such month, Tenant shall be obligated to pay such deficiency to Landlord as and when such deficiency arises.

5.2.6 Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Lease or by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any Base Rent, Additional Rent or other sum payable under this Lease or of any damages accruing to Landlord by reason of the violation of any of the covenants or conditions contained in this Lease.

5.3. **Right to Perform**. If Tenant shall fail to pay any sum of money, other than Base Rent or Additional Rent, required to be paid by it under this Lease or shall fail to perform any other act on its part to be performed under this Lease, and such failure shall continue for ten (10) Business Days after written notice of such failure by Landlord, or such shorter time if reasonable under the circumstances, Landlord may, but shall not be obligated to, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform such other act on Tenant's part to be made or performed as provided in this Lease. Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the nonpayment of sums due under this Section 5.3 as in the case of default by Tenant in the payment of Base Rent.

5.4. **Landlord's Default**. Landlord shall not be in default under this Lease unless Landlord fails to perform obligations required of Landlord within twenty (20) Business Days after written notice is delivered by Tenant to Landlord and to the holder of any mortgages or deeds of trust (collectively, "**Lender**") covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying the obligation which Landlord has failed to perform; provided, however, that if the nature of Landlord's obligation is such that more than twenty (20) Business Days are required for performance, then Landlord shall not be in default if Landlord or Lender commences performance within such twenty (20) Business Day period and thereafter diligently prosecutes the same to completion. All obligations of Landlord hereunder shall be construed as covenants, not conditions. In the event of any default, breach or violation of Tenant's rights under this Lease by Landlord, Tenant's exclusive remedy shall be either an action for specific performance or an action for actual damages. Tenant hereby waives the benefit of any laws granting it the right to perform Landlord's obligation, a lien upon the property of Landlord and/or upon Rent due Landlord, or the right to terminate this Lease or withhold Rent on account of any Landlord default.

5.5. **Acceptance of Rent Without Waiving Rights**. Under the Section captioned "No Waiver of Remedies", Landlord may accept Tenant's payments without waiving any rights under this Lease, including rights under a previously served notice of default. If Landlord accepts partial payments which cumulatively are less than the sum owed after serving a notice of default, Landlord may nevertheless commence and pursue an action to enforce rights and remedies under the previously serviced notice of default without giving Tenant any further notice or demand.

ARTICLE VI MISCELLANEOUS PROVISIONS

6.1. **Notices**. Any notice, request, approval, consent or written communication required or permitted to be delivered under this Lease shall be: (a) in writing; and (b) transmitted by personal delivery, overnight courier or United States Certified Mail, return receipt requested. Such writings shall be addressed to Landlord or Tenant, as the case may be, at the respective designated addresses set forth opposite their signatures, or at such other address(es) as they may, after the execution date of this Lease, specify by written notice delivered in accordance with this Section 6.1, with copies to the persons at the addresses, if any, designated opposite each party's signature. Those notices which contain a notice of breach or default or a demand for performance may be sent by any of the methods described in clause (b) above, but if transmitted by personal delivery or electronic means, shall also be sent concurrently by certified or mail, return receipt requested.

6.2. **<u>Attorney's Fees and Expenses</u>**. In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease, or in the event suit is brought for the recovery of Base Rent, Additional Rent or any other sums payable under this Lease or for the breach of any covenant or condition of this Lease, or for the restitution of the Premises to Landlord or the eviction of Tenant during the Lease Term or after the expiration or earlier termination of this Lease, the prevailing party shall be entitled to a reasonable sum for attorney's and paralegal's fees, expenses and court costs, including those relating to any appeal. Tenant shall also reimburse Landlord for all costs incurred by Landlord in connection with enforcing its rights under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended, including without limitation, legal fees, experts' fees and expenses, court costs and consulting fees. The prevailing party shall be determined under Civil Code section 1717(b)(1) or any successor statute.

6.3. **<u>No Accord and Satisfaction</u>**. No payment by Tenant or receipt by Landlord of an amount less than the Base Rent or Additional Rent or any other sum due and payable under this Lease shall be deemed to be other than a payment on account of the Base Rent, Additional Rent or other such sum, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, nor preclude Landlord's right to recover the balance of any amount payable or Landlord's right to pursue any other remedy provided in this Lease or at law.

6.4. **<u>Successors; Joint and Several Liability</u>**. Except as provided in the Section captioned "<u>Limitation on Recourse</u>" and subject to the Section captioned "<u>Assignment and Subletting by Landlord</u>", all of the covenants and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns. In the event that more than one person, partnership, company, corporation or other entity is included in the term "<u>Tenant</u>", then each such person, partnership, company, corporation or other entity shall be jointly and severally liable for all obligations of Tenant under this Lease.

6.5. **<u>Choice of Law</u>**. This Lease shall be construed and governed by the laws of the State of California. Landlord and Tenant each consents to venue in Los Angeles County, California, or any federal district court located therein, for any legal proceeding brought by Landlord or Tenant to enforce the terms of this Lease.

6.6. **<u>No Waiver of Remedies</u>**. The waiver by Landlord of any covenant or condition contained in this Lease shall not be deemed to be a waiver of any subsequent breach of such covenant or condition nor shall any custom or practice which may develop between the parties in the administration of this Lease be construed to waive or lessen the rights of Landlord to insist on the strict performance by Tenant of all of the covenants and conditions of this Lease. No act or thing done by Landlord or Landlord's Agents during the Lease Term shall be deemed an acceptance or a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless made in writing and signed by Landlord. The mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy it might have, either under this Lease or at law, nor shall the waiver of or redress for any violation of any covenant or condition in this Lease or in any of the rules or regulations attached to this Lease or later adopted by Landlord, prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Base Rent, Additional Rent or any other sum payable under this Lease with knowledge of a breach of any covenant or condition in this Lease shall not be deemed a waiver of such breach. The failure of Landlord to enforce any of the rules and regulations attached to this Lease or later adopted, against Tenant or any other tenant in the Building, shall not be deemed a waiver. Any waiver by Landlord must be in writing and signed by Landlord to be effective.

6.7. **Offer to Lease**. The submission of this Lease in a draft form to Tenant or its broker or other agent does not constitute an offer to Tenant to lease the Premises. This Lease shall have no force or effect until: (a) it is executed and delivered by Tenant to Landlord; and (b) it is executed and delivered by Landlord to Tenant.

6.8. **Force Majeure**. Except with respect to Tenant's monetary obligations (including, without limitation, Tenant's obligation to pay Base Rent and Additional Rent), and Tenant's obligation to timely vacate and surrender the Premises upon the expiration or earlier termination of this Lease, in the event that either Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act or obligation required under this Lease by reason of acts of God, strikes, lockouts, labor troubles or disputes, inability to procure or shortage of materials or labor, failure of power or utilities, delay in transportation, fire, vandalism, accident, flood, severe weather, other casualty, Governmental Requirements (including mandated changes in the Plans and Specifications or the Landlord Work resulting from changes in pertinent Governmental Requirements or interpretations thereof), riot, insurrection, civil commotion, sabotage, explosion, war, natural or local emergency, acts or omissions of others, including the other party, or other reasons of a similar or dissimilar nature not solely the fault of, or under the exclusive control of, such party, then performance of such act or obligation shall be excused for the period of the delay and the period for the performance of any such act or obligation shall be extended for the period equivalent to the period of such delay

6.9. **Severability; Captions**. If any clause or provision of this Lease is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of this Lease shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. Headings or captions in this Lease are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Lease.

6.10. **Interpretation**. Whenever a provision of this Lease uses the term (a) "include" or "including", that term shall not be limiting but shall be construed as illustrative, (b) "covenant", that term shall include any covenant, agreement, term or provision, (c) "at law", that term shall mean as specified in any applicable statute, ordinance or regulation having the force of law or as determined at law or in equity, or both, and (d) "day", that uncapitalized word, shall mean a calendar day. This Lease shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one party or its counsel.

6.11. **Incorporation of Prior Agreement; Amendments**. This Lease contains all of the agreements of the parties to this Lease with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties to this Lease or their respective successors in interest.

6.12. **Authority**. If either Landlord or Tenant is a partnership, company, corporation or other entity, each individual executing this Lease on behalf of such party represents and warrants to the other party that he or she is duly authorized to so execute and deliver this Lease and that all partnership, company, corporation or other entity actions and consents required for execution of this Lease have been given, granted or obtained.

6.13. **Time of Essence**. Time is of the essence with respect to the performance of every covenant and condition of this Lease.

6.14. **Survival of Obligations**. Notwithstanding anything contained in this Lease to the contrary or the expiration or earlier termination of this Lease, any and all obligations of the parties accruing prior to the expiration or termination of this Lease shall survive the expiration or earlier termination of this Lease, and such party shall promptly perform all such obligations whether or not this Lease has expired or terminated. Without limiting the foregoing, such obligations shall include any and all indemnity obligations set forth in this Lease.

6.15. **Consent to Service**. Tenant irrevocably consents to the service of process of any action or proceeding at the address of the Premises. Nothing in this paragraph shall affect the right to serve process in any other manner permitted by law.

6.16. **Landlord’s Authorized Agents**. Notwithstanding anything contained in the Lease to the contrary, including without limitation, the definition of Landlord’s Agents, only officers of NewTower Trust Company and Bentall Kennedy are authorized to amend, renew or terminate this Lease, or to compromise any of Landlord’s claims under this Lease or to bind Landlord in any manner. Without limiting the effect of the previous sentence, no property manager or broker shall be considered an authorized agent of Landlord to amend, renew or terminate this Lease, to compromise any of Landlord’s claims under this Lease or to bind Landlord in any manner.

[Signatures on following page]

IN WITNESS WHEREOF, this Lease has been executed the day and year first above set forth.

Designated Address for Landlord:

c/o Bentall Kennedy
1215 Fourth Avenue, Suite 2400
Seattle, WA 98161
Attn: Senior Vice President – Asset Management

With a copy to:

NewTower Trust Company
Multi-Employer Property Trust
c/o NewTower Trust Company
Attn: President/MEPT or Patrick O. Mayberry
Three Bethesda Metro Center, Suite 1600
Bethesda, Maryland 20814
Facsimile: (240) 235-9961

with a copy to Manager at:
IDS Real Estate Group
515 S. Figueroa Street, 16th Floor
Los Angeles, California 90071
Facsimile: 213-627-9937
Attn: David G. Mgrublian, C.E.O.

LANDLORD:

RUSSELL RANCH ROAD II LLC,
a Delaware limited liability company

By: Russell Ranch Road, LLC, a Delaware limited liability company, its Sole Member

By: MEPT Russell Ranch Road LLC, a Delaware limited liability company its Managing Member

By: MEPT Edgemoor REIT LLC, a Delaware limited liability company its Manager

By: Bentall Kennedy (U.S.) Limited Partnership, its Authorized Signatory

By: Bentall Kennedy (U.S.) G.P. LLC, its General Partner

By: /s/ Mark D. Reinikka
Name: Mark D. Reinikka
Its: Senior Vice President

By: /s/ Joseph R. Shea
Name: Joseph R. Shea
Its: Senior Vice President

Designated Address for Tenant:

(Prior to Commencement Date)
25134 Rye Canyon Loop, Suite 300
Valencia, California 91355
Attn: Stuart Tross, C.P.O.

TENANT:

MANNKIND CORPORATION,
a Delaware corporation

By: /s/ Matthew Pfeffer
Name: Matthew Pfeffer
Its: CEO

By: ______________________________

Name: ______________________________

Its: ______________________________

EXHIBIT A

DRAWING SHOWING LOCATION OF THE PREMISES

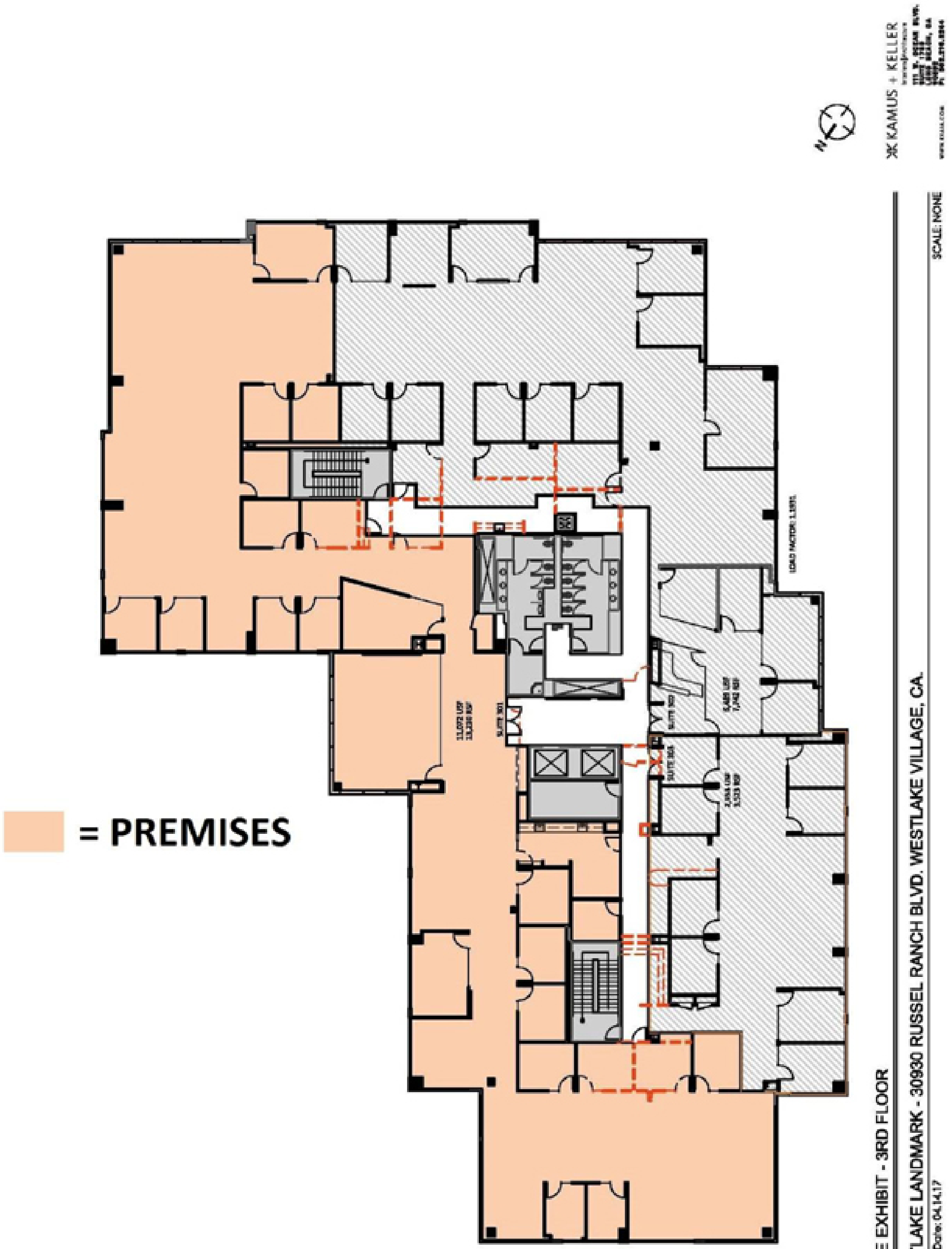

EXHIBIT B

INTENTIONALLY OMITTED

EXHIBIT C

FORM OF COMMENCEMENT DATE MEMORANDUM

______________________, as Landlord, and______________________as Tenant, executed that Lease dated as of______________________, 200____ (the "Lease").

The Lease contemplates that this document shall be delivered and executed as set forth in the paragraph entitled "Commencement Date Memorandum". This Commencement Date Memorandum shall become part of the Lease.

Landlord and Tenant agree as follows:

1. The Commencement Date of the Lease is____________________________.

2. The end of the Lease Term and the date on which this Lease will expire is___________________.

3. The Lease is in full force and effect as of the date of this Commencement Date Memorandum. By execution of this Commencement Date Memorandum, Tenant confirms that to the best of Tenant's knowledge, as of the date of the Commencement Date Memorandum (a) Tenant has no claims against Landlord and (b) Landlord has fulfilled all of its obligations under the Lease required to be fulfilled by Landlord.

4. The Premises consist of approximately_____________rentable square feet.

5. Base Rent:

The amount of Base Rent and the portion of the Lease Term during which such Base Rent is payable shall be determined from the following table:

Applicable Portion of Lease Term		Rate Per/Rentable Sq. Ft./ Annum	Annual Base Rent	Monthly Base Rent Installment (Annual ÷ 12)
Beginning	Ending			

6. Tenant's Pro Rata Share is__________percent (______%).

Dated:______________________________

LANDLORD:

____

By:______________________________

Name:______________________________

Its:______________________________

Dated:______________________________

TENANT:

____

By:______________________________

Name:______________________________

Its:______________________________

EXHIBIT D

RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside or inside of the Building or Land without the prior written consent of the Landlord, not to be unreasonably withheld, conditioned or delayed. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person chosen by Landlord.

2. If Landlord objects in writing to any curtains, blinds, shades, screens or hanging plants or other similar objects attached to or used in connection with any window or door of the Premises, Tenant shall immediately discontinue such use. No awning shall be permitted on any part of the Premises. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Premises.

3. Tenant shall not obstruct any sidewalk, halls, passages, exits, entrances, elevators, escalators, or stairways of the Building. The halls, passages, exits, entrances, elevators, escalators and stairways are not open to the general public. Landlord shall in all cases retain the right to control and prevent access to such areas of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interest of the Land, Building and the Building's tenants; provided that, nothing in this Lease contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not go upon the roof of the Building.

4. The directory of the Building will be provided exclusively for the display of the name and location of tenants only, and Landlord reserves the right to exclude any other names therefrom.

5. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Premises. Landlord shall not in any way be responsible to any Tenant for any loss of property on the Premises, however occurring, or for any damage to any Tenant's property by any janitor, any of Landlord's Agents or any other person, unless due to the gross negligence or willful misconduct of Landlord or Landlord's Agents.

6. Landlord may make a reasonable charge for any keys. Tenant shall not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door of its Premises. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished, shall pay Landlord therefor.

7. Intentionally Omitted.

8. If Tenant requires Telecommunication Services, computer circuits, burglar alarm or similar services or other utility services, it shall first obtain Landlord's approval of the construction or installation of such services, such approval not to be unreasonably withheld, conditioned or delayed. Application for such services shall be made in accordance with the procedure prescribed by Landlord in subsection 3.5.2 of the Lease.

9. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by Governmental Requirements.

Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space in the Building or to any other tenant in the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the Building must be reasonably acceptable to Landlord. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

10. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities permitted by the Lease. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors or vibrations nor shall Tenant bring into or keep in or about the Premises any birds or animals.

11. Tenant shall not use any method of heating or air-conditioning other than that supplied by Landlord.

12. Tenant shall not waste any utility provided by Landlord and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air-conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice.

13. Landlord reserves the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building.

14. Landlord reserves the right to exclude from the Building between the hours of 6 p.m. and 7 a.m. the following day, or such other hours as may be established from time to time by Landlord, and on Sundays and legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.

15. Tenant shall close and lock the doors of its Premises and entirely shut off all water faucets or other water apparatus, and electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or by Landlord for noncompliance with this rule.

16. Tenant shall not obtain for use on the Premises ice, drinking water, food, beverage, towel or other similar services, except at such reasonable hours and under such reasonable regulations as may be fixed by Landlord.

17. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be deposited in them. The expenses of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant if it or its employees or invitees shall have caused it.

18. Tenant shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or on the Premises. Tenant shall not make any room-to-room solicitation of business from other tenants in the Building. Tenant shall not use the Premises for any business or activity other than that specifically provided for in the Lease.

19. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building, except as expressly permitted by the Lease. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere. Other than the usual and customary cellular telephones, wireless internet routers and except as expressly permitted by the Lease, Tenant shall not install or utilize any wireless Telecommunication Facilities, including antenna and satellite receiver dishes within the Premises or on, in, or about the Building without first obtaining Landlord’s prior written consent (not to be unreasonably withheld, condition or delayed) and Landlord at its option may require the entry of a supplemental agreement with respect to such construction or installation. Tenant shall comply with all instructions for installation and shall pay or shall cause to be paid the entire cost of such installations. Application for such facilities shall be made in the same manner and shall be subject to the same requirements as specified for Telecommunication Services and Telecommunication Facilities in the paragraph of the Lease entitled “Utilities”. Supplemental rules and regulations may be promulgated by Landlord specifying the form of and information to be included with the application and establishing procedures, regulations and controls with respect to the installation and use of such wireless Telecommunication Facilities.

20. Tenant shall not mark, drive nails, screws or drill into the partitions, woodwork or plaster or in any way deface the Premises. Landlord reserves the right to direct electricians as to where and how telephone and telegraph wires are to be introduced to the Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule.

21. Tenant shall not install, maintain or operate upon the Premises any vending machine without the written consent of Landlord, not to be unreasonably withheld, conditioned or delayed.

22. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Building or Land are prohibited, and Tenant shall cooperate to prevent the same.

23. Landlord reserves the right to exclude or expel from the Building and Land any person who, in Landlord’s judgment, is intoxicated, under the influence of liquor or drugs or in violation of any of these Rules and Regulations.

24. Tenant shall store all of its trash and garbage within the Premises. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord.

25. The Premises shall not be used for lodging or any improper or immoral or objectionable purpose. No cooking shall be done or permitted by Tenant, except that use by Tenant of Underwriters’ Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted; provided that, such equipment and its use is in accordance with all Governmental Requirements.

26. Tenant shall not use in the Premises or in the public halls of the Building any hand truck except those equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building.

27. Without the prior written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.

28. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

29. Tenant assumes any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

30. The requirements of Tenant will be attended to only upon appropriate application to the Manager of the Building by an authorized individual. Employees of Landlord are not required to perform any work or do anything outside of their regular duties unless under special instructions from Landlord, and no employee of Landlord is required to admit Tenant to any space other than the Premises without specific instructions from Landlord.

31. Tenant shall not park its vehicles in any parking areas designated by Landlord as areas for parking by visitors to the Building or Land. Tenant shall not leave vehicles in the parking areas overnight nor park any vehicles in the Building parking areas other than automobiles, motorcycles, motor driven or nonmotor driven bicycles or four-wheeled trucks.

32. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other person, nor prevent Landlord from thereafter revoking such waiver and enforcing any such Rules and Regulations against any or all of the tenants of the Building.

33. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the covenants and conditions of any lease of premises in the Building. If any provision of these Rules and Regulations conflicts with any provision of the Lease, the terms of the Lease shall prevail.

34. Landlord reserves the right to make such other and reasonable, non-discriminatory Rules and Regulations as, in its judgment, may from time to time be needed for safety and security, the care and cleanliness of the Building and Land, the preservation of good order in the Building and the maintenance or enhancement of the value of the Building as a rental property. Tenant agrees to abide by all the Rules and Regulations stated in this exhibit and any additional rules and regulations which are so made by Landlord and delivered to Tenant in writing.

35. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant and Tenant's Agents.

EXHIBIT E

INTENTIONALLY OMITTED

EXHIBIT F

JANITORIAL SPECIFICATIONS

A. OFFICE AREAS

Daily:

All cleaning in the Premises will be performed five days each week, including either Monday through Friday or Sunday through Thursday, and excluding the holidays set forth in the lease.

1. Empty and wipe all waste receptacles; remove waste materials from the Premises; replace liners as necessary.
2. Dust with treated cloth the tops of all desks, credenzas, files, fixtures, windowsills, and all other horizontal surfaces (within reach). Papers on desktops will not be moved.
3. Remove fingerprints, smudges, etc. from doors, doorframes, partition glass, sidelights, walls, and around light switches.
4. Vacuum all rugs and carpet unobstructed by furniture, replacing chairs to their original positions. Spot clean minor stains as necessary.
5. Dust mop wood, resilient and composition floor areas with treated dust mops. Spot mop as necessary.
6. Dust mop all marble floors with untreated dust mop.
7. Spot mop all spills on hard surfaces floors as necessary.
8. Turn off lights except as otherwise directed.
9. Secure all locks and doors.

Monthly:

1. Dust all doorjambs
2. Dust all areas above and below the janitor’s normal reach (not to exceed 10 ft.).
3. Detail vacuum edges of carpet and all other carpeted areas not reached by normal vacuuming on a daily basis.
4. Vacuum or dust all air vents.

Quarterly:

1. Machine scrub and refinish all building standard resilient floors.
2. Vacuum all fabric furniture.

B. ELEVATOR LOBBIES AND PUBLIC CORRIDORS

Nightly:

All of the following cleaning services will be performed five days each week, including either Monday through Friday or Sunday through Thursday and excluding the holidays set forth in the Lease:

1. Dust mop wood, resilient and composition floor areas with treated dust mops. Spot mop as necessary.
2. Dust mop all marble floors with untreated dust mop.
3. Remove finger prints from walls, doors, frames and hardware, etc.

4. Clean and dust, directory board glass and ledges.
5. Dust all artwork and picture frames.
6. Secure all doors as directed.

Weekly:

1. Spot wash all lobby walls and doors.
2. Clean all door kick plates and thresholds.
3. Dust all doorjambs.

Quarterly:

1. Thoroughly scrub and refinish all resilient floors.

C. PUBLIC RESTROOMS

Daily:

All of the following cleaning services will be performed five days each week, including either Monday through Friday or Sunday through Saturday and excluding the holidays set forth in the Lease.

1. Empty and sanitize all trash receptacles and sanitary napkin disposal units. Replace waste bags and liners.
2. Wash and disinfectant all basins, bowls, both sides of the toilet seats, and urinals (including tile walls near urinals). Damp wipe all partitions, clean flushometers, piping, toilet seat hinges and other metal surfaces. Clean underside of rim on urinals and bowls.
3. Wash and polish all mirrors, powder shelves, bright work (including exposed piping below wash basins), towel dispensers, receptacles and any other metal surfaces.
4. Spot wash walls and doors.
5. Dust all ledges and tops of partitions.
6. Fill toilet tissue, soap, paper towels and sanitary dispensers.
7. Sweep and damp-mop all hard surface floor areas with germicidal solution.

Monthly:

1. Wash and all partitions and tile walls.
2. Vacuum or wash as necessary all ventilation grills.
3. Dust all doors and doorjambs
4. Machine-scrub all hard surface floors.

D. LUNCH ROOMS AND KITCHEN AREAS

Nightly:

All of the following cleaning services will be performed five days each week, including either Monday through Friday or Sunday through Thursday and excluding the holidays set forth in the Lease:

1. Remove trash and place for disposal. Change all liners nightly.
2. Wipe tables, chairs and countertops.

3. Clean kitchen sink.

4. Wipe front of oven refrigerator and dishwasher.

5. Sweep and spot mop floor.

6. It is understood that Landlord shall have no obligation (a) to wash or otherwise clean dishes, glasses and other utensils used (or preparing food or beverages or (b) to remove or store such dishes, glasses and other utensils in order to clean any area, fixture or surface or the Premises.

Weekly:

1. Clean out and wipe down refrigerators every Friday.

Monthly:

1. Spot wash doors and walls.

2. Scrub and refinish resilient floors.

E. JANITORIAL ROOMS, STORAGE ROOMS AND CLOSETS

Nightly:

All of the following cleaning services will be performed five days each week, including either Monday through Friday or Sunday through Thursday and excluding the holidays set forth in the Lease:

1. Remove trash from all of the above listed areas.

2. Maintain an orderly arrangement of all janitorial supplies and paper products in the storage rooms and service sink closets.

3. Maintain in a clean and orderly arrangement all equipment stored in these areas, such as mops, buckets, brooms, vacuum cleaners, scrubbers, etc.

4. Clean and disinfect service sinks as required.

5. Sweep and damp-mop service sink closet floors. Deodorize and disinfect as required.

6. Sweep storeroom floors.

F. ELEVATORS CABS

Nightly:

All of the following cleaning service’ will be performed five days each week, including either Monday through Friday or Sunday through Thursday, and excluding the holidays set forth In the Lease:

1. Dust all walls, doors and ceiling.

2. Vacuum carpets and spot clean stains.

3. Spot clean elevator saddles.

4. Clean all metal work.

Monthly:

1. Dust air duct grilles.

2. Wash all elevator door fronts.

3. Clean and vacuum all elevator saddles.

G. STAIRWAYS

Nightly:

1 Police all stairways

Monthly:

1. Sweep all stairways
2. Dust all stairway lights within reach
3. Dust all doors.
4. Dust all handrails.
5. Spot wash walls.

Quarterly:

1. Damp mop all stairways.

H. EXTERIOR STRUCTURE AND GROUNDS SERVICES

Nightly:

All of the following cleaning services will be performed five days each week, including either Monday through Friday or Sunday through Thursday, and excluding the holidays set forth in the Lease:

1. Inspect entire perimeter or project.
2. Spot sweep accumulations of dirt, papers and leaves in all common areas where wind tends to cause a collection of this debris.

I. GENERAL PROVISIONS

All cleaning services shall be performed after Regular Business Hours except as otherwise specifically requested by Tenant and except for exterior window washing and other exterior services. However, in no event shall such exterior services unreasonably interfere with Tenant’s use or enjoyment of the Premises or the Project.

The janitorial and cleaning services shall be comparable to the janitorial and cleaning services of comparable buildings with respect to the level of quality and the manner in which such services are performed. This cleaning specification may be reasonably changed or altered by Landlord from time to time to facilitate conformity with the latest methods of maintenance and cleaning technology generally recognized as acceptable for the comparable buildings. Landlord reserves the right to alter the level of service from time to time as determined by Landlord to be appropriate for a first-class office building. In the event Tenant requires a higher level of service beyond that which was required to be provided or was actually provided on the Commencement Date, pursuant to this Lease to suit it particular needs, the cost of such additional service shall be borne by Tenant.

SCHEDULE 4.11

PARKING ENCUMBRANCE

Restaurant Parking

Prior to the issuance of building permits, the developer shall pay to the City traffic mitigation fees pursuant to Section 6 of Development Agreement No. 89-002 (Westlake North).

If necessitated by adjacent restaurant development within Planning Area A of the Westlake North Specific Plan, the developer shall execute, to the reasonable satisfaction of the City, a shared parking agreement with Huntington Hotel Development, owners of Planning Area A (Parcel Map 060324), to provide up to 40 parking spaces on Planning Area B for use by future restaurant patrons on Planning Area A after 6:00 p.m. on weekdays and weekends. Said agreement shall remain in effect until it can be demonstrated to the reasonable satisfaction of the City that said parking spaces no longer required to support said adjacent restaurant uses, or until such agreement is so demonstrated to preclude occupancy of the subject office buildings approved herein by a use otherwise permitted by the Westlake North Specific Plan. In the event that the later is demonstrated, the owner of the subject property shall negotiate in good faith a new agreement for shared parking for and alternative number of spaces at an alternative location.

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Michael Castagna, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarterly period ended June 30, 2017 of MannKind Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusion about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2017

/s/ MICHAEL CASTAGNA
Michael Castagna
Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Steven Binder, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarterly period ended June 30, 2017 of MannKind Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2017

/s/ STEVEN BINDER
Steven Binder
Chief Financial Officer

Exhibit 32.1

CERTIFICATION OF
CHIEF EXECUTIVE OFFICER
PURSUANT TO
RULE 13a-14(b) OR 15d-14(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND SECTION 1350 OF
CHAPTER 63 OF TITLE 18 OF THE UNITED STATES CODE (18 U.S.C. § 1350)

In connection with the filing of the quarterly report of MannKind Corporation (the “Company”) on Form 10-Q for the quarterly period ended June 30, 2017, as filed with the Securities and Exchange Commission on or about the date hereof to which this certification is attached as Exhibit 32.1 (the “Report”) and pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Michael Castagna, Chief Executive Officer of MannKind Corporation (the “Company”), hereby certifies that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 7, 2017

In Witness Whereof, the undersigned has set his hand hereto as of the 7th day of August 2017.

/s/ Michael Castagna
Michael Castagna
Chief Executive Officer

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1 This certification is being furnished solely to accompany this quarterly report on Form 10-Q pursuant to 18 U.S.C. Section 1350, and is not deemed filed for purposes of Section 18 of the Exchange Act or the Securities Act of 1933, as amended, and is not incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language contained in such filing.

Exhibit 32.2

CERTIFICATION OF
CHIEF FINANCIAL OFFICER
PURSUANT TO
RULE 13a-14(b) OR 15d-14(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND SECTION 1350 OF
CHAPTER 63 OF TITLE 18 OF THE UNITED STATES CODE (18 U.S.C. § 1350)

In connection with the filing of the quarterly report of MannKind Corporation (the "Company") on Form 10-Q for the quarterly period ended June 30, 2017, as filed with the Securities and Exchange Commission on or about the date hereof to which this certification is attached as Exhibit 32.2 (the "Report") and pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Steven Binder, Chief Financial Officer of MannKind Corporation (the "Company"), hereby certifies that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 7, 2017

In Witness Whereof, the undersigned has set his hand hereto as of the 7th day of August 2017.

/s/ Steven Binder
Steven Binder
Chief Financial Officer

1 This certification is being furnished solely to accompany this quarterly report on Form 10-Q pursuant to 18 U.S.C. Section 1350, and is not deemed filed for purposes of Section 18 of the Exchange Act or the Securities Act of 1933, as amended, and is not incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language contained in such filing.