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# FORM 10-Q

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## SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended September 30, 2006

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: 0-27756

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# Alexion Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**13-3648318**  
(I.R.S. Employer  
Identification No.)

**352 Knotter Drive, Cheshire, Connecticut 06410**

(Address of principal executive offices) (Zip Code)

**203-272-2596**

(Registrant's telephone number, including area code)

**N/A**

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

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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 is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

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

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Common Stock, \$0.0001 par value

Class

31,851,672

Outstanding at November 6, 2006

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ALEXION PHARMACEUTICALS, INC.

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**ALEXION PHARMACEUTICALS, INC.**  
**Condensed Consolidated Balance Sheets**  
(amounts in thousands)  
(UNAUDITED)

	<u>September 30, 2006</u>	<u>December 31, 2005</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 39,981	\$ 43,629
Restricted cash	33,184	—
Marketable securities	70,683	168,827
Prepaid expenses and other current assets	3,650	5,095
Total current assets	<u>147,498</u>	<u>217,551</u>
Property, plant and equipment, net	28,630	10,631
Goodwill, net	19,954	19,954
Prepaid manufacturing costs	10,845	10,000
Other assets	4,074	4,575
Total Assets	<u>\$ 211,001</u>	<u>\$ 262,711</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 3,479	\$ 3,865
Accrued expenses	17,315	20,629
Deferred revenue	588	767
Current portion of obligations under capital lease	121	129
Total current liabilities	<u>21,503</u>	<u>25,390</u>
Obligations under capital lease	—	88
Deferred revenue, less current portion	4,902	5,343
Mortgage loan	26,000	—
Convertible notes	150,000	150,000
Total Liabilities	<u>202,405</u>	<u>180,821</u>
<b>STOCKHOLDERS' EQUITY</b>		
Preferred stock, \$.0001 par value; 5,000 shares authorized, no shares issued or outstanding	—	—
Common Stock, \$.0001 par value; 145,000 shares authorized; 31,717 and 30,980 shares issued at September 30, 2006 and December 31, 2005, respectively	3	3
Additional paid-in capital	607,996	589,250
Stock subscription receivable	54	—
Treasury Stock, at cost, 50 shares at September 30, 2006 and December 31, 2005, respectively	(981)	(981)
Accumulated other comprehensive loss	(145)	(315)
Accumulated deficit	(598,331)	(506,067)
Total Stockholders' Equity	<u>8,596</u>	<u>81,890</u>
Total Liabilities and Stockholders' Equity	<u>\$ 211,001</u>	<u>\$ 262,711</u>

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

**ALEXION PHARMACEUTICALS, INC.**  
**Condensed Consolidated Statements of Operations**  
**and Comprehensive Loss**  
(amounts in thousands, except per share amounts)  
(UNAUDITED)

	Three months ended September 30,		Nine months ended September 30,	
	2006	2005	2006	2005
REVENUES	\$ 263	\$ 384	\$ 1,370	\$ 1,116
OPERATING EXPENSES				
Research and development	21,205	31,788	65,881	81,304
General and administrative	12,121	6,415	31,688	16,816
Total operating expenses	<u>33,326</u>	<u>38,203</u>	<u>97,569</u>	<u>98,120</u>
Operating loss	(33,063)	(37,819)	(96,199)	(97,004)
OTHER INCOME AND EXPENSE				
Investment income	1,801	1,618	5,740	4,696
Interest expense	(687)	(736)	(2,062)	(3,477)
Loss from early extinguishment of convertible notes	—	—	—	(3,184)
Other expense	(13)	—	(13)	—
Loss before state tax benefit	(31,962)	(36,937)	(92,534)	(98,969)
STATE TAX BENEFIT	90	363	270	704
Net Loss	<u>\$ (31,872)</u>	<u>\$ (36,574)</u>	<u>\$ (92,264)</u>	<u>\$ (98,265)</u>
OTHER COMPREHENSIVE INCOME/LOSS				
Foreign currency translation	(24)	—	(65)	—
Unrealized losses on marketable securities	249	46	235	90
Comprehensive Loss	<u>\$ (31,647)</u>	<u>\$ (36,528)</u>	<u>\$ (92,094)</u>	<u>\$ (98,175)</u>
BASIC AND DILUTED LOSS PER SHARE DATA				
Net loss per share	\$ (1.02)	\$ (1.24)	\$ (2.96)	\$ (3.45)
SHARES USED IN COMPUTING BASIC AND DILUTED NET LOSS PER COMMON SHARE	<u>31,264</u>	<u>29,469</u>	<u>31,154</u>	<u>28,466</u>

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

**ALEXION PHARMACEUTICALS, INC.**  
**Condensed Consolidated Statements of Cash Flows**  
(amounts in thousands)  
(UNAUDITED)

	Nine months ended September 30,	
	2006	2005
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$ (92,264)	\$ (98,265)
Adjustments to reconcile net loss to net cash used by operating activities:		
Depreciation and amortization	2,651	3,239
Write-off of deferred financing costs	—	1,212
Share-based compensation expense	11,402	1,908
Changes in operating assets and liabilities		
Prepaid expenses and other assets	595	76
Accounts payable	(386)	(3,442)
Accrued expenses	(3,314)	14,118
Deferred revenue	(620)	(634)
Deferred research and development costs	—	(1,313)
Net cash used by operating activities	<u>(81,936)</u>	<u>(83,101)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of marketable securities	(516,974)	(578,360)
Proceeds from maturity or sale of marketable securities	615,353	590,611
Purchase of property, plant and equipment	(20,238)	(2,388)
Increase in restricted cash	(33,184)	—
Net cash provided by investing activities	<u>44,957</u>	<u>9,863</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from convertible debt offering	—	150,000
Proceeds from mortgage loan	26,000	—
Convertible debt issuance costs	—	(4,758)
Redemption of convertible notes	—	(120,000)
Exchange of 11,727 common shares in 2005	—	(325)
Net proceeds from issuance of common stock	7,396	68,190
Net cash provided by financing activities	<u>33,396</u>	<u>93,107</u>
Effect of exchange rate changes	(65)	—
Net change in cash and cash equivalents	<u>(3,648)</u>	<u>19,869</u>
Cash and cash equivalents at beginning of period	43,629	35,904
Cash and cash equivalents at end of period	<u>\$ 39,981</u>	<u>\$ 55,773</u>

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

[Table of Contents](#)**ALEXION PHARMACEUTICALS, INC.****Notes to Condensed Consolidated Financial Statements****1. Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements included in this Form 10-Q should be read in conjunction with the consolidated financial statements and accompanying notes included in our audited Transition Report on Form 10-K/T for the five month transition period ended December 31, 2005.

In our opinion, the unaudited condensed consolidated financial statements reflect all adjustments (including those that are normal and recurring) that are necessary in the judgment of management for a fair presentation of such statements in conformity with accounting principles generally accepted in the United States ("GAAP") for interim reporting. In preparing financial statements in conformity with GAAP, we must make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses, and related disclosures at the date of the financial statements and during the reporting period. Actual results could differ from those estimates.

During the nine month period ended September 30, 2006, we established six new entities to support our planned growth and preparation for commercialization. Alexion Manufacturing, LLC and Alexion Delaware Holding, LLC are wholly owned by Alexion Pharmaceuticals, Inc. and both are Delaware limited liability companies. The partnership of Alexion Bermuda, LP is ninety-nine percent owned by Alexion Pharmaceuticals, Inc. and one percent owned by Alexion Delaware Holding, LLC and was formed under the laws of Bermuda as a limited partnership. Alexion International, Sarl is ninety-five percent owned by Alexion Bermuda, LP and five percent owned by Alexion Pharmaceuticals, Inc. and was formed under the laws of Switzerland as a limited liability company. Alexion Holding B.V. is registered as a corporation in Amsterdam (the Netherlands) and is wholly owned by Alexion Delaware Holding, LLC. Finally, Alexion Pharma France SAS, a simplified joint stock company, is registered under the laws of France and wholly owned by Alexion Holding B.V.. There were no material transactions that occurred in the newly formed entities during the nine month period ending September 30, 2006, except as noted in Note 8 and Note 9 to these condensed consolidated financial statements.

**2. Accounting for Share-Based Compensation**

A summary of the status of our stock option plans at September 30, 2006 and changes during the nine months then ended is presented in the table and narrative below:

	<u>Options</u>	<u>Weighted-Average Exercise Price</u>
Options outstanding at December 31, 2005	5,092,085	\$ 24.16
Options granted	1,297,200	28.16
Options cancelled	(244,459)	23.28
Options exercised	(523,488)	14.13
Options outstanding at September 30, 2006	<u>5,621,338</u>	<u>25.41</u>

During the three and nine month period ended September 30, 2006, we recognized compensation expense of \$4,040,241 and \$10,009,256, respectively, for stock options and \$528,179 and \$1,393,188, respectively, for restricted stock, which were charged to our condensed consolidated statement of income. Due to our net loss position, a windfall tax benefit was not realized during the period.

[Table of Contents](#)**ALEXION PHARMACEUTICALS, INC.****Notes to Condensed Consolidated Financial Statements**

A summary of the status of our non-vested restricted stock as of September 30, 2006, and changes during the nine months then ended are as follows:

	<u>Restricted Stock</u>
Nonvested at December 31, 2005	133,500
Issued	225,059
Vested	—
Cancelled	<u>(11,500)</u>
Nonvested at September 30, 2006	<u>347,059</u>

SFAS 123R requires us to present pro forma information for periods prior to the adoption as if we had accounted for all share-based compensation under the fair value method of SFAS 123. For purposes of pro forma disclosure, the estimated fair value of the options at the date of grant is amortized to expense over the requisite service period, which generally equals the vesting period. The following table illustrates the effect on net loss and earnings per share as if we had applied the fair value recognition provisions of SFAS 123 to our share-based employee compensation.

<u>(amounts in thousands, except per share data)</u>	<u>Three months ended September 30, 2005</u>	<u>Nine months ended September 30, 2005</u>
Net loss, as reported	\$ (36,574)	\$ (98,265)
Add: Stock-based employee compensation expense included in reported net loss	1,584	1,907
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	<u>(2,158)</u>	<u>(6,975)</u>
Pro forma net loss	<u>\$ (37,148)</u>	<u>\$ (103,333)</u>
Basic and diluted-as reported	\$ (1.24)	\$ (3.45)

**3. Net Loss Per Common Share**

Basic net loss per common share is computed by dividing the net loss by the weighted average shares of common stock outstanding during the respective period. Diluted net loss per common share assumes, in addition to the above, the dilutive effect of other potential common shares outstanding during the period. Other potential common shares represent dilutive stock options, unvested restricted stock, and convertible debt. These outstanding stock options, convertible debt, and unvested restricted stock entitled holders to acquire 10,737,107 and 10,023,564 shares of common stock at September 30, 2006 and 2005, respectively. There is no difference in basic and diluted net loss per common share for the three and nine months ended September 30, 2006 and 2005, respectively, as the effect of other potential common shares is anti-dilutive.

**4. Capital Structure**

During the three and nine month periods ended September 30, 2006, we issued 92,726 and 523,488 shares of common stock, respectively, with proceeds of \$1,416,882 and \$7,343,937, respectively, upon the exercise of outstanding stock options.

During the three and nine month periods ended September 30, 2005, we issued 140,120 and 277,132 shares of common stock, respectively, with proceeds of \$2,025,819 and \$3,536,515 respectively, upon the exercise of

**ALEXION PHARMACEUTICALS, INC.**

**Notes to Condensed Consolidated Financial Statements**

outstanding stock options. Additionally, during the three month period ended September 30, 2005, we increased our holdings of common stock in treasury by 11,727 shares through stock-based exercises of employee options. The shares were exchanged at fair market value of \$325,206 in total.

In August 2005, we issued 2,500,000 shares of common stock in a public offering at \$26.75 per share, resulting in gross proceeds from the sale of approximately \$66,875,000. We incurred underwriting discounts and commissions of approximately \$2,145,000 or \$0.86 per share as well as other expenses, resulting in net proceeds of approximately \$64,517,000.

**6. Income Taxes**

The Company has net operating loss and federal and state research and development credit carry forwards of approximately \$493,000,000 and \$17,800,000 respectively as of December 31, 2005. The Tax Reform Act of 1986 contains certain provisions that can limit a taxpayer's ability to utilize net operating loss and tax credit carry forwards in any given year resulting from cumulative changes in ownership interests in excess of 50 percent over a three-year period. We have determined that these limiting provisions were triggered. However, such limitation is not expected to result in the loss of the federal net operating loss and research and development credit carry forward.

**7. Commitments and Contingencies**

We enter into agreements that contain indemnification provisions under our agreements with other companies in our ordinary course of business, typically with business partners, clinical sites, and suppliers. Pursuant to these agreements, we generally indemnify, hold harmless, and agree to reimburse the indemnified parties for losses suffered or incurred by the indemnified parties in connection with any U.S. patent or any copyright or other intellectual property infringement claim by any third party with respect to our products, or otherwise in connection with the use or testing of our product candidates. The term of these indemnification agreements is generally perpetual. The potential amount of future payments we could be required to make under these indemnification agreements is unlimited. We have not incurred material costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the estimated fair value of these agreements is minimal. Accordingly, we have no liabilities recorded for these agreements as of September 30, 2006.

**8. Property, Plant, and Equipment**

In July 2006, our wholly owned affiliate, Alexion Manufacturing, LLC purchased the former Dow manufacturing facility in Smithfield, Rhode Island for \$13,000,000. The biopharmaceutical manufacturing facility will be used primarily to produce Soliris™ (eculizumab). In accordance with the Purchase and Sale Agreement dated April 13, 2006, "the Agreement", we deposited into an escrow account \$500,000 upon execution of the Agreement on April 13, 2006 and an additional \$500,000 upon the completion of the due diligence period, which was ninety days after the agreement date. The deposits were held in escrow until the closing date at which time the escrowed amounts and the remaining balance, net of property taxes owed for the first part of the year, of \$11,926,289 was paid to Dow.

**9. Debt**

In July 2006, our wholly owned affiliate Alexion Manufacturing, LLC, entered into a mortgage loan agreement to borrow \$26,000,000 to finance the purchase and construction of our Smithfield, Rhode Island manufacturing facility. The mortgage loan bears interest at a fixed annual rate of 9.17% and all obligations under the loan agreement are guaranteed by Alexion Pharmaceuticals, Inc. The loan principal is required to be repaid in equal monthly installments of \$288,889, starting March 2009 and until August 2016, at which time all outstanding balances are due. The loan may not be prepaid in whole or in part prior to July 2009. After that date the loan can be prepaid in whole, but not in part, and must include a prepayment premium as described in the loan agreement. In the event that approval to market Soliris™ (eculizumab) has not been obtained before December 31, 2007, Alexion Manufacturing LLC must deliver an acceptable letter of credit to the lender for the amount of \$13,000,000. Also, included in the loan agreement are certain provisions which, if satisfied, would allow for additional borrowings of up to \$9,000,000.

Under the terms of the agreement, among other things, Alexion Manufacturing is restricted with respect to additional borrowings, leasing arrangements and mergers. Alexion Manufacturing also may not modify, amend, or waive



**ALEXION PHARMACEUTICALS, INC.**

**Notes to Condensed Consolidated Financial Statements**

material obligations with respect to, or terminate, material agreements or proprietary rights, or engage in any business other than ownership and operation of facility. Alexion Pharmaceuticals, Inc. may not, among other things, liquidate, wind-up or dissolve as long as the guarantee remains in effect.

As a condition of the loan, Alexion Manufacturing, LLC is required to maintain restricted cash accounts. These accounts must be used specifically for the purchase and construction of the manufacturing facility. The lender has a first priority security interest and the right to approve all disbursements from the accounts holding restricted cash. Under the agreement, we are required to, at all times, maintain a balance in the restricted cash accounts sufficient to complete the project.

**Recently Issued Accounting Standards**

In July 2006, the FASB approved the issuance of FASB Interpretation FIN No. 48, "Accounting for Uncertainty in Income Taxes (as amended)." This Interpretation clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, Accounting for Income Taxes. Additionally, this Interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. This Interpretation also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Interpretation is effective for reporting periods beginning after December 15, 2006 with earlier application permitted. For Alexion, the effective date will be the first quarter of 2007. The Company is evaluating the impact of adopting this accounting principal on its financial position and results of operations.

**ALEXION PHARMACEUTICALS, INC.**

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**Note Regarding Forward-Looking Statements**

This report contains forward-looking statements that have been made pursuant to the provisions of the Private Securities Litigation Reform Act of 1995. Such forward looking statements are based on current expectations, estimates and projections about our industry, management's beliefs and certain assumptions made by our management and may include, but are not limited to, statements regarding the potential benefits and commercial potential of Soliris™ (eculizumab), clinical trial results, completion of the SHEPHERD trial for Soliris™ (eculizumab), prospects for and timing of regulatory approval for Soliris™ (eculizumab), the uncertainties involved in the drug development process, the safety and efficacy of our product candidates, our future research and development activities, estimates of the potential markets for our products (for example, estimates regarding the number of PNH patients), assessment of competitors and potential competitors, estimates of the capacity of manufacturing and other facilities to support our products, the sufficiency of our existing capital resources and projected cash needs, sales and marketing plans, as well as assumptions relating to the foregoing. Words such as "anticipates," "expects," "intends," "may," "plans," "believes," "seeks," "estimates," variations of such words and similar expressions are intended to identify such forward-looking statements, although not all forward-looking statements contain these identifying words. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict; therefore, actual results may differ materially from those expressed or forecasted in any such forward-looking statements. Such risks and uncertainties include, but are not limited to, those discussed later in this report under the section entitled "Risk Factors". Unless required by law, we undertake no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. However, readers should carefully review the risk factors set forth in other reports or documents we file from time to time with the Securities and Exchange Commission. The interim 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 Notes thereto for the five month transition period ended December 31, 2005 and the related Management's Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Transition Report on Form 10-K/T for the five month transition period ended December 31, 2005.

**Business**

We are a biotechnology company working to develop and deliver life-changing drug therapies for patients with serious and life-threatening medical conditions. We are engaged in the discovery and development of therapeutic products aimed at treating patients with a wide array of severe disease states, including hematologic diseases, cancer, and autoimmune disorders. Since our incorporation in January 1992, we have devoted substantially all of our resources to drug discovery, research, and product and clinical development. In September 2005, we formed a wholly-owned subsidiary, Alexion Europe SAS to support commercial and regulatory operations throughout Europe.

In September 2006, we filed a Biologics License Application, or BLA, with the U.S. Food and Drug Administration, or FDA, and a European Marketing Authorization Application, or MAA, in Europe, for Soliris™ (eculizumab) for the treatment of a rare blood disorder known as Paroxysmal Nocturnal Hemoglobinuria, or PNH. The Phase III clinical development program for Soliris™ (eculizumab) in PNH is comprised of two Phase III clinical trials, known as TRIUMPH and SHEPHERD. The FDA agreed to the design of the protocols for these two trials under the Special Protocol Assessment, or SPA, process. TRIUMPH is a placebo-controlled efficacy trial and SHEPHERD is an open-label, non-placebo controlled safety trial with efficacy secondary endpoints. In January 2006, we reported positive results from TRIUMPH which were also published in the September 2006 issue of the New England Journal of Medicine. All pre-specified, primary and secondary endpoints in the TRIUMPH trial were achieved with statistical significance. SHEPHERD is a twelve month study with a six month preplanned interim analysis. In June 2006, we reported positive six month results from SHEPHERD. Soliris™ (eculizumab) appeared to be safe and well tolerated during that six month period. In addition, all pre-specified primary and secondary efficacy endpoints in the trial were achieved with statistical significance for the six month period. The data from TRIUMPH and SHEPHERD served as the primary basis for the BLA and MAA submitted in the United States and Europe, respectively. We have requested priority review designation for the BLA from the FDA. Our MAA has been granted accelerated

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### ALEXION PHARMACEUTICALS, INC.

assessment by the European Medicines Evaluation Agency, or EMEA, for Soliris™ (eculizumab) in Europe. Accelerated Assessment is given by the EMEA for medicinal products of major therapeutic interest and shortens the timeframe for review by that agency. Additionally, we have been notified by the EMEA that the MAA has been validated and that the assessment procedure has commenced.

Our second clinical stage product candidate, pexelizumab, has been evaluated in Phase III clinical trials for two separate indications: (1) coronary artery bypass graft (CABG) surgery patients undergoing cardiopulmonary bypass (CPB) and (2) acute myocardial infarction (AMI) patients undergoing primary percutaneous angioplasty. As previously announced, results from those Phase III clinical trials did not achieve their primary endpoints and will not be sufficient for filing for licensing approval in those indications. Pexelizumab development is conducted in collaboration with Procter & Gamble Pharmaceuticals, or P&GP. We have held discussions with P&GP regarding the pexelizumab program, and we do not currently intend to continue development of pexelizumab in the CABG or AMI indications.

In July 2006, we acquired a manufacturing plant in Smithfield, Rhode Island. We intend to equip and develop the plant in accordance with FDA and other regulatory requirements to manufacture Soliris™ (eculizumab) and other product candidates.

In addition to our Phase III programs, we are developing a global patient registry for PNH patients and have initiated the EXPLORE trial to investigate the frequency of undiagnosed PNH patients who have been diagnosed with other bone marrow failure diseases such as aplastic anemia and myelodysplasia. We intend to pursue additional indications for Soliris™ (eculizumab), and have other product candidates in earlier stages of development.

To date, we have not received any revenues from the sale of our products. We have incurred operating losses since our inception. As of September 30, 2006, we had an accumulated deficit of \$598,331,000. We expect to incur substantial operating losses for the next several years due to expenses associated with product research and development, pre-clinical studies and clinical testing, regulatory activities, manufacturing development, scale-up and commercial-scale manufacturing, pre-commercialization and commercialization activities, developing a sales and marketing force, establishing European and other regional headquarters, and other infrastructure support costs. We may need to obtain additional financing to cover these costs.

We plan to develop and commercialize on our own those product candidates for which the clinical trials and commercialization requirements can be funded and accomplished by our own resources. For those products which require greater resources, our strategy is to form corporate alliances for product development and commercialization.

### Results of Operations

#### Comparison of the Three and Nine Months ended September 30, 2006 to the Three and Nine Months ended September 30, 2005

##### Revenues

A summary of revenues recognized is as follows for the periods presented:

	Three months ended September 30,		Increase/ (Decrease) % Change	Nine months ended September 30,		Increase/ (Decrease) % Change
	2006	2005		2006	2005	
	(amounts in thousands, except percentage data)					
P&G	\$ 147	\$ 147	0%	\$ 441	\$ 441	0%
U.S. government grants	116	237	-51%	829	675	23%
Other revenue	—	—	0%	100	—	100%
Total revenues	<u>\$ 263</u>	<u>\$ 384</u>	-32%	<u>\$ 1,370</u>	<u>\$ 1,116</u>	23%

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We earned revenues of approximately \$263,000 and \$384,000 for the three months ended and \$1,370,000 and \$1,116,000 for the nine months ended September 30, 2006 and 2005, respectively. Revenue reflects the amortization of deferred revenue resulting from cash received from P&G under our collaboration for the development and commercialization of pexelizumab, U.S. government funded research grant revenue related to our research programs, and a nonrefundable fee for exclusive access to our xenotransplantation technologies, a program that was terminated in October 2003.

**Research and Development**

The following table provides information regarding the change in research and development expenses during the periods presented:

	Three months ended September 30,		Increase/ (Decrease) % Change	Nine months ended September 30,		Increase/ (Decrease) % Change
	2006	2005		2006	2005	
	(amounts in thousands, except percentage data)					
Clinical development	\$ 7,942	\$14,053	-43%	\$27,713	\$39,419	-30%
Manufacturing and development	528	9,036	-94%	5,566	19,429	-71%
Product development	8,470	23,089		33,279	58,848	
Payroll and benefits	7,963	5,290	51%	21,865	14,778	48%
Operating and occupancy	1,207	1,359	-11%	3,966	3,978	0%
Discovery research	2,995	1,311	128%	4,988	1,702	193%
Depreciation and amortization	570	739	-23%	1,783	1,998	-11%
Total research and development expense	<u>\$21,205</u>	<u>\$31,788</u>	-33%	<u>\$65,881</u>	<u>\$81,304</u>	-19%

Research and development expenses decreased approximately \$10,583,000 for the three months and \$15,423,000 for the nine months ended September 30, 2006, as compared to the same periods in 2005, respectively, primarily due to:

- decrease in clinical development expenses of \$6,111,000 and \$11,706,000 for the three and nine month periods ended September 30, 2006, respectively, due to the completion of the PRIMO-CABG2 and APEX AMI clinical trials. The decreased cost for the nine month period ended September 30, 2006 was partially offset by clinical cost increases of \$4,695,000 for the SHEPHERD and extension studies supporting our development of Soliris™ (eculizumab);
- decrease in manufacturing and manufacturing development costs of \$8,508,000 and \$13,863,000 for the three and nine month periods ended September 30, 2006, respectively, related primarily to the decreased eculizumab manufacturing costs in 2006, partially offset by the recognition of a liability during the nine months ended September 30, 2006 related to our third party pexelizumab manufacturing agreement;
- increase of \$1,684,000 and \$3,286,000 for the three and nine month periods ended September 30, 2006, respectively, in discovery research costs primarily due to the recognition in the first quarter of 2005 of deferred expense related to our terminated collaboration with XOMA, resulting in a reduction of research and development cost in the first quarter of 2005; and
- increase of 2,673,000 and \$7,087,000 for the three and nine month periods ended September 30, 2006, respectively, in research and development payroll and benefit costs. The increases resulted from the expensing of share-based compensation as required by SFAS 123R amounting to \$2,498,000 and \$6,578,000 for the three and nine month periods ended September 30, 2006, respectively, as well as increased headcount to support our research and development activities.

[Table of Contents](#)**ALEXION PHARMACEUTICALS, INC.****General and Administrative Expenses**

The following table provides information regarding the change in general and administrative expenses during the periods presented:

	Three months ended September 30,		Increase/ (Decrease) % Change	Nine months ended September 30,		Increase/ (Decrease) % Change
	2006	2005		2006	2005	
Total general and administrative expense	<u>\$ 12,121</u>	<u>\$ 6,415</u>	89%	<u>\$31,688</u>	<u>\$16,816</u>	88%

General and administrative expenses increased approximately \$5,706,000 for the three months ended September 30, 2006 and \$14,872,000 for the nine months ended September 30, 2006, as compared to the same periods of 2005, primarily due to:

- higher payroll and benefits costs of \$3,921,000 for the three month period and \$8,533,000 for the nine month period ended September 30, 2006 primarily resulting from growth of our headcount dedicated to commercial development activities and the expensing of share-based compensation of \$2,070,000 and \$4,824,000 during the three and nine month periods ended September 30, 2006, respectively;
- increased administrative costs related to Alexion Europe of approximately \$2,000,000 for the three month period and \$4,800,000 for the nine month period ended September 30, 2006; and
- an increase of \$1,029,000 and \$2,432,000 for the three and nine month periods ended September 30, 2006, respectively, for professional fees, recruitment expenses, public relations and other items related to commercial development.

**Total Operating Expenses**

Total operating expenses for the three and nine month periods ended September 30, 2006 were approximately \$33,326,000 and \$97,569,000 compared to approximately \$38,203,000 and \$98,120,000 for the same periods ended September 30, 2005, respectively.

**Other Income and Expense**

Investment income was approximately \$1,801,000 and \$5,740,000 for the three and nine months ended September 30, 2006 as compared to \$1,618,000 and \$4,696,000 for the same periods in 2005, respectively. The increase was due primarily to higher interest rates.

Interest expense was approximately \$687,000 and \$2,062,000 for the three and nine months ended September 30, 2006, respectively, as compared to approximately \$736,000 and \$3,477,000 for the same period in 2005, respectively. The decrease in interest expense is attributable to the lower interest rate for the 1.375% convertible senior notes as compared to the 5.75% convertible subordinated notes which were repaid in March 2005. During the nine month period ended September 30, 2005, we recorded a loss from early extinguishment of the 5.75% convertible subordinated notes, which consisted of the write-off of the remaining balance of the deferred financing costs of approximately \$1,212,000 and the redemption premium of approximately \$1,972,000.

**Income Taxes**

We recorded a state tax benefit of approximately \$90,000 and \$270,000 for the three and nine months ended September 30, 2006, respectively, compared to approximately \$363,000 and \$704,000 for the same period in 2005, respectively. The benefit is the result of the exchange for cash of our estimated 2005 and 2006 non-incremental research and development tax credits with the State of Connecticut.

## **ALEXION PHARMACEUTICALS, INC.**

The company has net operating loss and federal and state research and development credit carry forwards of approximately \$493 million and \$17.8 million, respectively, as of December 31, 2005. The Tax Reform Act of 1986 contains certain provisions that can limit a taxpayer's ability to utilize net operating loss and tax credit carry forwards in any given year resulting from cumulative changes in ownership interests in excess of 50 percent over a three-year period. We have determined that these limiting provisions were triggered, however, such limitation would not result in the loss of the federal net operating loss and research and development credit carry forward.

### **Net Loss**

The company incurred a net loss for the three and nine month periods ended September 30, 2006 of approximately \$31,872,000 and \$92,264,000 or \$1.02 and \$2.96 per common share, respectively, versus a net loss of approximately \$36,574,000 and \$98,265,000 or \$1.24 and \$3.45 per common share, respectively, for the same periods in 2005.

### **Liquidity and Capital Resources**

Our primary source of cash is through public offerings of our common stock and the sale of convertible notes. Also, as described in detail below, in July 2006, we entered into a mortgage loan agreement to fund the purchase and construction of a manufacturing plant. Other sources include debt financing, payments received under corporate collaborations and grants, and equipment and leasehold improvements financing. Our primary use of cash includes business development activities and research and development.

As of September 30, 2006, cash, cash equivalents, and marketable securities were approximately \$143,848,000 compared with \$212,456,000 at December 31, 2005. The decrease was primarily due to cash used to fund operating activities. As of September 30, 2006, \$33,184,000 of cash was restricted.

### **Operating Activities**

Net cash used in operating activities for the nine months ended September 30, 2006 was approximately \$81,936,000. The decrease compared to the same period in the previous year is primarily due to decreased clinical trial and research and development activities as compared to the same period in 2005.

### **Investing Activities**

Net cash utilized for investing activities for the nine months ended September 30, 2006 was approximately \$44,957,000. This included proceeds of approximately \$98,379,000 from marketable securities, net of purchases of marketable securities, approximately \$20,238,000 of property, plant and equipment additions, and setting aside \$33,184,000 in restricted cash pursuant to the terms of our mortgage loan.

### **Financing Activities**

Net cash provided by financing activities for the nine months ended September 30, 2006 was approximately \$33,396,000, consisting of proceeds from our mortgage loan of \$26,000,000 and proceeds from the issuance of common stock related to the exercise of stock options of approximately \$7,396,000.

### **Sufficiency of Cash Resources**

We anticipate that our existing capital resources as well as interest and investment income earned on available cash and marketable securities should provide us adequate resources to fund our operating expenses and capital requirements as currently planned for at least the next twelve months.

### **Financial Instruments**

As of September 30, 2006, the market value of our \$150,000,000 1.375% convertible senior notes due February 1, 2012, based on quoted market prices, was estimated at \$188,812,500. The \$59,062,500 increase from December 31, 2005 is attributable to the increase in the price of our common stock.

**ALEXION PHARMACEUTICALS, INC.****Contractual Obligations**

The following table summarizes our contractual obligations at September 30, 2006 and the effect such obligations is expected to have on liquidity and cash flow in future fiscal years. These do not include milestones and assume non-termination of agreements. These obligations represent payments based on current operating forecasts, which are subject to change:

	(in millions)				
	<u>Total</u>	<u>Less than 1 Year</u>	<u>1-3 Years</u>	<u>3-5 Years</u>	<u>More than 5 Years</u>
Contractual obligations:					
Convertible notes payable	\$150.0	\$ —	\$ —	\$ —	\$ 150.0
Mortgage loan	26.0	—	2.9	7.0	16.1
Interest expense	26.4	0.6	13.4	7.8	4.6
Capital and operating leases	24.4	0.6	7.6	5.2	11.0
Total contractual obligations	<u>\$226.8</u>	<u>\$ 1.2</u>	<u>\$ 23.9</u>	<u>\$ 20.0</u>	<u>\$ 181.7</u>

**Mortgage Loan**

In July 2006, our wholly owned affiliate Alexion Manufacturing, LLC entered into a mortgage loan agreement to borrow \$26,000,000 to finance the purchase and construction of our Smithfield, Rhode Island manufacturing facility. The mortgage loan bears interest at a fixed annual rate of 9.17% and all obligations under the loan agreement are guaranteed by Alexion Pharmaceuticals, Inc. The loan principal is required to be repaid in equal installments, starting March 2009 and until August 2016, at which time all outstanding balances are due. The loan may not be prepaid in whole or in part prior to July 2009. After that date the loan can be prepaid in whole, but not in part, and must include a prepayment premium as described in the loan agreement. In the event that approval to market Soliris™ (eculizumab) is not obtained before December 31, 2007, Alexion Manufacturing LLC must deliver an acceptable letter of credit to the lender for the amount of \$13,000,000. Also, included in the loan agreement are certain provisions which, if satisfied would allow for additional borrowings of \$9,000,000.

Under the terms of the agreement, among other things, Alexion Manufacturing is restricted with respect to additional borrowings, leasing arrangements and mergers. Alexion Manufacturing also may not modify, amend, or waive material obligations with respect to, or terminate, material agreements or proprietary rights, or engage in any business other than ownership and operation of facility. Alexion Pharmaceuticals, Inc. may not, among other things, liquidate, wind-up or dissolve as long as the guarantee remains in effect.

As a condition of the loan, Alexion Manufacturing, LLC is required to maintain restricted cash accounts. These accounts must be used specifically for the purchase and construction of the manufacturing facility. The lender has a first priority security interest and the right to approve all disbursements from the accounts holding restricted cash. Under the agreement, we are required to, at all times, maintain a balance in the restricted cash accounts sufficient to complete the project.

**Property, Plant, and Equipment**

In July 2006, our wholly owned affiliate, Alexion Manufacturing, LLC purchased the former Dow manufacturing facility in Smithfield, Rhode Island for \$13,000,000. The biopharmaceutical manufacturing facility will be used primarily to produce Soliris™ (eculizumab). In accordance with the Purchase and Sale Agreement dated April 13, 2006, we deposited into an escrow account \$500,000 upon execution of the Agreement on April 13, 2006 and an additional \$500,000 upon the completion of the due diligence period, in July 2006. The deposits were held in escrow until the closing date at which time the escrowed amounts and the remaining balance, net of property taxes owed for the first part of the year, of \$11,926,289 was paid to Dow.

## ALEXION PHARMACEUTICALS, INC.

### Critical Accounting Policies

The preparation of our financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates its estimates and judgments. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Our critical accounting policies are summarized in our Transition Report on Form 10-K/T for the five-month transition period ended December 31, 2005, in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" under the caption "Critical Accounting Policies and the Use of Estimates." We have reviewed those policies and determined that they remain our critical accounting policies for the three and nine month periods ended September 30, 2006, respectively.

### Recently Issued Accounting Standards

In July 2006, the FASB approved the issuance of FASB Interpretation FIN No. 48, "Accounting for Uncertainty in Income Taxes (as amended)." This Interpretation clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, Accounting for Income Taxes. Additionally, this Interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. This Interpretation also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Interpretation is effective for reporting periods beginning after December 15, 2006 with earlier application permitted. For Alexion, the effective date will be the first quarter of 2007. The Company is evaluating the impact of adopting this accounting principal on its financial position and results of operations.

### Adoption of New Accounting Pronouncements

In May 2005, the FASB issued FASB 154, "Accounting Changes and Error Corrections." The Statement replaces APB Opinion No. 20, Accounting Changes, and FASB Statement No. 3, Reporting Accounting Changes in Interim Financial Statements, and changes the requirements for the accounting for and reporting of a change in accounting principle. The Statement applies to all voluntary changes in accounting principle. It also applies to changes required by an accounting pronouncement in the unusual instance that the pronouncement does not include specific transition provisions. When a pronouncement includes specific transition provisions, those provisions should be followed. This statement is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. For us, the effective date was the first quarter of 2006. The adoption of this accounting principle did not have a significant impact on our financial position or results of operations.

In March 2004, the EITF reached a consensus on Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments." EITF 03-1 provides guidance on other-than-temporary impairment models for marketable debt and equity securities accounted for under SFAS 115 and non-marketable equity securities accounted for under the cost method. The EITF developed a basic three-step model to evaluate whether an investment is other-than-temporarily impaired. In November 2005, the FASB approved the issuance of FASB Staff Position "FSP" FAS No. 115-1 and FAS 124-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments." The FSP addresses when an investment is considered impaired, whether the impairment is other-than-temporary and the measurement of an impairment loss. The FSP also includes accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary. The FSP is effective for reporting periods beginning after December 15, 2005 with earlier application permitted. For us, the effective date was the first quarter of 2006. The adoption of this accounting principle did not have a significant impact on our financial position or results of operations.



**ALEXION PHARMACEUTICALS, INC.**

**Item 3. Quantitative and Qualitative Disclosure about Market Risks**

As of September 30, 2006, we held approximately 52% of our cash and investments in financial instruments with original maturity dates of three months or less which includes restricted cash, 22% in financial instruments with original maturity dates of greater than three months and less than one year, and the remaining 26% in financial instruments with original maturity dates of equal to or greater than one year and less than two years. These financial instruments are subject to interest rate risk and will decline in value if interest rates increase. We estimate that a change of 100 basis points in interest rates would result in an increase or decrease of approximately \$423,000 in the fair value of our cash and investments, which had a weighted average duration of approximately 3 months at September 30, 2006.

Our outstanding long-term liabilities as of September 30, 2006 included our \$150,000,000, 1.375% Convertible Senior Notes due February 1, 2012. As the notes bear interest at a fixed rate, our results of operations would not be affected by interest rate changes. As of September 30, 2006, the market value of our \$150,000,000 1.375% convertible senior notes due February 1, 2012, based on quoted market prices, was estimated at \$188,812,500.

In July 2006, Alexion Manufacturing borrowed \$26,000,000 to purchase and finance construction of the Smithfield, Rhode Island manufacturing facility. The loan bears interest at a fixed rate. Accordingly, any changes in the interest rate will not affect our future payments on the loan.

**Item 4. Controls and Procedures.**

We have carried out an evaluation, as of the end of the period covered by this report, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. In designing and evaluating the disclosure controls and procedures, our management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving control objectives and our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based upon their evaluation and subject to the foregoing, the Chief Executive Officer and the Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level in ensuring that material information relating to us and required to be included in the reports we file under the Securities Exchange Act of 1934, as amended, (the "Exchange Act") is accumulated and communicated to the Chief Executive Officer and Chief Financial Officer or other persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

There have been no changes in our internal controls over financial reporting in connection with the evaluation required under paragraph (d) of Rule 13a-15 under the Exchange Act that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

**ALEXION PHARMACEUTICALS, INC.**

**PART II. OTHER INFORMATION**

**Item 1A. Risk Factors**

*You should carefully consider the following risk factors before you decide to invest in our Company and our business because these risk factors may have a significant impact on our business, operating results, financial condition, and cash flows. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of the following risks actually occur, our business, financial condition and results of operations could be materially and adversely affected.*

**Risks Related to Our Financial Position and Need for Additional Capital**

***If we continue to incur operating losses, we may be unable to continue our operations.***

We have incurred losses since we started our company in January 1992. As of September 30, 2006, we had an accumulated deficit of approximately \$598,331,000. If we continue to incur operating losses and fail to become a profitable company, we may be unable to continue our operations. Since we began our business, we have focused on research and development of product candidates. Although we have submitted for filing a BLA with the FDA in the United States and an MAA in Europe for Soliris™ (eculizumab), we have no products that are available for sale and do not know when we will have products available for sale, if ever. We expect to continue to operate at a net loss for at least the next several years as we continue our research and development efforts, continue to conduct clinical trials and develop manufacturing, sales, marketing and distribution capabilities. Our future profitability depends on our receiving regulatory approval of our product candidates and our ability to successfully manufacture and market approved drugs. The extent and the timing of our future losses and our profitability, if we are ever profitable, are highly uncertain.

***If we fail to obtain the capital necessary to fund our operations, we will be unable to continue or complete our product development.***

We believe that our existing cash, cash equivalents and marketable securities will provide sufficient capital to fund our operations and product development for at least twelve months. We may need to raise additional capital before or after that time to complete the development and continue the commercialization of our product candidates. We are currently preparing for the commercialization of Soliris™ (eculizumab) and conducting or evaluating several clinical trials. Funding needs may shift between projects and potentially accelerate and increase as we get closer to commercialization of Soliris™ (eculizumab) or if we initiate new clinical trials for our product candidates.

Additional financing could take the form of public or private debt or equity offerings, equity line facilities, bank loans, collaborative research and development arrangements with corporate partners and/or the sale or licensing of some of our property. The amount of capital we may need depends on many factors, including:

- the time and cost necessary to obtain regulatory approvals;
- the time and cost necessary to develop sales, marketing and distribution capabilities;
- the cost necessary to sell, market and distribute our products, if any are approved;
- the time and cost necessary to purchase or to further develop manufacturing processes, arrange for contract manufacturing or build manufacturing facilities and obtain the necessary regulatory approvals for those facilities;
- changes in applicable governmental regulatory policies or requests by regulatory agencies for additional information or data;
- the existence, terms, maintenance, termination and status of collaborative arrangements and strategic partnerships, such as our collaboration with Procter & Gamble, or P&G;

**ALEXION PHARMACEUTICALS, INC.**

- the progress, timing and scope of our research and development programs;
- the progress, timing and scope of our preclinical studies and clinical trials;
- any new collaborative, licensing or other commercial relationships that we may establish.

We may not get funding when we need it or funding may only be available on unfavorable terms. If we cannot raise adequate funds to satisfy our capital requirements, we may have to delay, scale-back or eliminate our research and development activities or future operations. We might have to license our technology to others. This could result in sharing revenues that we might otherwise retain for ourselves. Any of these actions would harm our business.

***We are significantly leveraged.***

On September 30, 2006, we had outstanding \$150,000,000 principal amount of 1.375% convertible senior notes. On July 11, 2006, our subsidiary Alexion Manufacturing borrowed \$26,000,000 to finance the purchase and construction of our Smithfield, Rhode Island manufacturing facility which may not be prepaid in whole or in part prior to July 11, 2009. The loan is guaranteed by us and bears a fixed annual rate of 9.17%. Our 1.375% convertible senior notes and the mortgage loan remain outstanding, and the degree to which we are leveraged could, among other things:

- make it difficult for us to make payments on our notes and our loan;
- make it difficult for us to obtain financing for working capital, acquisitions or other purposes on favorable terms, if at all;
- make us more vulnerable to industry downturns and competitive pressures; and
- limit our flexibility in planning for, or reacting to changes in, our business.

Our ability to meet our debt service obligations will depend upon our future performance, which will be subject to financial, business and other factors affecting our operations, many of which are beyond our control.

**Risks Related to Our Business**

***We depend heavily on the success of our lead product candidate, Soliris™ (eculizumab), which is still under development. If we do not obtain FDA approval of Soliris™ (eculizumab) or if FDA delays approval or narrows the indications for which we may market Soliris™ (eculizumab), our business will be materially harmed.***

We recently submitted for filing a BLA to the FDA in the United States and an MAA in Europe for Soliris™ (eculizumab) for the treatment of PNH. In the near term our ability to generate revenues will depend on approval and successful commercialization of Soliris™ (eculizumab). The commercial success of Soliris™ (eculizumab) will depend on several factors, including the following:

- acceptance of our applications for filing;
- successful completion of our ongoing Phase III clinical trial for Soliris™ (eculizumab);
- receipt of marketing approvals from the FDA and similar foreign regulatory authorities;
- establishing commercial manufacturing capabilities ourselves or through third-party manufacturers;
- successfully launching commercial sales of the product;
- the number of patients with PNH that may be treated with the product; and

**ALEXION PHARMACEUTICALS, INC.**

- acceptance of the product in the medical community and by third-party payers.

The FDA and other regulatory agencies may refuse to accept our regulatory applications for review and may require additional information or data prior to acceptance. Even if our applications are accepted for review, we may not receive required regulatory approvals on a timely basis or at all. The approval process can involve additional lengthy clinical testing and other costly and time-consuming procedures.

Several biotechnology companies have failed to obtain regulatory approvals because regulatory agencies were not satisfied with the structure or conduct of clinical trials or the formatting or content of regulatory submissions. Similar problems could delay or prevent us from obtaining approvals. Furthermore, regulatory authorities, including the FDA, may not agree with our interpretations of our clinical trial data, which could delay, limit or prevent regulatory approvals. In addition, before a product candidate is approved for marketing, we, or any third-party manufacturing our product, are subject to inspection of the manufacturing facilities and the FDA will not approve the product for marketing if we or our third-party manufacturers are not in compliance with current good manufacturing practices.

Even if the FDA and similar foreign regulatory authorities do grant marketing approval for Soliris™ (eculizumab), they may narrow the indications for which we are permitted to market the product, may pose other restrictions on the use or marketing of the product, or may require us to conduct additional post-marketing trials. A narrowed indication or other restrictions may limit the market potential for the product and obligation to conduct additional clinical trials would likely result in increased expenditures and lower revenues. If we are not successful in commercializing Soliris™ (eculizumab), or are significantly delayed or limited in doing so, our business will be materially harmed and we may need to curtail or cease operations.

***Inability to contract with third-party manufacturers on commercially reasonable terms, or failure or delay by us or our third-party manufacturers, in manufacturing our drug products in the volumes and quality required, would have a material adverse effect on our business.***

We have no experience or capacity for manufacturing drug products in volumes that would be necessary to support commercial sales and we can provide no assurance that we will be able to do so successfully. We depend on a few outside suppliers for manufacturing. Our small, clinical-scale manufacturing plant cannot manufacture enough of our product candidates for later stage clinical development or commercial supply. We do not have the capacity to produce more than one product candidate at a time in that plant. We acquired a commercial-scale manufacturing plant in Smithfield, Rhode Island in July, 2006. However, that plant is not currently equipped or approved by the FDA or other regulatory agencies to manufacture Soliris™ (eculizumab) or our other drug candidates. We expect that it will be at least two years before the plant is capable of making product for commercial sale. We have no experience in developing commercial-scale manufacturing of the sort anticipated in Smithfield, Rhode Island. We can provide no assurance that we will be able to develop the Smithfield, Rhode Island site into a plant capable of manufacturing our drug products under conditions required by the FDA or foreign regulatory agencies on a timely basis, if at all. Our plant in Smithfield, Rhode Island will be subject to FDA inspection and approval before we can begin manufacturing Soliris™ (eculizumab) there and will continue to be subject to ongoing FDA inspections thereafter. Our Smithfield, Rhode Island plant will also be subject to European regulatory inspection and approval before we can begin manufacturing Soliris™ (eculizumab) there for European sales and will continue to be subject to ongoing European regulatory inspection thereafter.

We have executed a commercial-scale product supply agreement with Lonza for the long-term manufacture of eculizumab. The failure of Lonza to manufacture appropriate supplies of eculizumab on a timely basis, or at all, may prevent or impede the commercialization of Soliris™ (eculizumab). If eculizumab is approved for sale, we expect that Lonza or we would be required to manufacture substantially more material than we have required for clinical and preclinical trials. We and our outside manufacturers may experience higher manufacturing failure rates than in the past if and when we attempt to substantially increase production volume. If we experience interruptions in the manufacture of our products, our drug development and commercialization efforts will be delayed. If any of our outside manufacturers stops manufacturing our products or reduces the amount manufactured, or is otherwise unable to manufacture our required amounts at our required quality, we will need to find other alternatives, which is likely to be expensive and time consuming, and even if we are able to find alternatives they may ultimately be insufficient

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for our needs. As a result, our ability to conduct testing and drug trials and our plans for commercialization would be materially adversely affected. Submission of products and new development programs for regulatory approval, as well as our plans for commercialization, would be delayed. Our competitive position and our prospects for achieving profitability would be materially and adversely affected.

Manufacture of drug products, including the need to develop and utilize manufacturing processes that consistently produce our drug products to their required quality specifications, is highly regulated by the FDA and other domestic and foreign authorities. Regulatory authorities must approve the facilities in which our products are manufactured prior to granting market approval for any product candidate. Manufacturing facilities are also subject to ongoing inspections, and minor changes in manufacturing processes may require additional regulatory approvals. We cannot assure you that we or our third-party collaborators will successfully comply with all of those requirements and regulations, which failure would have a materially adverse effect on our business.

Manufacture of our drug products is highly technical and only a few third-parties have the ability and capacity to manufacture our drug products for our development and commercialization needs. We can not assure you that these potential third-party collaborators will agree to manufacture our products on our behalf on commercially reasonable terms, if at all. If we do achieve agreement from one or more third parties to manufacture our drug products, we cannot assure you that they will be able or willing to honor the terms of the agreements, including any obligations to manufacture the drug products in accordance with regulatory requirements and to our quality specifications and volume requirements. Due to the highly technical requirements of manufacturing our drug products, our third-party collaborators and we may be unable to manufacture our drug products despite their and our efforts.

Due to the nature of the current market for third-party commercial manufacturing, many arrangements require substantial penalty payments by the customer for failure to use the manufacturing capacity for which it contracted. We could owe substantial penalty payments to Lonza if we were not to use the manufacturing capacity for which we contracted, and we could be required to share with P&G, on up to a 50-50 basis, substantial penalty payments owed by P&G for its failure to utilize the manufacturing capacity it contracted for with Chiron Corporation for the supply of pexelizumab. Penalty payments under these agreements typically decrease over the life of the agreement, and may be substantial initially and de minimis or non-existent in the final period. The payment of a substantial penalty would harm our financial condition.

***If we are unable to establish sales, marketing and distribution capabilities, or to enter into agreements with third parties to do so, we will be unable to successfully market and sell future drug products.***

We have no experience with marketing, sales and distribution of drug products and have only recently established pre-commercial capability in those areas. If we are unable to establish capabilities to sell, market and distribute our products, either by developing our own capabilities or entering into agreements with others, we will not be able to successfully sell Soliris™ (eculizumab) or our future drug products. In that event, we will not be able to generate significant revenues. We cannot guarantee that we will be able to hire the qualified sales and marketing personnel we need. We may not be able to enter into any marketing or distribution agreements with third-party providers on acceptable terms, if at all.

***If we are unable to obtain reimbursement for our future products from government health administration authorities, private health insurers and other organizations, our products may be too costly for regular use and our ability to generate revenues would be harmed.***

Soliris™ (eculizumab), if commercialized, is likely to be significantly more expensive than traditional drug treatments. Our future revenues and profitability will be adversely affected if we cannot depend on governmental, private third-party payers and other third-party payers, including Medicare and Medicaid, to defray the cost of Soliris™ (eculizumab) to the consumer. If these entities refuse to provide coverage and reimbursement with respect to Soliris™ (eculizumab) or determine to provide an insufficient level of coverage and reimbursement, Soliris™ (eculizumab) may be too costly for general use, and physicians may not prescribe it. Many third-party payers cover only selected drugs, making drugs that are not preferred by such payer more expensive for patients, and require prior authorization or failure on another type of treatment before covering a particular drug. Third-party payers may be especially likely to impose these obstacles to coverage for higher-priced drugs, which we anticipate Soliris™ (eculizumab) to be.

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In addition to potential restrictions on coverage, the amount of reimbursement for our products may also reduce our profitability and worsen our financial condition. In the United States and elsewhere, there have been, and we expect there will continue to be, actions and proposals to control and reduce healthcare costs. Government and other third-party payers are challenging the prices charged for healthcare products and increasingly limiting and attempting to limit both coverage and level of reimbursement for prescription drugs.

Since Soliris™ (eculizumab) will likely be too expensive for most patients to afford without health insurance coverage, if adequate coverage and reimbursement by third-party payers is not available, our ability to successfully commercialize Soliris™ (eculizumab) may be adversely impacted. Any limitation on the use of Soliris™ (eculizumab) or any decrease in the price of Soliris™ (eculizumab) will have a material adverse effect on our ability to achieve profitability.

In certain foreign countries, pricing, coverage and level of reimbursement of prescription drugs are subject to governmental control and we may be unable to negotiate coverage, pricing, and reimbursement on terms that are favorable to us. In some foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing vary widely from country to country. For example, the 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. Our results of operation may suffer if we are unable to market our products in foreign countries or if coverage and reimbursement for our products in foreign countries is limited.

***If the testing or use of our products harms people, or is perceived to harm patients even when such harm is unrelated to our products, our clinical trials may be adversely affected, our regulatory approval process could be delayed, negatively impacted or abandoned, any regulatory approvals could be revoked or otherwise negatively impacted, and we could be subject to costly and damaging product liability claims.***

The testing, manufacturing, marketing and sale of drugs for use in humans exposes us to product liability risks. Side effects and other problems from using our products could cause serious adverse events and give rise to product liability claims against us. We might have to withdraw or recall our products from the marketplace. Some of these risks are unknown at this time.

We have tested Soliris™ (eculizumab) in only a small number of patients. If our applications for marketing Soliris™ (eculizumab) are approved and more patients begin to use our product, new risks and side effects associated with Soliris™ (eculizumab) may be discovered, and risks previously viewed as inconsequential could be determined to be significant. As a result, regulatory authorities may delay or revoke their approvals; we may be required to conduct additional clinical trials, make changes in labeling of our product, reformulate our product or make changes and obtain new approvals for our and our suppliers' manufacturing facilities. We may also experience a significant drop in the potential sales of our product if and when regulatory approvals for Soliris™ (eculizumab) are obtained, experience harm to our reputation in the marketplace or become subject to lawsuits, including class actions. Any of these results could decrease or prevent any sales of Soliris™ (eculizumab) or substantially increase the costs and expenses of commercializing and marketing Soliris™ (eculizumab).

We may be sued by people who participate in our trials or who use our products. Many patients who participate in our trials or use our products are already very ill. Any informed consents or waivers obtained from people who enroll in our trials or use our products may not protect us from liability or litigation. Our product liability insurance may not cover all potential types of liabilities or may not cover covered types of liabilities completely. Moreover, we may not be able to maintain our insurance on acceptable terms. In addition, negative publicity relating to the use of our product or to a product liability claim may make it more difficult, or impossible, for us to recruit patients for our clinical trials or to market and sell our products. As a result of these factors, a product liability claim, even if successfully defended, could have a material adverse effect on our business, financial condition or results of operations.

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Our clinical trials are often conducted with patients who have severe and advanced stages of disease when they enter our trials. Patients involved in clinical trials such as ours often have known as well as unknown significant pre-existing health risks. During the course of a trial, patients may suffer adverse events, including death, for reasons that may or may not be related to our products. Such events could subject us to costly litigation, require us to pay substantial amounts of money to injured patients or delay, negatively impact or end our opportunity to receive regulatory approval to market our products. Even in a circumstance in which we do not believe that an adverse event is related to our product, the investigation into the circumstance may be time consuming or may be inconclusive. These investigations may delay our regulatory approval process, impact and limit the type of regulatory approvals our products receive, or end our opportunity to receive regulatory approval. PNH patients in our trials sometimes have additional, pre-existing, potentially life-threatening disease, including for example bone marrow failure.

Some patients who have participated in our PNH trials have died or suffered potentially life-threatening diseases either during or after ending study-specified treatments. In particular, use of C5 Inhibitors, such as eculizumab, is associated with an increased risk for infection with Neisseria bacteria. Serious cases of Neisseria infection can result in severe illness, including but not limited to brain damage, loss of limbs or parts of limbs, kidney failure, or death. PNH patients in our TRIUMPH and SHEPHERD trials all received vaccination against the Neisseria bacteria prior to first administration of eculizumab; however, vaccination does not eliminate all risk of becoming infected with Neisseria bacteria. Some patients in our trials of eculizumab for the treatment of PNH and other diseases have become infected with Neisseria bacteria, including PNH patients in the open-label extension trial E05-001 who had been vaccinated against Neisseria bacteria. Each such incident has been reported to appropriate regulatory agencies in accordance with relevant regulations.

We are also aware of a potential risk for PNH patients who delay a dose of Soliris™ (eculizumab) or discontinue their treatment of Soliris™ (eculizumab). Treatment with Soliris™ (eculizumab) blocks complement and allows complement-sensitive PNH red blood cells to increase in number. If treatment with Soliris™ (eculizumab) is thereafter delayed or discontinued, a greater number of red blood cells therefore would become susceptible to destruction when the patient's complement system is no longer blocked. The rapid destruction of a larger number of a patient's red blood cells may lead to numerous complications, including death. Several PNH patients in our studies of Soliris™ (eculizumab) have received delayed doses or discontinued their treatment. In none of those circumstances were complications from rapid destruction of a larger number of PNH red blood cells observed to be significant; however, we have not studied the delay or termination of treatment in enough patients to determine that complications in the future are unlikely to occur. Determination of significant complications associated with the delay or discontinuation of Soliris™ (eculizumab) could have a material adverse effect on our ability to sell eculizumab for PNH.

***If we are unable to engage and retain third-party collaborators, our research and development efforts may be delayed.***

We depend upon third-party collaborators to assist us in the development of our product candidates. If any of our existing collaborators breaches or terminates its agreement with us or does not perform its development work under an agreement in a timely manner, or at all, we would experience significant delays in the development or commercialization of our product candidates. We would also experience significant delays if we could not engage additional collaborators when required. In either event, we would be required to devote additional funds or other resources to these activities or to terminate them. Either of these events would divert funds or other resources from other parts of our business.

We cannot assure you that:

- our current collaboration arrangements will continue in their current form;
- we will be able to negotiate acceptable collaborative agreements to develop or commercialize our product candidates;
- any arrangements with third parties will be successful; or
- current or potential collaborators will not pursue treatments for other diseases or seek other ways of developing treatments for our disease targets.

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***If our competitors get to the marketplace before we do with better or cheaper drugs, our drugs may not be profitable to sell or to continue to develop.***

Each of Abbott Laboratories Inc., Adprotech Ltd., Avant Immunotherapeutics, Inc., Baxter International, Inc., Millennium Pharmaceuticals, Inc., Neurogen Corporation, Tanox, Inc., XOMA, Ltd., and Archemix Corporation have publicly announced their intentions to develop drugs which target the inflammatory effects of complement in the immune system. We are also aware that GlaxoSmithKline, plc, Merck & Co., Inc., and Pfizer, Inc. have had programs develop complement inhibitor therapies. Each of AstraZeneca, MorphoSys AG and Dyax Corporation has publicly announced intentions to develop therapeutic human antibodies from libraries of human antibody genes. Additionally, each of Amgen, Inc. and Medarex, Inc. has publicly announced intentions to develop therapeutic human antibodies from mice that have been bred to include some human antibody genes. These and other pharmaceutical companies, many of which have significantly greater resources than we, may develop, manufacture, and market better or cheaper drugs than our product candidates. They may establish themselves in the marketplace even before we are able to finish our clinical trials. Other pharmaceutical companies also compete with us to attract academic research institutions as drug development partners, including for licensing these institutions' proprietary technology. If our competitors successfully enter into such arrangements with academic institutions, we will be precluded from pursuing those unique opportunities and may not be able to find equivalent opportunities elsewhere.

***If we fail to recruit and retain personnel, our research and product development programs may be delayed.***

We are highly dependent upon the efforts of our senior management and scientific personnel, particularly Dr. Leonard Bell, M.D., our Chief Executive Officer and a member of our Board of Directors, David W. Keiser, our President, Chief Operating Officer and a member of our Board of Directors, and Stephen P. Squinto, Ph.D., our Executive Vice President and Head of Research. There is intense competition in the biotechnology industry for qualified scientific and technical personnel. Since our business is very science-oriented and specialized, we need to continue to attract and retain such people. We may not be able to continue to attract and retain the qualified personnel necessary for developing our business. We have employment agreements with Dr. Bell, Mr. Keiser, and Dr. Squinto. None of our key personnel is nearing retirement age or to our knowledge, planning to retire. To our knowledge, there is no tension between any of our key personnel and the Board of Directors. If we lose the services of our management and scientific personnel and fail to recruit other scientific and technical personnel, our research and product development programs will be materially and adversely affected.

In particular, we highly value the services of Dr. Bell, our Chief Executive Officer. The loss of his services could materially and adversely affect our ability to achieve our objectives.

***We are subject to environmental laws and potential exposure to environmental liabilities.***

We are subject to various federal, state and local environmental laws and regulations that govern our operations, including the handling and disposal of non-hazardous and hazardous wastes, including medical and biological wastes, and emissions and discharges into the environment, including air, soils and water sources. Failure to comply with such laws and regulations could result in costs for corrective action, penalties or the imposition of other liabilities. We also are subject to laws and regulations that impose liability and clean-up responsibility for releases of hazardous substances into the environment. Under certain of these laws and regulations, a current or previous owner or operator of property may be liable for the costs of remediating its property or locations to which wastes were sent from its facilities, without regard to whether the owner or operator knew of, or necessarily caused, the contamination. Such obligations and liabilities, which to date have not been material, could have a material impact on our business and financial condition.

***We may expand our business through acquisitions that could disrupt our business and harm our financial condition.***

Our business strategy includes expanding our products and capabilities, and we may seek acquisitions to do so. Acquisitions involve numerous risks, including:

- substantial cash expenditures;



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- potentially dilutive issuance of equity securities;
- incurrence of debt and contingent liabilities, some of which may be difficult or impossible to identify at the time of acquisition;
- difficulties in assimilating the operations of the acquired companies;
- diverting our management's attention away from other business concerns;
- risks of entering markets in which we have limited or no direct experience; and
- the potential loss of our key employees or key employees of the acquired companies.

We cannot assure you that any acquisition will result in short-term or long-term benefits to us. We may incorrectly judge the value or worth of an acquired company or business. In addition, our future success would depend in part on our ability to manage the rapid growth associated with some of these acquisitions. We cannot assure you that we will be able to make the combination of our business with that of acquired businesses or companies work or be successful. Furthermore, the development or expansion of our business or any acquired business or companies may require a substantial capital investment by us. We may not have these necessary funds or they might not be available to us on acceptable terms or at all. We may also seek to raise funds by selling shares of our capital stock, which could dilute current stockholders' ownership interest in our company, or securities convertible into our capital stock, which could dilute current stockholders' ownership interest in our company upon conversion.

***Our ability to use net operating loss carry forwards to reduce future tax payments may be limited if there is a change in ownership of Alexion.***

As of December 31, 2005, we had approximately \$493 million of net operating loss carry forwards, or NOLs, available to reduce taxable income in future years. We believe that some of these NOLs are currently subject to an annual limitation under section 382 of the Internal Revenue Code of 1986, as amended.

Our ability to utilize our NOLs may be further limited if we undergo an ownership change, as defined in section 382, as a result of subsequent changes in the ownership of our outstanding stock. We would undergo an ownership change if, among other things, the stockholders, or group of stockholders, who own or have owned, directly or indirectly, 5% or more of the value of our stock, or are otherwise treated as 5% stockholders under section 382 and the regulations promulgated there under, increase their aggregate percentage ownership of our stock by more than 50 percentage points over the lowest percentage of our stock owned by these stockholders at any time during the testing period, which is generally the three-year period preceding the potential ownership change. In the event of an ownership change, section 382 imposes an annual limitation on the amount of post-ownership change taxable income a corporation may offset with pre-ownership change NOLs. The limitation imposed by section 382 for any post-change year would be determined by multiplying the value of our stock immediately before the ownership change (subject to certain adjustments) by the applicable long-term tax-exempt rate. Any unused limitation may be carried over to later years, and the limitation may under certain circumstances be increased by built-in gains which may be present with respect to assets held by us at the time of the ownership change that are recognized in the five-year period after the ownership change. Our use of NOLs arising after the date of an ownership change would not be affected.

**Risks Related to Our Industry**

***We are subject to extensive government regulation, and, if we do not obtain and maintain regulatory approvals, we will not be able to sell our drug products.***

We and our partners cannot sell or market our products without regulatory approval. If we or our partners do not obtain and maintain regulatory approval for our products, the value of our company and our results of operations will

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be harmed. In the United States, we or our partners must obtain and maintain approval from the FDA for each indication for each drug that we intend to sell and for each facility where such drug is manufactured. Obtaining FDA approval is typically a lengthy and expensive process, and approval is highly uncertain. Foreign governments also regulate drugs distributed outside the United States and facilities outside the United States where such drugs are manufactured, and obtaining their approvals can also be lengthy, expensive and highly uncertain. The approval process varies from country to country and the requirements governing the conduct of clinical trials, product manufacturing, product licensing, pricing and reimbursement vary greatly from country to country. In certain foreign jurisdictions we would be required to obtain pricing approvals prior to marketing our products. None of our product candidates has received regulatory approval to be marketed and sold in the United States or any other country. We may not receive regulatory approval for any of our product candidates for at least the next several years, if ever.

We and our partners, contract manufacturers and suppliers are subject to rigorous and extensive regulation by the FDA, other federal and state agencies, and governmental authorities in other countries. These regulations apply both before and after approval of our product candidates, if our product candidates are ever approved, and cover, among other things, testing, manufacturing, quality control, labeling, advertising, promotion, and export of biologics. As a condition of approval for marketing our product, FDA, or governmental authorities in other countries may require us to conduct additional clinical trials. Our manufacturing and other facilities and those of any third parties manufacturing our products will be subject to inspection prior to grant of marketing approval and subject to continued review and periodic inspections by the regulatory authorities. Any third party we would use to manufacture our products for sale must also be licensed by applicable regulatory authorities. Failure to comply with the laws, including statutes and regulations, administered by the FDA or other agencies could result in:

- administrative and judicial sanctions, including, warning letters;
- fines and other civil penalties;
- delays in approving or refusal to approve a product candidate;
- withdrawal of a previously granted approval;
- product recall or seizure;
- interruption of production;
- operating restrictions;
- injunctions; and
- criminal prosecution.

The discovery of previously unknown problems with a product or the facility used to produce the product could result in a regulatory authority imposing restrictions on us, or could cause us to voluntarily adopt such restrictions, including withdrawal of one or more of our products or services from the market.

We may be unable to obtain necessary regulatory approvals in the United States and foreign countries on a timely basis, if at all, for any of our product candidates or maintain such approvals if obtained. Any delays in obtaining necessary regulatory approvals or failure to maintain them could prevent us from marketing our products.

The FDA has granted orphan drug designation for eculizumab in the treatment of PNH and membranous nephritis. Orphan drug designation does not convey any advantage in, or shorten the duration of, the FDA review and approval process. If a product which has an orphan drug designation is the first drug of its type to receive FDA approval for the indication for which it has such designation, the product is entitled to orphan exclusivity, i.e., the FDA may not approve any other applications to market the same drug for the same indication for a period of seven years, except in limited circumstances.

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***If our drug trials are delayed or achieve unfavorable results, we will have to delay or may be unable to obtain regulatory approval for our products.***

We must conduct extensive testing of our product candidates before we can obtain regulatory approval for our products. We need to conduct both preclinical animal testing and clinical human trials. These tests and trials may not achieve favorable results. The FDA typically requires two well controlled clinical trials that demonstrate efficacy in order to obtain FDA approval to market a product candidate. The special protocol assessment for our development of Soliris™ (eculizumab) for PNH provides for only a single efficacy trial and the FDA has indicated that the trials should provide compelling evidence of clinically meaningful benefit in order to warrant consideration for marketing approval. The FDA has noted that a study that is merely statistically positive may not provide the evidence necessary to support filing or approval of a product candidate.

The FDA and other regulatory agencies may require additional information or data prior to and after acceptance of our BLA and MAA for Soliris™ (eculizumab) for PNH. We may have to conduct additional lengthy clinical testing and other costly and time-consuming procedures. Inconclusive or negative final data from our 12 month Phase III SHEPHERD trial would have a significant negative impact on our prospects. Even if we view the data as positive, the FDA may not agree with our interpretations of our clinical trial data for Soliris™ (eculizumab) and may decide that our results are not adequate to support approval for marketing of Soliris™ (eculizumab). In those circumstances, we would not be able to obtain regulatory approval on a timely basis, if ever. Even if approval is granted, the approval may require limitations on the indicated uses for which the drug may be marketed. In addition to the FDA and other regulatory agency regulations in the United States, we are subject to a variety of foreign regulatory requirements governing human clinical trials, marketing and approval for drugs, and commercial sales and distribution of drugs in foreign countries. The foreign regulatory approval process includes all of the risks associated with FDA approval as well as country-specific regulations. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries.

***Completion of clinical trials does not guarantee advancement to the next phase of development.***

Completion of clinical trials does not guarantee that we will initiate additional trials for our product candidates, that if the trials are initiated what the scope and phase of the trial will be or that they will be completed, or that if the trials are completed, that the results will provide a sufficient basis to proceed with further trials or to apply for or receive regulatory approvals or to commercialize products. Results of trials could be inconclusive, requiring additional or repeat trials. If the results achieved in our clinical trials are insufficient to proceed to further trials or to regulatory approval of our product candidates our company could be materially adversely affected. Failure of a trial to achieve its pre-specified primary endpoint generally increases the likelihood that additional studies will be required if we determine to continue development of the product candidate, reduces the likelihood of timely development of and regulatory approval to market the product candidate, and may decrease the chances for successfully achieving the primary endpoint in scientifically similar indications.

***There are many reasons why drug testing could be delayed or terminated.***

For human trials, patients must be recruited and each product candidate must be tested at various doses and formulations for each clinical indication. Also, to ensure safety and effectiveness, the effect of drugs often must be studied over a long period of time, especially for the chronic diseases that we are studying. Unfavorable results or insufficient patient enrollment in our clinical trials could delay or cause us to abandon a product development program. We may decide to abandon development of a product candidate at any time, or we may have to spend considerable resources repeating clinical trials or conducting additional trials, either of which would increase costs and delay any revenue from those product candidates, if any.

Additional factors that can cause delay, impairment or termination of our clinical trials or our product development efforts include:

- slow patient enrollment, including for example due to the rarity of the disease being studied;

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- long treatment time required to demonstrate effectiveness;
- lack of sufficient supplies of the product candidate;
- disruption of operations at the clinical trial sites;
- adverse medical events or side effects in treated patients;
- the failure of patients taking the placebo to continue to participate in our clinical trials;
- insufficient clinical trial data to support effectiveness of the product candidates;
- lack of effectiveness of the product candidate being tested;
- lack of sufficient funds;
- inability to manufacture sufficient quantities of the product candidate for development or commercialization activities in a timely and cost-efficient manner; or
- failure to obtain the necessary regulatory approvals for the product candidate or the approvals for the facilities in which such product candidate is manufactured.

**Risks Related to Intellectual Property**

***If we cannot protect the confidentiality and proprietary nature of our trade secrets, our business and competitive position will be harmed.***

Our business requires using sensitive technology, techniques and proprietary compounds that we protect as trade secrets. However, since we are a small company, we also rely heavily on collaboration with suppliers, outside scientists and other drug companies. Collaboration presents a strong risk of exposing our trade secrets. If our trade secrets were exposed, it would help our competitors and adversely affect our business prospects.

In order to protect our drugs and technology more effectively, we need to obtain and maintain patents covering the drugs and technologies we develop. We may obtain patents through ownership or license. Our drugs are expensive and time-consuming to test and develop. Without patent protection, competitors may copy our methods, or the chemical structure or other aspects of our drugs. Even if we obtain and maintain patents, the patents may not be broad enough to protect our drugs from copycat products.

***If we are found to be infringing on patents owned by others, we may be forced to pay damages to the patent owner and obtain a license to continue the manufacture, sale or development of our drugs and/or pay damages. If we cannot obtain a license, we may be prevented from the manufacture, sale or development of our drugs.***

Parts of our technology, techniques and proprietary compounds and potential drug candidates, including those which are in-licensed, may be found to infringe patents owned by or granted to others. If we cannot resolve these conflicts, we may be liable for damages, be required to obtain costly licenses or be stopped from manufacturing, using or selling our products or conducting other activities. For example, we are aware of broad patents owned by others relating to the manufacture, use and sale of recombinant humanized antibodies, recombinant humanized single chain antibodies, recombinant human antibodies, and recombinant human single chain antibodies. Many of our product candidates, including our lead product candidate, eculizumab, are either genetically engineered antibodies, including recombinant humanized antibodies, recombinant humanized single chain antibodies, recombinant human antibodies, or recombinant human single chain antibodies.

We have received notices from the owners of some of these patents claiming that their patents may be infringed by the development, manufacture or sale of some of our drug candidates, including eculizumab. We are also aware of other patents owned by third parties that might be claimed to be infringed by the development and commercialization of some of our drug candidates, including eculizumab. In respect to some of these patents, we have obtained licenses, or expect to obtain licenses. However, with regard to other patents, we have either determined in our judgment that:

- we believe our products do not infringe the patents;

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- we do not believe the patents are valid; or
- we have identified and are testing various modifications that we believe should not infringe the patents and which should permit commercialization of our product candidates.

Any holder of these patents or other patents covering similar technology could sue us for damages and seek to prevent us from manufacturing, selling or developing our drugs. Legal disputes can be costly and time consuming to defend. If any patent holder successfully challenges our judgment that our products do not infringe their patents or that their patents are invalid, we could be required to pay costly damages or to obtain a license to sell or develop our drugs. A required license may be costly or may not be available on acceptable terms, if at all. A costly license, or inability to obtain a necessary license, could have a material adverse effect on our business.

There can be no assurance that we would prevail in a patent infringement action; will be able to obtain a license to any third-party patent on commercially reasonable terms; successfully develop non-infringing alternatives on a timely basis; or license alternative non-infringing technology, if any exists, on commercially reasonable terms. Any impediment to our ability to manufacture or sell approved forms of our product candidates could have a material adverse effect on our business and prospects.

**Risks Related to Our Common Stock**

***If the trading price of our common stock continues to fluctuate in a wide range, our stockholders will suffer considerable uncertainty with respect to an investment in our common stock.***

The trading price of our common stock has been volatile and may continue to be volatile in the future. Factors such as announcements of fluctuations in our or our competitors' operating results or clinical or scientific results, fluctuations in the trading prices or business prospects of our competitors and collaborators, changes in our prospects, particularly with respect to regulatory approval of Soliris™ (eculizumab), and market conditions for biotechnology stocks in general could have a significant impact on the future trading prices of our common stock and our convertible senior notes. In particular, the trading price of the common stock of many biotechnology companies, including ours, has experienced extreme price and volume fluctuations, which have at times been unrelated to the operating performance of the companies whose stocks were affected. This is due to several factors, including general market conditions, the announcement of the results of our clinical trials or product development and the results of our attempts to obtain FDA approval for our products. In particular, since August 1, 1999, the sales price of our common stock has ranged from a low of \$9.05 per share to a high of \$119.88 per share. While we cannot predict our future performance, if our stock price continues to fluctuate in a wide range, an investment in our common stock may result in considerable uncertainty for an investor.

***Anti-takeover provisions of Delaware law, provisions in our charter and bylaws and our stockholders' rights plan, or poison pill, could make a third-party acquisition of us difficult and may frustrate any attempt to remove or replace our current management.***

Because we are a Delaware corporation, the anti-takeover provisions of Delaware law could make it more difficult for a third party to acquire control of us, even if the change in control would be beneficial to stockholders. We are subject to the provisions of Section 203 of the Delaware General Laws, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

Our corporate charter and by-law provisions and stockholder rights plan may discourage certain types of transactions involving an actual or potential change of control that might be beneficial to Alexion or its stockholders. Our bylaws provide that special meetings of our stockholders may be called only by the Chairman of the Board, the President,

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the Secretary, or a majority of the Board of Directors, or upon the written request of stockholders who together own of record 50% of the outstanding stock of all classes entitled to vote at such meeting. Our bylaws also specify that the authorized number of directors may be changed only by resolution of the board of directors. Our certificate does not include a provision for cumulative voting for directors which may have enabled a minority stockholder holding a sufficient percentage of a class of shares to elect one or more directors. Under our certificate of incorporation, our board of directors has the authority, without further action by stockholders, to designate up to 5,000,000 shares of preferred stock in one or more series. The rights of the holders of common stock will be subject to, and may be adversely affected by, the rights of the holders of any class or series of preferred stock that may be issued in the future.

Pursuant to our stockholder rights plan, each share of common stock has an associated preferred stock purchase right. The rights will not trade separately from the common stock until, and are exercisable only upon, the acquisition or the potential acquisition through tender offer by a person or group of 20% or more of the outstanding common stock. The rights are designed to make it more likely that all of our stockholders receive fair and equal treatment in the event of any proposed takeover of us and to guard against the use of partial tender offers or other coercive tactics to gain control of us.

These provisions could delay or discourage transactions involving an actual or potential change in control of us or our management, including transactions in which stockholders might otherwise receive a premium for their shares over then current prices. These provisions could also limit the ability of stockholders to remove current management or approve transactions that stockholders may deem to be in their best interests and could adversely affect the price of our common stock.

**Item 5. Other Information**

**Purchase of Manufacturing Facility**

As described in Item 2 of Part I, on July 13, 2006, our wholly owned affiliate, Alexion Manufacturing LLC purchased a manufacturing facility in Smithfield, Rhode Island from Dow Chemical Company for \$13,000,000. The biopharmaceutical manufacturing facility will be used primarily to produce Soliris™ (eculizumab). Pursuant to the Purchase and Sale Agreement dated April 13, 2006, or the purchase agreement, we acquired rights to approximately a 55,000 square foot facility, certain equipment located at, or used in connection with, the facility and certain rights under service contracts related to the facility. We deposited into an escrow account \$500,000 upon execution of the purchase agreement on April 13, 2006 and an additional \$500,000 upon the completion of the due diligence period in July 2006. The deposits were held in escrow until the closing date at which time the escrowed amounts and the remaining balance, net of property taxes owed for the first part of the year, of \$11,926,289 was paid to Dow.

**Mortgage Loan Agreement**

As described in Item 2 of Part I, on July 11, 2006, Alexion Manufacturing entered into certain loan contracts, including the Loan and Security Agreement, or the loan agreement, and the Promissory Note, or the promissory note, with iStar Financial, Inc., as a lender, to borrow \$26,000,000 to finance the purchase and construction of our Smithfield, Rhode Island manufacturing facility. On the closing date, Alexion Manufacturing paid iStar a commitment fee of \$390,000.

The mortgage loan is evidenced by the promissory note and all obligations under the loan are guaranteed by Alexion Pharmaceuticals, Inc. pursuant to the Completion, Payment, and Performance Guaranteed entered into on July 11, 2006. To further secure its performance of its obligations under the loan agreement, Alexion Manufacturing entered into the Construction Mortgage Deed, Assignment of Leases and Rents, Security Agreement on July 11, 2006 which, among other things, grants the lender a security interest in the facility and the inventory, accounts and other property of Alexion Manufacturing.

The loan bears interest at a fixed annual rate of 9.17%, and in the event of default, as described below, the rate increases to 14.17%. Interest-only payments are due monthly beginning with the closing of the transaction, and the loan principal plus interest payments are due in equal installments monthly beginning March 2009 and until August 2016, at which time all outstanding balances are due. The loan may not be prepaid in whole or in part prior to July

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2009. After that date the loan can be prepaid in whole, but not in part, and must include a prepayment premium as described in the loan agreement. In the event that approval to market Soliris™ (eculizumab) in the United States or Europe has not been obtained before December 31, 2007, Alexion Manufacturing is obligated to deliver an acceptable letter of credit to the lender for the amount of \$13,000,000.

Under the terms of the agreement, among other things, Alexion Manufacturing is restricted with respect to additional borrowings, leasing arrangements and mergers. Alexion Manufacturing also may not modify, amend, or waive material obligations with respect to, or terminate, material agreements or proprietary rights, or engage in any business other than ownership and operation of the Smithfield, Rhode Island facility. Alexion Pharmaceuticals, Inc. may not, among other things, liquidate, wind-up or dissolve as long as the guarantee remains in effect.

As a condition of the loan, Alexion Manufacturing is required to maintain restricted cash accounts. These accounts are restricted as to use specifically for the purchase and construction of the manufacturing facility. The lender has a first priority security interest and the right to approve all advances from the accounts holding restricted cash. We are required to, at all times, maintain a balance in the restricted cash accounts sufficient to complete the project. On the date of closing of the transaction, the balance of restricted cash was \$35,807,244.

Lender has a right to approve all disbursements from the accounts to pay construction and development costs in connection with the facility and to require that certain conditions be satisfied prior to making disbursements, including sufficiency of funds to pay the remaining costs of the project. Prior to receiving a disbursement, Alexion Manufacturing is required to, among other things, comply with all conditions reasonably imposed by iStar and also confirm that all representations and warranties are still true; certify all expenses to be verified by the lender; represent that all work complies with applicable legal requirements and all necessary licenses and approvals have been obtained.

Lender also has a right from time to time to estimate the costs associated with completion of construction and to determine whether the amounts held in the restricted cash accounts are sufficient. Should it be determined that the funds are insufficient, Alexion Manufacturing would have ten business days to make a deposit of sufficient funds. Failure to do so would be considered an event of default.

The loan agreement specifies a number of other events of default (some of which are subject to applicable cure periods), including the failure to make payments when due; breach of representations and warranties; failure to deliver a \$13,000,000 letter of credit if marketing approval for Soliris™ (eculizumab) is not received in the United States or Europe prior to December 31, 2007; default in performance of or compliance with any term contained in the loan agreement or other loan contracts; voluntary or involuntary bankruptcy; change in control of Alexion Manufacturing; and noncompliance with covenants and defaults under other agreements or instruments of indebtedness by Alexion Manufacturing or Alexion. Upon the occurrence of an event of default, the lender may take one or more actions, including declaring all amounts outstanding to be immediately due and payable, taking possession of the facility, applying all funds contained in the restricted cash accounts to satisfy obligations; discontinuing any construction work; causing construction work to be completed; and ceasing loan disbursements.

Alexion manufacturing is required to indemnify the lender in connection with a variety of claims, including related to or out of (i) any breach by Alexion Manufacturing or Alexion Pharmaceuticals, Inc. of any representation, warranty, covenant or other agreement contained in the loan agreement or other contracts, (ii) actual or threatened spill, leakage or clean-up of hazardous material affecting the facility or any violation of any applicable environmental law, and (iii) use of proceeds of the loan. In addition, in connection with the loan agreement, Alexion Manufacturing entered into an Environmental Indemnity Agreement on July 11, 2006 to specifically indemnify the lender against claims arising from the presence or release of hazardous materials at the facility.

Provided that no event of default exists and approval to market Soliris™ (eculizumab) in the US or Europe is obtained prior to or on December 31, 2007, Alexion Manufacturing may request a loan for an additional \$9,000,000 on the terms described in the loan agreement.

**ALEXION PHARMACEUTICALS, INC.**

**Item 6. EXHIBITS**

(a) Exhibits

10.1 Purchase and Sale Agreement by and between The Dow Chemical Company and Alexion Manufacturing LLC, dated as of April 13, 2006, as amended.

10.2 Loan and Security Agreement between Alexion Manufacturing LLC and iStar Financial Inc., dated as of July 11, 2006.

10.3 Completion, Payment, and Performance Guarantee by Alexion Pharmaceuticals, Inc. in favor of iStar Financial Inc., dated as of July 11, 2006.

10.4 Construction Mortgage Deed, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of July 11, 2006 by Alexion Manufacturing LLC in favor of iStar Financial Inc.

10.5 Environmental Indemnity Agreement by and among Alexion Manufacturing LLC, Alexion Pharmaceuticals, Inc. in favor of iStar Financial Inc., dated as of July 11, 2006.

31.1 Certification by Leonard Bell, Chief Executive Officer of Alexion Pharmaceuticals, Inc., pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, in connection with Alexion Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.

31.2 Certification by Vikas Sinha, Senior Vice President and Chief Financial Officer of Alexion Pharmaceuticals, Inc., pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, in connection with Alexion Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.

32.1 Certification by Leonard Bell, Chief Executive Officer of Alexion Pharmaceuticals, Inc., pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in connection with Alexion Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.

32.2 Certification by Vikas Sinha, Senior Vice President and Chief Financial Officer of Alexion Pharmaceuticals, Inc., pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in connection with Alexion Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.



**SIGNATURES**

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

**ALEXION PHARMACEUTICALS, INC.**

Date: November 8, 2006

By: /s/ Leonard Bell, M.D.

Leonard Bell, M.D.

Chief Executive Officer, Secretary and Treasurer

(principal executive officer)

Date: November 8, 2006

By: /s/ Vikas Sinha

Vikas Sinha

Senior Vice President and Chief Financial Officer

(principal financial and accounting officer)

**PURCHASE AND SALE AGREEMENT**

This Agreement ("Agreement") is made this 13<sup>th</sup> day of April, 2006, by and between The Dow Chemical Company, a Delaware corporation, with offices at 2030 Dow Center, Midland, Michigan 48674 ("Seller"), and Alexion Pharmaceuticals, Inc., a Delaware corporation, with offices at 352 Knotter Drive, Cheshire, Connecticut, 06410 ("Buyer").

**WITNESSETH:**

WHEREAS, Seller has the right to acquire ownership of the Property, as hereinafter defined in Paragraph 1.H, which is located in City of Smithfield, County of Providence, State of Rhode Island, containing 34 acres more or less; and

WHEREAS, Seller desires to sell and Buyer desires to purchase the "Property" upon the terms and subject to the conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, Buyer and Seller hereby agree as follows:

**1. DEFINED TERMS:** Terms and expressions used in this Agreement shall have the meanings set forth below:

- A. Closing: The Closing shall mean that event wherein (i) Buyer transfers by wire transfer to Escrow Agent the balance of the Purchase Price (for wire transfer to an account designated Seller), and fulfills any other obligations required as of the Closing; and (ii) Seller conveys the Property to Buyer by the Deed and fulfills any other obligations required as of Closing.
- B. Deadline for Closing Date: The Deadline for Closing Date shall be thirty (30) days after the end of the Due Diligence Period described in Paragraph 7.
- C. Deed: The Deed shall mean the quitclaim deed attached hereto as Schedule 1.C, executed and acknowledged by Seller, in proper statutory form for recording. The Deed shall be subject to a permanent restriction against residential use and against use of groundwater.
- D. Due Diligence Period: Due Diligence Period shall mean the period of time set forth in Paragraph 7 for Buyer to complete its Due Diligence Study.
- E. Due Diligence Study: Due Diligence Study shall mean Buyer's examination of the Property as set forth in Paragraph 7.
- F. Effective Date: This Agreement shall become effective when both parties have executed this Agreement.
- G. Environmental Documents. All environmental site assessments, including but not limited to Phase I and Phase II assessments of the Property, if any; and all other material

documents, including but not limited to notices of violation, claims, reports, and studies, relating to the environmental condition of the Property; polluting substances on, in or at the Property; the remediation, abatement, or cleanup of polluting substances on, in, or at the Property; or any other environmental considerations which may or have in fact materially affected the Property. Environmental Documents are limited to those in the possession or control of the Seller and of which the Seller has Knowledge. A list of such Environmental Documents is listed in Schedule 1.G. attached hereto.

- H. Escrow Agent: Escrow Agent shall mean Chicago Title Insurance Company, 450 Veterans Memorial Parkway, Metacomet Executive Office Park, Suite 900, East Providence, RI, 02914. The Escrow Agent shall also be the underwriter of the title insurance policy to be issued to Buyer.
- I. Permitted Encumbrances. The Property shall be sold and conveyed by Seller subject to the following items which are sometimes herein referred to as "Permitted Encumbrances": (i) liens to be released and discharged by Seller at or before Closing; (ii) restrictions and easements which do not (x) render title to the Property unmarketable nor uninsurable at standard rates, nor (y) interfere with Buyer's intended use of the Property, as reasonably determined by Buyer; (iii) matters that will be removed or cured by Seller at or before Closing with the Seller's acquisition of title to the Property from the Rhode Island Economic Development Corporation ("EDC") prior to Closing; and (iv) matters disclosed by the Preliminary Title Report or the Survey and which are not objected to by Buyer within the time provided in Section 6. Seller hereby acknowledges that Buyer has objected, without limitation, to the Right of First Refusal Agreement dated February 7, 2000 between EDC and FMR Rhode Island, Inc ("Fidelity") which affects a portion of the Property ("Right of First Refusal"). Notwithstanding anything to the contrary stated herein, Permitted Encumbrances shall not be deemed to include the Right of First Refusal.
- J. Property: Those certain tracts or parcels of land situated in the City of Smithfield, State of Rhode Island, and more fully described in Schedule I.J. attached hereto, a portion of which is known as 100 Technology Way, together with (a) all improvements and fixtures located thereon including, a manufacturing facility ("Building"), (b) all and singular the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto, (c) all right, title and interest of Seller, if any, in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such parcel(s) of land, (d) all apparatus, equipment, machinery and appliances and all personal property located on the Property as evidenced by a DVD containing a video tape of the Property taken by James Rich, a representative of the Buyer, in the presence of Seller's representative, Warren Hill, on March 24, 2006, with each party having an identical copy of the DVD collectively the "Personal Property"; provided, however, the Personal Property does not include those items listed on Schedule I.J.-1 ("Excluded Personal Property") even if the same are shown in the DVD. The Excluded Personal Property shall be removed by Seller from the Property by Closing. All of the foregoing (except for the Excluded Personal Property) is collectively referred to herein as the "Property".
- K. Purchase Price: The Purchase Price shall be \$13,000,000.00 (Thirteen Million Dollars and no/100).

**2. SALE OF PROPERTY:** Subject to the terms and conditions of this Agreement and on the basis of the representations, warranties and covenants herein contained, Seller hereby agrees to sell and convey the Property to Buyer and Buyer hereby agrees to purchase the Property.

**3. PURCHASE PRICE/TERMS OF SALE:** The Purchase Price for the Property shall be paid as follows:

- A. As of the Effective Date, Seller and Buyer shall open an escrow with Escrow Agent and execute and deliver to the Escrow Agent the escrow agreement (“Escrow Agreement”) attached hereto as Schedule 3.A. The Deposit shall be placed in an interest bearing account in a federally insured lending institution and Escrow Agent shall not commingle the Deposit with any funds of Escrow Agent or others. Escrow shall be deemed to be open upon Escrow Agent’s receipt of signed Escrow Agreement from both parties. Buyer shall upon the opening of an escrow with Escrow Agent as stated above, deposit, in immediately available funds, the sum of \$500,000.00 (“Deposit”) with Escrow Agent to be held, together with accrued interest thereon, as a deposit on account of the Purchase Price. The party entitled to receive the Deposit shall also be entitled to receive any interest thereon. The Buyer’s tax identification number shall be used on this account.
- B. Notwithstanding any provision in this Agreement, Seller and Buyer agree that at any time on or before expiration of the Due Diligence Period, Buyer may, by written notice to Seller, terminate this Agreement in accordance with terms of Paragraph 7. In the event Buyer so terminates this Agreement, the Deposit, and any interest thereon, shall be paid to Buyer by Escrow Agent, and the parties shall be fully discharged and released, each to the other, from all liability and obligations hereunder except for those that expressly survive termination. Upon completion of the Due Diligence Period if Buyer has not elected to terminate this Agreement, Buyer shall deposit an additional \$500,000.00 with Escrow Agent for a total Deposit of \$1,000,000.00 and the term “Deposit” shall be deemed to mean the full \$1,000,000.00. Buyer understands that the Deposit is non-refundable after expiration of the Due Diligence Period, and thereafter, if this transaction fails to close for any reason other than (i) the failure of the Seller to fulfill its obligations under this Agreement, including, Seller’s obligations under Sections 4.B. (i), (ii) or/and (iv) (each a “Seller Default”); or (ii) the failure of the Closing Condition in Section 4.B. (iii), ( in each such case the Deposit shall be refunded in full to Buyer by the Escrow Agent), and the Escrow Agent shall deliver the Deposit to Seller.

**4. CLOSING:**

- A. Upon the satisfaction, waiver or completion of all Closing Conditions (as defined below), the Seller shall deliver the Seller’s Deliveries and the Buyer shall deliver the Buyer’s Deliveries to Escrow Agent at least one (1) business day prior to the Deadline for Closing Date. Each party shall provide copies of the closing documents to the other at least two (2) business days prior to Closing. Closing shall be on or before the Deadline for Closing Date and shall occur through Escrow Agent. The parties shall direct Escrow Agent to deliver the closing documents to the appropriate parties, record relevant title documents, and make

disbursements according to the closing statements executed by Seller and Buyer, all as provided in the Escrow Agreement.

- B. Conditions to Parties' Obligation to Close. In addition to all other conditions set forth herein, the obligation of Seller and Buyer to consummate the transactions contemplated hereunder are conditioned upon the following (the "Closing Conditions"):
- (i) the other party's representations and warranties contained herein shall be true and correct in all material respects as of the date of this Agreement and the Closing;
  - (ii) as of the Closing, the other party shall have tendered all deliveries required to be made by it at Closing;
  - (iii) there shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against the other party that would adversely affect the other party's ability to perform its obligations under this Agreement, and
  - (iv) the Seller shall have acquired fee simple title to the Property and shall have delivered to Escrow Agent, or caused to be delivered to the Escrow Agent, such documentation as Escrow Agent may reasonably require to remove from the Title Policy each of the Rhode Island Economic Development Corporation ("EDC") loan documents affecting the Property, owner's title affidavit and any other documents customarily required to be provided by a Seller of commercial real estate, all as necessary for Escrow Agent to issue an owner's title policy at Closing at standard rates, insuring title to the Property and Purchaser's appurtenant right to the Private Access Road Easement and in the "Fidelity Roadways", as defined in the Private Access Road Easement Agreement referenced in Section 8.B. hereof and the Cross-Easement Agreement and Amendment to Cross-Easement Agreement referenced in Section 8.D. hereof, subject only to the Permitted Encumbrances.
- C. Seller's Deliveries In Escrow. At least one (1) day prior to the Deadline for Closing Date, Seller shall deliver in escrow to Escrow Agent the following ("Seller's Deliveries"):
- (i) a duly executed and acknowledged Deed;
  - (ii) a duly executed and acknowledged Bill of Sale in the form attached hereto as Schedule 4.C.(ii);
  - (iii) a duly executed and acknowledged Assignment and Assumption of Service Contracts (which Buyer has elected to assume pursuant to Section 7 hereof), Warranties, Permits and Guaranties in the form attached hereto as Schedule 4.C.(iii);
  - (iv) such conveyancing or transfer tax forms or returns, if any, as are required to be

delivered or signed by Seller by applicable state and local law in connection with the conveyance of the Property, together with a debit or credit on the closing statement for the payment of the assessments shown on said forms or returns;

- (v) a Foreign Investment in Real Property Tax Act affidavit executed by Seller on which the Buyer is entitled to rely, that Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Internal Revenue Code;
- (vi) evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to Buyer, Escrow Agent, as well as Buyer's lender;
- (vii) a duly executed and acknowledged Assignment and Assumption of Construction Agreement pursuant to Section 8.A hereof in the form attached hereto as Schedule 4.C.(vii);
- (viii) a duly executed and acknowledged Assignment and Assumption of Easement Agreements concerning the matters set forth in Paragraphs 8B and 8C of this Agreement in the form attached hereto as Schedule 4.C.(viii);
- (ix) a construction performance bond and a payment bond issued in favor of Buyer and Seller by a surety company selected by Seller and reasonably approved by Buyer for the full estimated costs, with such costs determined by a price fixed contract reasonably acceptable to Seller, of constructing the Private Roadway (as defined in Paragraph 8A) which assures the timely performance of those obligations of the Seller provided for in Paragraph 8A of this Agreement (the "Private Roadway Performance Bond"), and the payment by Contractor of all persons providing labor and all suppliers providing materials for the construction of the Private Roadway (the "Private Roadway Payment Bond"), provided further that Seller shall not amend or modify the Private Roadway Performance Bond or the Private Roadway Payment Bond and shall maintain such bonds in full force and effect until completion of the Private Roadway. The obligations of this Section 4.C.(ix) shall survive the delivery of the Deed;
- (x) a standard owner's affidavit for the benefit of the Escrow Agent in order to insure over standard exceptions for tenants in possession and labor and materials provided to the Property by Seller, together with any customary affidavit reasonably requested by Escrow Agent as to facts within Seller's Knowledge;
- (xi) such additional documents that Buyer, Escrow Agent, or the Buyer's lender may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Seller or result in any new or additional obligation, covenant, representation or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement and provided that such documents are reasonably acceptable to Seller as to form and substance); and

- (xii) a duly executed and acknowledged Temporary Construction Easement pursuant to Section 8.A. of this Agreement in the form attached hereto as Schedule 4.C.(xii).
- D. Buyer's Deliveries in Escrow. At least one (1) day prior to the Deadline for Closing Date, Buyer shall deliver in escrow to Escrow Agent the following (the "Buyer's Deliveries"):
  - (i) a duly executed and acknowledged Assignment and Assumption of Service Contracts, Warranties, Permits and Guaranties in the form attached hereto as Schedule 4.C. (iii);
  - (ii) a duly executed and acknowledged Assignment and Assumption of Construction Agreement in the form attached hereto as Schedule 4.C. (vii);
  - (iii) a duly executed and acknowledged Assignment and Assumption of Easement Agreements in the form attached hereto as Schedule 4.C. (viii);
  - (iv) a duly executed and acknowledged Temporary Construction Easement in the form attached hereto as Schedule 4.C. (xii);
  - (v) evidence of the existence, organization and authority of Buyer and of the authority of the persons executing documents on behalf of Buyer reasonably satisfactory to Seller, Escrow Agent, as well as Buyer's lender; and
  - (vi) such additional documents that Seller, Escrow Agent, or the Buyer's lender may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Buyer or result in any new or additional obligation, covenant, representation or warranty of Buyer under this Agreement beyond those expressly set forth in this Agreement and provided that such documents are reasonably acceptable to Buyer as to form and substance).
- E. Closing Statements. As of or prior to the Closing Date, Seller and Buyer shall deposit with Escrow Agent executed closing statements consistent with this Agreement in the form reasonably required by Escrow Agent.
- F. Purchase Price. At or before the Closing Date, Buyer shall deliver to Escrow Agent the Purchase Price, less the Deposit that is applied to the Purchase Price, plus or minus applicable prorations and adjustments, in immediate, same-day U.S. federal funds wired for credit into Escrow Agent's escrow account, which funds shall be delivered in a manner to permit Escrow Agent to deliver good funds to Seller or its designee on the Closing Date (and, if requested by Seller, by wire transfer).
- G. Possession. Seller shall deliver sole and exclusive possession of the Property to Buyer (subject to the Temporary Construction Easement and Permitted Encumbrances) at the Closing in the same condition as on the Effective Date, reasonable wear and tear, removal

of Seller's property listed on Schedule 1.J.-2, and subject to Paragraphs 10 and 11 casualty and condemnation excepted.

5. **CONVEYANCE:** At Closing, Seller shall convey fee simple title to the Property to Buyer by the Deed concurrently with Buyer's performance of its Closing obligations under this Agreement.

6. **TITLE REPORT/SURVEY:**

- A. As soon as reasonably possible but no later than 30 days following the Effective Date, Buyer shall, at Buyer's expense, have ordered a preliminary title report a/k/a title commitment ("Preliminary Title Report") on the Property, and its appurtenant rights, together with copies of all exceptions, issued by Escrow Agent, or an issuing agent of Escrow Agent. Buyer shall obtain a new survey of the Property of sufficient quality to permit the Escrow Agent to remove the standard survey exception from the owner's title policy to be obtained by Buyer (the "Survey"). No later than the fortieth (40th) day after the Effective Date, Buyer shall advise Seller and Escrow Agent in writing of any Preliminary Title Report or Survey exceptions, not permitted by this Agreement, which Buyer does not accept (which are not Permitted Encumbrances) ("Title and Survey Objections"). If Buyer makes any timely Title and Survey Objections, Buyer shall simultaneously deliver to Seller a copy of the Preliminary Title Report and Survey together with a copy of any recorded document on which such Title and Survey Objections, or any part thereof, are based. Notwithstanding anything to the contrary stated herein, Seller shall have no obligation to remove any "Title or Survey Objections" except for liens and mortgages of an ascertainable amount created, assumed or caused by Seller ("Seller's Liens"), and intervening encumbrances which are recorded after the Preliminary Title Report and Seller has expressly agreed to remove pursuant to the terms herein, which Seller's Liens and such intervening encumbrances Seller shall cause to be released of record at or prior to Closing (with Seller having the right to apply the Purchase Price or a portion thereof for such purpose). If Buyer fails to notify Seller of any Title or Survey Objections within said period of time, all Title or Survey Objections, if any, shall be deemed waived, except Seller's Liens shall not be deemed waived. If Buyer timely notifies Seller and Escrow Agent of any Title or Survey Objections, the Closing Date may, at Seller's sole option, to be exercised in a notice to Buyer delivered within ten (10) days of Seller's receipt of the Title or Survey Obligations, be adjourned for a period of up to thirty (30) days in order to enable Seller to cure such Title or Survey Objections. If at the date to which Closing is adjourned Seller is unable or unwilling to remove such Title or Survey Objections, Buyer may:
- (i) terminate this Agreement by written notice to Seller and Escrow Agent, in which event Escrow Agent shall return the Deposit, together with interest thereon, to Buyer and neither party shall have any further rights or obligations of any nature to the other hereunder or by reason hereof except those that expressly survive termination of this Agreement; or
  - (ii) accept such title as Seller can convey without any reduction or abatement of the Purchase Price and without any present or future claim against Seller relating to any Title or Survey Objections.



Between the date of the Agreement and a Closing hereunder, Seller shall not voluntarily encumber the title or permit any encumbrance on title to the Property with any liens which shall not be fully released on or prior to Closing hereunder. In the event any involuntary lien or liens securing the payment of money, which are not Permitted Encumbrances (and excluding any inchoate liens for real estate taxes and municipal assessments not yet due and payable) should be filed against the title to the Property, Seller shall be required to elect one of the following: (i) use the net proceeds at Closing to discharge any such involuntary lien or liens or (ii) bond off such lien(s) in accordance with applicable laws so that the lien(s) no longer encumbers the Property, or (iii) escrow with the Escrow Agent one hundred ten percent (110%) of the principal amount of such lien(s) under an escrow arrangement reasonably satisfactory to Seller, Buyer and the Escrow Agent and which results in the Escrow Agent issuing the owner's title policy to Buyer without an exception for the lien(s).

- B. As a condition precedent to Buyer's obligations, Escrow Agent shall issue no later than Closing, at Buyer's expense, a policy of title insurance at standard rates, in the amount of the Purchase Price, or such lesser amount as Buyer may desire, insuring fee simple title to the Property in Buyer and insuring the appurtenant rights to the Private Access Road Easement and the Fidelity Roadways, subject only to the Permitted Encumbrances.
- C. Nothing contained in this Agreement shall be deemed to require Seller to remove any title exception other than those exceptions specifically referenced in this Agreement (including, without limitation, Seller's Liens and intervening encumbrances that arise after the date of the Preliminary Title Report for which Seller is obligated to remove), or to bring any action or proceeding to remove any defect in or objection to title or to fulfill any condition, nor shall Buyer have any right of action against Seller therefor, at law or in equity, for damages or specific performance, and no attempt by Seller to cure an objection to title shall be construed as an admission that such objection is one which would give Buyer the right to cancel this Agreement.
- D. The acceptance of the Deed by Buyer shall be deemed to be full performance and discharge of every agreement and obligation on Seller's part to be performed under this Agreement, except for those obligations which expressly survive the delivery of the Deed.

**7. DUE DILIGENCE STUDY:**

- A. Buyer shall have the right to conduct, at Buyer's expense, a Due Diligence Study of the Property as of the Effective Date and for a sixty (60) day period thereafter (the "Due Diligence Period"). During the Due Diligence Period, Buyer and its designated agents shall have the right to enter upon and inspect the Property in accordance with this Paragraph 7. Should Buyer determine that the Property is not satisfactory for any reason or for no reason, then Buyer may terminate this Agreement by written notice to Seller and Escrow Agent provided that Seller and Escrow Agent receive such written notice at any time before the end of the Due Diligence Period. If a timely written notice of termination is received by Seller and Escrow Agent, Escrow Agent shall return the Deposit, together with interest thereon, to Buyer, subject to the provisions of Section 3.B. hereof and neither

party shall have any further rights or obligations of any nature to the other hereunder, except those that expressly survive termination.

- B. Buyer hereby indemnifies and holds Seller harmless from and defends Seller (with legal counsel selected by Seller) against any and all claims, losses, costs (including reasonable attorney's fees), damages, causes of action, suits and liability of every kind for injury to or death of persons or damage to property arising out of or connected with the acts or omissions of Buyer, its agents, employees or contractors in conducting the Due Diligence Study, provided, however, the indemnity shall not extend to protect Seller from any liabilities arising from environmental conditions existing prior to the Effective Date, such as matters merely discovered by Buyer (e.g. latent environmental contamination), nor shall such indemnity extend to protect Seller from damage or injury arising out of the negligence or willful misconduct of Seller, its agents, employees, or contractors. In the event the transaction contemplated by this Agreement is not closed for any reason, then Buyer shall restore the Property to its original condition, to the extent changed by Buyer, its agents, employees or contractors, at Buyer's sole cost.
- C. Buyer shall secure from the proper governmental authorities any licenses or permits required by law for any activities connected with the Due Diligence Study. In the event that any governmental agency exercises authority or control over any aspect of the Due Diligence Study, Buyer shall comply with all regulations, directions and orders issued by such agency(ies). Buyer is solely responsible for securing said licenses/permits and complying with said regulations, directions and orders. Seller shall reasonably cooperate with Buyer in obtaining the same to the extent Seller's cooperation is required by such governmental authorities. Buyer hereby indemnifies Seller against liability for any fees, penalties or fines incurred by Buyer or Seller that are attributable to Buyer's failure to comply with this Paragraph 7.C, provided, however, that such indemnity shall not extend to protect Seller from liability for fees, penalties or fines arising out of the negligence or willful misconduct of Seller, its agents, employees or contractors.
- D. Buyer shall at all times conduct the Due Diligence Study in a manner that is reasonably satisfactory to Seller. Buyer shall have reasonable access to the Property at all reasonable times during normal business hours, for the purpose of conducting and obtaining inspections and tests, including, without limitation, surveys and architectural, engineering, geotechnical, topographical and environmental inspections and tests, including soil borings, test wells, and other reasonable invasive environmental sampling and testing, and review of wetlands conditions and other land use restrictions, all as Buyer deems necessary or desirable in its reasonable discretion. Buyer shall provide Seller with advance notice of all significant activities it intends to perform in connection with the Due Diligence Study.
- E. Buyer, its agents and assigns, shall keep confidential and shall not copy, disclose, or reproduce, in whole or in part, any samples, reports, data, test results or information generated by its Due Diligence Study unless required to do so by law or authorized in writing to do so by Seller. The restrictions set forth in the foregoing sentence shall expire at Closing in the event the transaction contemplated by this Agreement is consummated. Prior to Closing, the restrictions herein shall not be construed to prohibit Buyer from providing copies of such information to its employees, agents, environmental consultants,

lender and attorneys who have a need to know such information and who are under written obligation of confidentiality. In the event Closing does not occur for any reason other than a Seller Default, upon Seller's request, Buyer shall deliver to Seller a copy of any survey, phase I and phase II environmental assessment (including, without limitation, all samples, reports, data, test results and other information related thereto) which Buyer may have obtained with respect to the Property (collectively "Property Information"), provided if Buyer's cost of obtaining the Property Information exceeds \$15,000 ("Cap"), Seller shall pay for half of the Buyer's costs in excess of the Cap for such Property Information upon receipt of copies of invoices from Buyer; provided, however, the Seller may revoke its request for the Property Information after receipt of the invoices. Seller shall indemnify Buyer from and against claims, damages, suits and liability of any kind arising out of Seller's or any and all third parties' (to whom Seller provides copies of such Property Information), use of or reliance upon the Property Information. This indemnity shall survive termination of this Agreement.

- F. Within five (5) days after the Effective Date, Seller shall provide to Buyer copies of the Environmental Documents, if any. Seller shall also cause to be delivered to Buyer, or make available to Buyer at the Building during normal business hours, the following due diligence materials at a time mutually acceptable to the parties and within five (5) days after the Effective Date: (i) a full and complete list, together with copies, of service, supply, equipment rental, and all other service contracts related to the operation of the Property, if any ("Service Contracts"); (ii) a copy of any survey relating to the Property in Seller's possession; (iii) any outstanding licenses or permits relating to the Property (including a copy of those permits and approvals obtained or required to be obtained from January 1, 2004 to present); (iv) plans in Seller's possession for all buildings located on the Property; (v) any building conditions survey relating to the Property; (vi) a copy of the Seller's owner's title insurance policy; (vii) waste manifests; (viii) equipment files; and (ix) such other Property reports and materials other than economic analyses in Seller's possession or control related to the Property and reasonably requested by the Buyer. Prior to the end of the Due Diligence Period, and provided the same are terminable by their terms, Buyer shall notify Seller as to which of the Service Contracts Buyer desires to assume at Closing, whereupon Seller shall terminate all other Service Contracts at or prior to the Closing at Seller's sole cost.
- G. Buyer shall pay for all Buyer's costs associated with the Due Diligence Study.
- H. The obligations of this Paragraph 7 shall survive the termination of this Agreement for any reason and shall not merge into the Deed.

#### **8. DEVELOPMENT AGREEMENTS:**

- A. Seller has entered into a Public and Private Roadway Construction Agreement dated May 1, 2002 with the EDC and FMR Rhode Island, Inc. ("Fidelity"), a copy of which, together with any and all amendments thereto are attached hereto as Schedule 8.A. (collectively the "Construction Agreement"). Seller agrees that it will perform all of its obligations under the Construction Agreement relating to the construction of the Private Roadway (as defined

in this Paragraph 8A) on or before September 15, 2006. Seller's post Closing construction activities with respect to the Private Roadway shall be in accordance with the Temporary Construction Easement Agreement between Buyer and Seller effective as of the Closing and referenced in Section 4.C.(xii) "Private Roadway" means those improvements to the Easement Parcel (as defined in the Construction Agreement) constructed in accordance with all laws, and substantially in accordance with the plans and specifications delivered by Seller's attorney to Buyer's attorney in PDF format by email at 12:14 p.m. EST on April 13, 2006, relating to construction of the Private Roadway including, without limitation, the "Water Loop Connection" as defined in the Construction Agreement and depicted in the plans and specification. The parties acknowledge that the plans and specifications must be reviewed and approved by Fidelity, so there may be modifications required. Seller will assign to Buyer all of its rights under the Construction Agreement (except for those rights expressly reserved to Seller) upon Seller's completion of the Private Roadway in accordance with all laws and approvals and the plans and specifications, as such plans and specifications may be modified by Fidelity as stated above and provided there is no existing default under the Agreement, Buyer will assume all remaining obligations of Seller under the Construction Agreement in the form Assignment and Assumption of Construction Agreement referenced in Section 4.C.(vii) hereof, that will be recorded in the Land Evidence Records of the Town of Smithfield; provided, however, Seller will reserve in such agreement all rights and remedies provided in the Construction Agreement relating to the Private Roadway Escrow (as defined in the Construction Agreement), the Escrow Agreement (as defined in the Construction Agreement), and the right to be reimbursed by Fidelity for one-half (1/2) of the costs incurred by Seller in constructing the Private Roadway. The provisions of this Section 8.A shall survive delivery of the Deed.

- B. At the Closing, Seller shall assign to Buyer, and Buyer shall assume, all rights and obligations of Seller contained in the Private Access Road Easement Agreement recorded in Book 322, Page 867 of the Land Evidence Records of the Town of Smithfield in accordance with Section 4.C. (viii) hereof, subject to the right of Seller to have access to and use of the Easement Parcel (as described therein) for construction of the Private Roadway, which construction access rights shall be set forth in the Temporary Construction Easement referenced above.
- C. At the Closing, Seller shall assign to Buyer, and Buyer shall assume, all rights and obligations of Seller contained in the Buffer Zone Easement and Agreement recorded in Book 322, Page 848 of the Land Evidence Records of the Town of Smithfield, in accordance with the Assignment and Assumption of Easement Agreements referenced in Section 4.C. (viii) hereof.
- D. Buyer agrees that it will take title to the Property subject to the Declaration of Deed Restrictions recorded in Book 322, Page 787 of the Land Evidence Records of the Town of Smithfield. E. At the Closing, Seller shall assign to Buyer and Buyer shall assume all rights and obligations of Seller to the Cross-Easement Agreement recorded in Book 257 at Page 498 of the Land Evidence Records of the Town of Smithfield, as amended by the Amendment to Cross-Easement Agreement recorded in Book 322 at Page 837 of the Land Evidence Records of the Town of Smithfield, in accordance with the Assignment and Assumption of Easement Agreements referenced in Section 4.C. (viii) hereof.

**9. EMINENT DOMAIN:** Seller shall give Buyer and Escrow Agent notice within ten (10) days of Seller's receipt of notice, from a governmental entity having the power of eminent domain, of an actual or threatened exercise of the power of eminent domain which materially affects the Property. On receiving such notice, Buyer shall have the right for ten (10) days to terminate this Agreement by giving written notice to Seller and Escrow Agent, in which case all proceeds of the taking shall remain the property of Seller. If Buyer does not terminate this Agreement within ten (10) days after its receipt of such notice, the proceeds or right thereto, including condemnation awards and all other payments in connection with such taking, shall be transferred to Buyer at Closing and Buyer shall accept the Deed subject to the eminent domain proceeding.

**10. RISK OF LOSS:**

- A. Seller shall bear the risk of damage or loss to the Property other than that damage or loss caused by Buyer, its employees, agents or contractors, before Closing. In the event that the Property or any material portion thereof is damaged or destroyed after the Effective Date and prior to Closing other than by acts of Buyer, its employees, agents or contractors, Seller shall give Buyer notice of the damage or loss within ten (10) days after Seller learns of the damage or loss. Upon receipt of such notice, if the damage or loss renders the Property reasonably unfit for Buyer's intended use, as determined by Buyer, Buyer shall have ten (10) days within which Buyer may elect to:
- (i) terminate this Agreement and receive a full refund of the Deposit referenced in Paragraph 3, together with any interest thereon, whereupon neither party shall have any further rights or obligations under this Agreement except those that expressly survive termination; or
  - (ii) consummate the purchase of the Property without reduction or abatement of the Purchase Price and without any present or future claim against Seller relating to such damage or loss.

**11. SELLER'S REPRESENTATIONS:** Seller makes the following representations which shall be true as of Effective Date and at Closing and which shall survive Closing:

- A. Organization; Corporate Authority: Seller is a corporation duly organized and validly existing under the laws of the State of Delaware and is qualified to do business as a foreign corporation in the State of Rhode Island. Seller has the legal and corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement.
- B. Authorization of Agreement: The execution, delivery and performance of this Agreement have been duly and validly authorized within Seller's organization and this Agreement is a valid and legally binding obligation of Seller enforceable in accordance with its terms and each document and instrument of transfer contemplated by this Agreement when executed and delivered by Seller in accordance with the provisions hereof shall be valid and legally binding upon Seller in accordance with its terms. To Seller's Knowledge, no consent, approval or authorization by any governmental authority or any other person or entity, private or public, is

required in connection with the execution, delivery or performance by Seller of this Agreement or the transactions herein contemplated or the other closing documents to which Seller is a party, except for those permits and approvals required for construction of the Private Roadway referred to in Section 8A.

- C. Conflicts and Pending Actions. There is no agreement to which Seller is a party or that is binding on Seller that is in conflict with this Agreement nor are there any outstanding options to purchase or rights of first refusal which affect the Property and that will not be terminated prior to or in connection with the Closing.
- D. Laws. To the best of Seller's Knowledge, the use and operation of the Property is in compliance with "Laws", and Seller has not received any notice of any violation of environmental laws, building codes, zoning and land use laws, or any other local, state and federal laws and regulations applicable to the Property or any part thereof (collectively, "Laws") which has not been cured as of the date hereof. Seller shall not commit any action which will result in a violation of the Laws between the date hereof and the Closing.
- E. Property Proceedings. Seller has not received notice of any governmental proceedings relating to condemnation or the Laws, which would detrimentally affect the use or operation of the Property, nor to Seller's Knowledge, has Seller received notice of any special assessment proceedings affecting the Property. Seller shall notify Buyer promptly of any such proceedings of which Seller becomes aware.
- F. Future Contracts and Amendments. Except for contracts related to the construction of the Private Roadway, Seller shall not, without Buyer's approval, which approval shall not be unreasonably withheld, enter into or extend or make a material modification to any contract, including the agreements set forth in Section 8 hereof, affecting the Property or its operation, other than any such contract or agreement that will be terminated at or prior to Closing at Seller's expense.
- G. Environmental Documents. Seller has made reasonable inquiry in compiling the Environmental Documents it provides to Buyer and to the best of Seller's Knowledge, the Environmental Documents are complete copies of such documents.
- H. Approvals for Access. Seller has obtained, or will obtain, all licenses, permits, variances, approvals, authorizations and subordinations from any third parties with superior rights with respect to the Private Access Road Easement and the construction of the Private Roadway required from all governmental authorities having jurisdiction over the Property and from any private parties with respect to the same.
- I. Service Contracts and Agreements. To Seller's Knowledge the Service Contracts and Agreements set forth in Section 8 hereof are, and at the time of Closing, will be complete copies of such Contracts and Agreements and the assumed Service Contracts are, and at the time of the Closing, will be in full force and effect without default by Seller.

All references in this Agreement to the "best of Seller's Knowledge," "actual Knowledge of Seller" or "Knowledge of Seller" or words of similar import shall refer only to the current (i.e.,

upon execution of this Agreement and at Closing) actual knowledge of the Designated Persons (as set forth in Schedule 11 attached hereto) and shall not be construed to refer to the knowledge of any other officer, agent or employee of Seller or any affiliate thereof.

**12. SELLER'S DISCLAIMER OF REPRESENTATIONS AND WARRANTIES:**

**EXCEPT FOR THE FOREGOING PARAGRAPH 11 REPRESENTATIONS AND SELLER'S OBLIGATIONS TO CONSTRUCT THE PRIVATE ROADWAY, SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OR PROMISES, EXPRESS OR IMPLIED, REGARDING THE PROPERTY INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS, WARRANTIES OR PROMISES AS TO THE PHYSICAL CONDITION, ENVIRONMENTAL CONDITION, LAYOUT, FOOTAGE, LEASES, RENTS, INCOME AND REVENUES, EXPENSES, ZONING, OPERATIONS, PRESENCE OF HAZARDOUS SUBSTANCES OR ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE PROPERTY OR ITS SALE TO BUYER. BUYER AGREES THAT NO REPRESENTATIONS, WARRANTIES, OR PROMISES HAVE BEEN MADE OTHER THAN AS SPECIFICALLY SET FORTH IN PARAGRAPH 11 AND WITH RESPECT TO THE CONSTRUCTION OF THE PRIVATE ROADWAY, AND FURTHER AGREES THAT IF BUYER PROCEEDS TO CLOSING, IT WILL HAVE TAKEN THE PROPERTY "AS IS," "WHERE IS" AND "WITH ALL FAULTS" SUBJECT TO THE REPRESENTATIONS AND WARRANTIES SET FORTH IN PARAGRAPH 11 AND SELLER'S OBLIGATION TO CONSTRUCT THE PRIVATE ROADWAY HEREOF WHICH SHALL SURVIVE DELIVERY OF THE DEED. BUYER FURTHER AGREES THAT SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION FURNISHED BY ANY REAL ESTATE BROKER OR REAL ESTATE AGENT, OR ANY AGENT OF SELLER.**

**13. BUYER'S REPRESENTATIONS:** Buyer makes the following representations and warranties which shall be true as of Effective Date and at Closing and which shall survive Closing:

- A. Organization; Authority: Buyer has the legal authority to enter into and to consummate the transactions contemplated by this Agreement.
- B. Authorization of Agreement: The execution, delivery and performance of this Agreement have been duly and validly authorized within Buyer's organization. This Agreement is a valid and legally binding obligation of Buyer enforceable in accordance with its terms and each document and instrument of transfer contemplated by this Agreement when executed and delivered by Buyer in accordance with the provisions hereof shall be valid and legally binding upon Buyer in accordance with its terms.

**14. INDEMNIFICATION:** Buyer hereby indemnifies, and agrees to hold Seller harmless, from and against any environmental liability arising from or related to (i) the release of

hazardous materials at, on or from the Property subsequent to the date of Closing; and (ii) any exacerbation or aggravation of any other hazardous materials released by reason of any activities on the Property at any time on or after the date of Closing (other than activities of Seller or its employees, agents, contractors or consultants, including without limitation, the Private Road construction). In the event that Seller receives or becomes aware of an environmental liability for which the Buyer has provided an indemnity herein, Seller shall notify Buyer within 60 days of receipt or discovery of the facts that give rise to the environmental liability specifying the facts constituting the basis for such claim, including a copy of any documents evidencing these facts, and the amount, to the extent known, of the claim asserted. Buyer shall have the right upon written notice to Seller, and using counsel reasonably satisfactory to Seller, to investigate, secure, contest, or settle the environmental liability. Upon undertaking the defense of the environmental liability, the Buyer shall have the sole right to control the defense of the environmental liability and the Seller shall cooperate with the Buyer with the defense thereof.

Seller hereby indemnifies, and agrees to hold Buyer harmless from and against any liability, claims, damages, causes of action, including reasonable attorneys' fees and consequential and indirect damages, arising from or related to any claims by Fidelity or its successor or assigns with respect to the Right of First Refusal. The provisions of this Section 14 shall survive delivery of the Deed.

**15. BROKERS:** Seller and Buyer represent that neither one has used a Real Estate broker relative to this Property other than CB Richard Ellis and Seller shall compensate CB Richard Ellis pursuant to a separate agreement. Both parties agree to hold harmless each other as to any claims for commissions by parties not named in this Agreement and Seller shall hold harmless Buyer as to any claims for commissions by CB Richard Ellis, which indemnities shall survive termination of this Agreement.

**16. ADJUSTMENTS:**

- A. Escrow fees shall be paid by Seller as to one-half and Buyer as to one-half. Except as may be otherwise set forth in this Agreement, in the event this Agreement is terminated for any reason prior to Closing, escrow fees (if any) shall be equally divided between Buyer and Seller.
- B. All taxes of whatever nature and kind which have become a lien on the land and are due and payable as of the date of Closing shall be paid and discharged by Seller. All special assessments of whatever nature and kind which have become a lien on the land as of the date of Closing shall be paid and discharged by Seller. Current real and personal property taxes shall be prorated to the date of Closing in accordance with local custom in Providence County, Rhode Island. Seller shall be responsible for taxes up to and including the day of Closing. The terms of this Paragraph 16. B. shall survive delivery of the Deed.
- C. Seller shall pay any conveyance and transfer tax as well as any documentary transfer tax required by law.
- D. Seller agrees to pay any legal fees of attorneys representing Seller in the transaction covered by this Agreement, and Buyer agrees to pay the legal fees of the attorneys



representing Buyer in the transaction covered by this Agreement. Buyer will record, and pay the cost of recording, the Deed. Any other costs not specifically covered by this Agreement shall be borne in the same manner as is customary in Providence County, Rhode Island, in connection with the sale of real estate of the type covered by this Agreement.

- E. Seller shall cause all the utility meters at the Property to be read on the Closing Date, and will be responsible for the cost of utilities used prior to the Closing Date.
- F. Any other adjustments expressly provided for in this Agreement. Payments under the Service Contracts assumed by Buyer shall be prorated as of the date of Closing.

**17. ASSIGNMENT:** Buyer may not transfer or assign its interest under this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may transfer or assign its interest under this Agreement to a wholly-owned subsidiary of Buyer without the consent or approval of Seller. Any transfer or assignment shall not release Buyer from its obligations under this Agreement unless expressly agreed by Seller in writing with respect to that transfer or assignment.

**18. MISCELLANEOUS:**

- A. This Agreement shall be construed in accordance with the laws of the State of Rhode Island notwithstanding any contrary "choice of laws" provisions of that or any other State.
- B. The titles of paragraphs of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Agreement or the intent of any provisions thereof.
- C. The submission of this Agreement to Buyer shall not be construed to vest in Buyer an option to purchase or any reservation of the Property. Buyer shall have no right or interest hereunder until such time as this Agreement shall be fully executed and delivered by Buyer and Seller.
- D. In construing this Agreement, no weight or relevance shall be given to the fact that it or any particular provision may have been drafted by one of the parties, each of the parties having had adequate opportunity to negotiate all of the provisions hereof.
- E. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. The signature page from one or more counterparts may be detached and reattached to any other executed counterparts of this Agreement.
- F. The parties agree that facsimile or scanned electronic signatures shall be considered the same as an original signature for all purposes under this Agreement except for those signatures which are on documents intended to be filed in the Land Evidence Records of the Town of Smithfield.

- G. Unless otherwise expressly provided, whenever a provision in this Agreement requires the approval or consent of a party, such approval or consent will not be unreasonably withheld, conditioned or delayed.
- H. Each Schedule attached to this Agreement is incorporated into and made a part of this Agreement.
- I. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

**19. Intentionally Omitted.**

**20. NOTICES:**

- A. All notices and other communications from one party to the other pertaining to this Agreement shall be given in written form.
- B. If such notices or other communications are to be given to Seller, they shall either be personally delivered to Seller or shall be sent to Seller by United States certified mail, return receipt requested, postage prepaid, or by a nationally recognized courier addressed to Seller as follows:

The Dow Chemical Company  
Manager of Real Estate, Attn. Chuck Kendall  
2030 Dow Center  
Midland, MI 48674  
Phone: (989) 636-4038

cc: The Dow Chemical Company  
Legal Department, Attn. Toby Threet  
47 Building  
Midland, MI 48667  
Phone: (989) 636-3374

C. All notices and other communications to be given to Buyer shall be personally delivered to Buyer or shall be sent by United States certified mail, return receipt requested, postage prepaid, or by a nationally recognized courier addressed to Buyer as follows:

Alexion Pharmaceuticals  
Attn. M. Stacy Hooks, Ph.D.  
352 Knotter Drive  
Cheshire, CT 06410  
Phone: (203) 271-8360

cc: Alexion Pharmaceuticals  
Attn. Thomas Dubin, Senior Vice President  
352 Knotter Drive  
Cheshire, CT 06410  
Phone: (203) 271-8203

D. All notices and other communications to be given to Escrow Agent shall be personally delivered to Escrow Agent or shall be sent by United States mail, postage prepaid addressed to Escrow Agent as follows:

Chicago Title Insurance Company  
Attn: Jeff Meyer  
450 Veterans Memorial Parkway  
Metacomet Executive Office Park, Suite 900  
East Providence, RI 02914  
Phone: (410) 431-0900

E. All notices shall be effective when actually refused or delivered.

**21. SUCCESSORS AND ASSIGNS:** This Agreement shall bind and benefit the parties and their respective representatives, successors and assigns.

**22. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.

**23. AMENDMENT:** This Agreement may not be amended except in writing by the person against whom enforcement of any waiver, change, or discharge is sought.

**24. DEFAULT:** In the event the transaction covered hereby is not consummated as a result of a material default on the part of Buyer (Seller not being in default hereunder), then Seller shall have, as its sole and exclusive remedy, the right to obtain the Deposit from the Escrow Agent as liquidated damages for failure to consummate the transaction contemplated by this Agreement, subject to the terms of Paragraph 3.B hereof. Said liquidated damages are not applicable to Buyer's breach of the provisions of Paragraph 7 of this Agreement. In the event performance of this Agreement is tendered in a timely manner by Buyer and the transaction covered hereby is not consummated as a result of a material Seller Default (Buyer not being in default hereunder), Buyer shall be entitled to a return of the Deposit and to maintain an action for damages; or Buyer may bring an action for specific performance subject to the terms of Paragraph 3.B hereof. Under no circumstances shall either party be liable for incidental or consequential damages, whether foreseeable or unforeseeable.

**25. CALCULATION OF TIME PERIODS:** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Computation of a subsequent period of time designated to begin after the last day of a previous period shall be deemed to commence on the day immediately following the day the previous period ended, as such end date may have been adjusted due to its falling on a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. local time in the state in which the Property is located.

**26. ENTIRE AGREEMENT:** This Agreement and its Schedules contain all the representations by each party to the other and expresses the entire understanding between the parties with respect to the sale of the Property. All prior communications concerning the sale of the Property are merged in or replaced by this Agreement.

**27. RECORDING.** Neither this Agreement, nor any memorandum concerning this Agreement, shall be recorded in the Land Evidence Records of the Town of Smithfield.

**THE DOW CHEMICAL COMPANY**

By: /s/ Charles B. Kendall  
Name: Charles B. Kendall  
Title: Authorized Representative  
Date: 4/13/06

**ALEXION PHARMACEUTICALS, INC.**

By: /s/ David Keiser  
Name: David Keiser  
Title: Pres. & CEO  
Date: 4/13/06

Alexion Legal Dept.

Approved: HB  
Date: 4/13/06

**FIRST ADDENDUM TO PURCHASE AND SALE AGREEMENT**

THIS FIRST ADDENDUM TO PURCHASE AND SALE AGREEMENT ("First Addendum") is entered into between The Dow Chemical Company, a Delaware corporation, with offices at 2030 Dow Center, Midland, Michigan 48674 (the "Seller") and Alexion Pharmaceuticals, Inc., a Delaware corporation, with offices at 352 Knotter Drive, Cheshire, Connecticut 06410 (the "Buyer").

WHEREAS, Buyer and Seller have entered into a Purchase and Sale Agreement dated April 13, 2006 (the "Agreement") relating to the property situated in the City of Smithfield, County of Providence, State of Rhode Island, containing 34 acres more or less, more particularly described in Paragraph 1.J. of the Agreement (the "Property"), and

WHEREAS, the Buyer and Seller desire to amend the Agreement as provided in this First Addendum to the Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and in the Agreement, the parties agree as follows:

1. All of the terms and conditions of the Agreement are incorporated herein and by this reference made a part hereof, and shall remain the same except to the extent modified by this First Addendum. In the event of a conflict between a provision of the Agreement and a provision of this First Addendum, the provision in this First Addendum shall be controlling. All capitalized terms in this First Addendum shall have the meaning ascribed to those words in the Agreement unless the context in which the word is used clearly indicates to the contrary.

2. Paragraph 7 of the Agreement is hereby amended to provide the Due Diligence Period is extended to June 26, 2006, but solely for the purpose of allowing Buyer to conduct further analysis regarding the nature and extent of certain lead discovered on the unimproved parcel on the Property. All other issues that were, or could have been, addressed in Buyer's Due Diligence Study are deemed waived. Buyer agrees that within three (3) business days after the last party signs this First Addendum, Buyer will deliver to Seller a copy of all reports and data concerning Buyer's Due Diligence Study as it relates to the environmental condition of the Property.

3. Paragraph 1.B. is hereby amended to read as follows:

B. Deadline for Closing Date: The Deadline for Closing Date shall be July 12, 2006.

4. The second sentence of Section 8A of the Agreement is revised to read as follows:

Seller agrees that it will perform all of its obligations under the Construction Agreement relating to the construction of the Private Roadway (as defined in this Paragraph 8A) on or before the time required by the Construction Agreement, as it may be amended, but in any event not later than September 15, 2007.

5. Counterparts. This First Addendum may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. The signature page from one or more counterparts may be detached and reattached to any other executed counterparts of this First Addendum.

6. Facsimile Signatures. The parties agree that facsimile or scanned electronic signatures shall be considered the same as an original signature for all purposes under this First Addendum.

IN WITNESS WHEREOF, the parties have duly executed this First Addendum as of the 12<sup>th</sup> day of June, 2006.

**SELLER:**

The Dow Chemical Company

By: /s/ Charles B. Cendell

Name: Charles B. Cendell

Title: Illegible

Date: June 12, 2006

**BUYER:**

Alexion Pharmaceuticals, Inc.

By: /s/ David Keiser

Name: David Keiser

Title: Pres & COO

Date: June 12, 2006

**ASSIGNMENT AND ASSUMPTION OF  
PURCHASE AND SALE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT ("Assignment"), is made as of July 5, 2006 by and between, **ALEXION PHARMACEUTICALS, INC.**, a Delaware corporation with offices at 352 Knotter Road, Cheshire CT 06410 ("Assignor") and **ALEXION MANUFACTURING LLC**, a Delaware limited liability company with offices at 352 Knotter Road, Cheshire CT 06410 ("Assignee"), pursuant to that certain Purchase and Sale Agreement dated April 13, 2006 as amended by First Addendum to Purchase and Sale Agreement dated as of June 12, 2006, by and between The Dow Chemical Company, as Seller, and Assignor, as Buyer (collectively, the "Purchase Agreement"), which provides for the sale and purchase of certain Property located in the City of Smithfield, County of Providence, State of Rhode Island (as such term is defined in the Purchase Agreement). All capitalized terms used herein and not defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement.

WHEREAS, pursuant to the Purchase Agreement, the Assignor has agreed to purchase the Property as defined in, and in accordance with the terms of, the Purchase Agreement; and

WHEREAS, the Buyer/Assignor desires to assign its interest under the Purchase Agreement to Assignee, and Assignee has agreed to assume all obligations associated with the Purchase Agreement as evidenced by this Assignment.

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Assignor and the Assignee hereby agree as follows:

1. Assignor hereby assigns, transfers, grants, conveys and delivers to Assignee all of Assignor's right, title and interest in and to the Purchase Agreement.
2. Assignor warrants and represents, as of the date hereof, the Purchase Agreement has not been further modified.
3. Assignee hereby assumes and agrees to fully perform all of the terms, conditions, covenants and agreements arising out of said Purchase Agreement on the part of Assignor to be performed thereunder, arising after and to be kept and performed after the effective date of this Assignment, and Assignor shall have no further obligation or liability under or arising out of said Assigned Agreements, except as otherwise stated herein and in the Purchase Agreement.
4. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives, and assigns.

5. This Assignment may not be modified in any manner or terminated, except in writing and executed by both parties.

6. This Assignment shall be governed by and construed under the laws of the State of Rhode Island.

IN WITNESS WHEREOF, the parties have caused this Assignment to be duly executed and delivered as of the day and year first above written.

Signed, Sealed and Delivered  
in the Presence of:

/s/ Illegible  
Notary Public  
My commission expires 7/31/07

Signed, Sealed and Delivered  
in the Presence of:

/s/ Illegible  
Notary Public  
My commission expires 7/31/07

ASSIGNOR  
**ALEXION PHARMACEUTICALS, INC.**

By: /s/ David Keiser  
David Keiser  
Its: President  
Duly Authorized

ASSIGNOR  
**ALEXION MANUFACTURING LLC**  
BY: **ALEXION PHARMACEUTICALS, INC.**  
Its Sole Member

By: /s/ David Keiser  
David Keiser  
Its: President  
Duly Authorized



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**\$26,000,000**

**LOAN AND SECURITY AGREEMENT**

**between**

**ALEXION MANUFACTURING LLC,  
a Delaware limited liability company  
as Borrower**

**and**

**iSTAR FINANCIAL INC.,  
as Lender**

**Dated as of July 11, 2006**

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## LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of July 11, 2006, by Alexion Manufacturing LLC, a Delaware limited liability company (“**Borrower**”), having an address at c/o Alexion Pharmaceuticals Inc., 352 Knotter Drive, Cheshire, Connecticut 06410, and iSTAR FINANCIAL INC., a Maryland corporation (together with its successors and assigns, hereinafter referred to as “**Lender**”), with offices at 1114 Avenue of the Americas, 27<sup>th</sup> Floor, New York, New York 10036.

### RECITALS

A. The Mortgaged Property. Borrower is the fee owner of the Land and Improvements (as such terms are defined herein).

B. The Loan. Borrower desires to borrow from Lender and Lender desires to lend to Borrower, a loan in the amount of \$26,000,000.

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions and agreements contained herein, Borrower and Lender agree as follows:

### SECTION 1 DEFINITIONS

#### **1.1 General Definitions.**

In addition to any other terms defined in this Agreement, the following terms shall have the following meanings:

“**Acceptable Financial Institution**” means a depository institution or trust company incorporated under the laws of the United States of America or any state thereof and subject to supervision and examination by federal or state banking authorities, so long as (a) at all times the short-term commercial paper, certificates of deposit or other debt obligations of such depository institution or trust company are rated at least A-1 by S&P and P-1 by Moody’s and the long-term unsecured debt obligations of which are rated at least A by S&P and the equivalent thereof by Moody’s or (b) such depository institution or trust company has otherwise been approved by Lender, such approval not to be unreasonably withheld.

“**Acceptable Letter of Credit**” shall mean an irrevocable standby letter of credit that meets all of the following requirements: (a) it is a sight draft letter of credit from a financial institution (the “**Issuer**”) acceptable to Lender, in its sole and absolute discretion; provided, however, that JP Morgan Chase Bank, HSBC Bank USA, N.A., and any financial institution having a Credit Rating of “A1” or higher from Moody’s and “A+” or higher from S&P, or, as applicable, an equivalent rating from an other Rating Agency is pre-approved; (b) it has an expiration date of not less than one (1) year from the date such letter of credit is delivered to Lender and thereafter renewed annually at least thirty (30) calendar days prior to the expiration date (and may be drawn on by the holder thereof if not so renewed) until the Drug Approval is received; (c) it is freely assignable by Lender, provided that the transferor and transferee shall

have complied with the Issuer's customary transfer requirements and pay when due the reasonable costs charged by such Issuer in connection with such assignment; (d) it may be drawn upon by Lender to cure Events of Default by Borrower, but only in accordance with its terms and the terms of this Agreement; and (e) it is otherwise reasonably satisfactory to Landlord and is substantially similar to the letter of credit form attached hereto as **Exhibit F** and incorporated herein by this reference.

**"Accounting Changes"** means (a) changes in accounting principles required by GAAP consistently applied and implemented by Borrower; and (b) changes in accounting principles recommended or approved by Borrower's certified public accountant, with the approval of Lender, which approval shall not be unreasonably withheld; provided that Lender's approval shall not be required so long as (i) Borrower's financial statements are prepared on a consolidated basis with the financial statements of Guarantor, (ii) Guarantor is a reporting company under the Exchange Act, and (iii) Guarantor's financial statements are audited by a so-called "Big-4" accounting firm.

**"Accounts"** means Borrower's present and future rights to payment of money, accounts and accounts receivable including (a) rights to payment of money, accounts and accounts receivable arising from or relating to the construction, use, leasing, occupancy or operation of the Mortgaged Property, the rental of, or payment for, space, goods sold or leased or services rendered, whether or not yet earned by performance, and all other "accounts" (as defined in the UCC), (b) rights to payment, accounts, and accounts receivable arising from any consumer credit, charge, entertainment or travel card or service organization or entity, (c) all reserves, deferred payments, refunds, cost savings payments and deposits no matter how evidenced and whether now or later to be received from third parties (including all earnest money sales deposits) or deposited with, or by, Borrower by, or with, third parties (including all utility deposits), (d) all chattel paper, instruments, documents, notes, drafts and letters of credit (other than any letters of credit in favor of Lender), (e) the Reserve Accounts, the Development Fund, the Equity Account and any and all other accounts held by or on behalf of Lender and/or Borrower pursuant to this Agreement, (f) all "deposit accounts" (as defined in the UCC), (g) all "securities accounts" (as defined in the UCC), and (h) all contracts and agreements which relate to any of the foregoing.

**"Affiliate"** means any Person: (A) directly or indirectly controlling, controlled by, or under common control with, another Person; (B) directly or indirectly owning or holding ten percent (10%) or more of any equity interest in another Person; or (C) ten percent (10%) or more of whose voting stock or other equity interest is directly or indirectly owned or held by such other Person. When used with respect to Borrower, the term "Affiliate" shall also include the spouse, ancestors, descendants and siblings of an Affiliate of Borrower (such Persons being sometimes referred to as **"Family Members"**), Affiliates of such Family Members and trusts for the benefit of another Affiliate of Borrower.

**"Agreement"** means this Loan and Security Agreement (including all schedules, exhibits, annexes and appendices hereto), as amended, modified or supplemented from time to time.

**"Alteration"** is defined in Section 7.14.

**“Architect’s Agreements”** means all agreements between Owner and a Borrower’s Architect, including Change Orders, for the performance of architectural services for the Construction Work (other than and specifically excluding for the Initial Construction Work or Project Improvements), and each such agreement is herein called an **“Architect’s Agreement”**.

**“Assignment(s)”** means individually and collectively, the assignment of leases and rents, assignments of contracts, agreements and equipment leases, the assignments of licenses, permits and approvals, the assignments of management agreement, if any, the assignment of trademarks, tradenames and copyrights, if any, and such other assignments of even date herewith from Borrower to or for the benefit of Lender, each granting a security interest in collateral for the Loan.

**“Assignments of Initial Architect’s Agreements”** means all Architect’s Agreement and Consent to Assignment of Construction Documents of even date herewith from Borrower to Lender collaterally assigning each Initial Architect’s Agreement to Lender, and each such assignment is herein called an **“Assignment of Initial Architect’s Agreement.”**

**“Assignments of Initial Construction Contracts”** means all Contractor’s Agreement and Consent to Assignment of Construction Documents of even date herewith from Borrower to Lender collaterally assigning each Initial Construction Contract to Lender, and each such assignment is herein called an **“Assignment of Initial Construction Contract.”**

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy,” as amended from time to time and all rules and regulations promulgated thereunder.

**“Bank(s)”** means the Acceptable Financial Institution at which the Reserve Accounts are maintained.

**“Base Rate”** means a fixed rate per annum equal to 9.17%.

**“Borrower’s Initial Equity Contribution”** is defined in Section 2.1.

**“Business Day”** means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state is closed.

**“Capital Expenditure Reserve”** is defined in Section 5.12.

**“Capital Expenditure Reserve Account”** is defined in Section 6.1.

**“Capital Improvements”** is defined in Section 5.12.

**“Capital Lease”** means any lease of any property (whether real, personal or mixed) that, in conformity with GAAP, should be accounted for as a capital lease.

**“Cash Management Agreement”** shall mean the Cash Management Agreement dated as of the date hereof, among Borrower, Lender and Bank.



**“Change in Control”** means the occurrence of any one or more of the following: (i) a sale of all or substantially all of the assets of Guarantor, in a single transaction or series of transactions, (ii) a Person or Group shall have acquired, in one or more transactions, ownership or control of forty-nine percent (49%) or more of the voting Securities of Guarantor, (iii) Guarantor shall cease to directly or indirectly Control the business and affairs of the Borrower or (iv) Guarantor shall cease to directly or indirectly own fifty-one percent (51%) or more of the voting Securities of Borrower.

**“Change Order”** means any amendment, waiver, or modification to the Project Plans and Specifications, any Initial Construction Contract, or the Development Budget which has been approved by Lender; provided, however, that no Lender approval is required for any Change Order which is a Permitted Change Order.

**“Claims”** is defined in Section 5.3(A).

**“Closing”** means that all conditions for disbursement of the initial proceeds of the Loan to or for the benefit of Borrower have been satisfied deferred pursuant to the Post-Closing Endeavor Letter, or waived in writing by Lender and the disbursement of the proceeds of the Loan shall have been made to, or upon the order of, Borrower.

**“Closing Checklist”** means the closing checklist attached hereto as **Exhibit E**.

**“Closing Date”** means the date on which the Closing occurs.

**“Code”** means the United States Internal Revenue Code of 1986, and any rule or regulation promulgated thereunder from time to time.

**“Collateral”** means the Mortgaged Property, the Reserve and Other Accounts Collateral and all other real and personal property of Borrower or any other Person pledged or mortgaged to Lender as collateral security for repayment of the Loan, if any.

**“Commitment Fee”** means an amount of money equal to \$390,000.

**“Completion of Initial Construction Work”** means the completion of the Initial Construction Work, in accordance with the Project Plans and Specifications and pursuant to the terms of this Agreement.

**“Confidential Information”** is defined in Section 11.12.

**“Construction”** means all labor, materials and equipment required for the construction, equipping, fixturing and furnishing of the Restoration, the Alterations, the Initial Construction Work and any other construction, equipping, fixturing and furnishing, approved (or deemed approved) by Lender.

**“Construction Contract”** means one or more construction agreements, including Change Orders, in form and substance acceptable to Lender between Borrower and a Contractor covering any portion of the Construction (other than and specifically excluding for the Initial Construction Work).

**“Construction Legal Compliance”** means Borrower’s satisfaction of all of the following: (A) (i) the applicable Construction through the applicable date of determination, has been constructed substantially in accordance with the applicable Plans and Specifications; and (ii) the applicable Construction has been, or will be, constructed in substantial compliance with all Legal Requirements; (B) all material entitlements, approvals, allocations, certificates, authorizations, permits and licenses required through the then-current stage of construction have been obtained from all appropriate Governmental Authorities and have been validly and irrevocably obtained without qualification, appeal or existence of unexpired appeal periods; (C) all conditions to the issuance of, and the requirements under, all permits, conditional use permits and licenses required through the current stage of construction have been satisfied in all material respects; and (D) no appeals, suits or other actions are pending or threatened in writing by any Governmental Authority which, if determined adversely to the interests of Borrower or the Mortgaged Property, would result in the revocation, suspension or qualification of any of such permits or approvals.

**“Contingent Obligation,”** as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person: (A) with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (B) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (C) under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement designed to protect the applicable Person against fluctuations in interest rates; or (D) under any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect that Person against fluctuations in currency values. Contingent Obligations shall include (1) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (2) the obligation to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement, and (3) any liability of such Person for the obligations of another through any agreement to purchase, repurchase or otherwise acquire such obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed.

**“Contractor”** means the contractor’s) or construction manager’s) for the Construction (other than and specifically excluding the Initial Construction Work) as Lender may, from time to time approve, which approval shall not be unreasonably withheld, conditioned or delayed.

**“Contracts”** means all contracts, agreements, warranties and representations relating to or governing the use, occupancy, design, construction, operation, management, repair and service of any other component of the Mortgaged Property, as amended, modified or supplemented from time to time.

**“Contractual Obligation,”** as applied to any Person, means any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject including the Loan Documents.

**“Control”** (including with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Credit Rating”** means the senior unsecured debt rating issued by S&P and Moody’s or if either or both no longer exist or no longer issue ratings then, for either or both as so applicable, another Rating Agency. All references to specific levels of a Credit Rating mean such rating with a “stable” or “positive” outlook, but not a “negative” outlook or “on watch” associated with such rating.

**“Default”** means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default if that condition or event were not cured or removed within any applicable grace or cure period.

**“Default Interest”** is defined in Section 2.2(A).

**“Default Rate”** means a rate per annum equal to the Base Rate plus five percent (5%).

**“Development Advance”** is defined in Section 2.1.

**“Development Budget”** means the detailed budget, including all Hard Costs and Soft Costs, attached hereto as Schedule 1.1 (A), setting forth Borrower’s current estimate of all costs to be incurred in connection with the Completion of Initial Construction Work, which budget has been approved by Lender. The Development Budget covers the acquisition, development, design, construction and furnishing of the Initial Construction Work in accordance with the Project Plans and Specifications, and shall include cash flow projections for the duration of the Initial Construction Work through Completion of Initial Construction Work. Except in connection with Permitted Change Orders, all amendments to the Development Budget shall be subject to Lender’s prior written approval. The Development Budget shall include any and all approved amendments and Change Orders (including Permitted Change Orders). The Development Budget includes a line item for each Initial Construction Contract. The Development Budget includes all costs of materials, fixtures, furnishings, personal property and labor to be incurred in the construction and furnishing of the Initial Construction Work. The Development Budget (and any amendment thereto) shall, among other things, consist of the following for each Initial Construction Contract: (a) a description of work (such work being classified and shown on a line item basis) reasonably satisfactory to Lender for the building and other improvements for such Initial Construction Contract; and (b) an allocation to each construction line item of a scheduled portion of the guaranteed maximum price (or such other basis of agreement as Borrower and Lender may agree upon) in such Initial Construction Contract.

**“Development Draw Schedule”** means a detailed schedule of advances, including all line items in the Development Budget, and consistent with the Initial Construction Draw Schedule, setting forth Borrower’s estimate of such chronological advances, which schedule is attached hereto as Schedule 1.1(B).

**“Development Fund”** is defined in Section 2.1.

**“Development Schedule”** means the schedule for the completion of each item set forth in the Development Budget, set forth on Schedule 1.1(C).

**“Distribution”** is defined in Section 7.12.

**“Dollars”** and the sign **“\$”** mean the lawful money of the United States of America.

**“Drug Approval”** is defined in Section 5.14.

**“EBITDA Interest Coverage”** means, at any reporting date, for a Person, the ratio calculated by dividing (A) the earnings from continuing operations (including interest income and equity earnings, but excluding nonrecurring items) before interest, taxes, depreciation and amortization for such Person by (B) gross interest incurred by such Person before subtracting (i) capitalized interest and (ii) interest income.

**“Eligible Account”** means a segregated account maintained at an Acceptable Financial Institution. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**“Employee Benefit Plan”** means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Part 3 of Title I of ERISA or Section 412 of the Code and is either (a) maintained by any Person or any ERISA Affiliate for employees of such Person or any ERISA Affiliate or (b) maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which such Person or any ERISA Affiliate is then making or has any obligation to make contributions or, within the preceding five (5) plan years, has made or has had any obligation to make contributions.

**“Environmental Claims”** is defined in Section 4.13.

**“Environmental Indemnity Agreement”** means the Environmental Indemnity Agreement, dated of even date herewith, executed by Borrower and Guarantor in favor of Lender, together with all amendments, modifications, renewals, substitutions and extensions thereto.

**“Environmental Laws”** means all present and future federal, state and/or local laws, statutes, ordinances, codes, rules, regulations, orders, decrees, licenses, decisions, orders, injunctions, requirements and/or directives of Governmental Authorities, as well as common law, imposing liability, standards of conduct or otherwise pertains or relates to, or for, for the environment, industrial hygiene, the regulation of Hazardous Substances, natural resources, pollution or waste management.

**“Environmental Reports”** means those reports and audits itemized on Schedule 1.1(D) hereto.

**“Equipment, Fixtures and Personalty”** means all fixtures and all of the equipment and personalty listed on Exhibit B hereto, together with all accessions, replacements and substitutions thereto and the proceeds thereof.

**“Equity Account”** is defined in Section 5.13.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder.

**“ERISA Affiliate”** means any Person who is a member of a group which is under common control with another Person, who together with such other Person is treated as a single employer within the meaning of Sections 414(b), (c), (m) and (o) of the IRC or Sections 4001 of ERISA. Guarantor shall be deemed to be an ERISA Affiliate of Borrower for purposes of this Agreement, irrespective of whether it and Borrower would be treated as a single employer.

**“Event of Default”** is defined in Section 9.1.

**“Excess Interest”** is defined in Section 2.2(C).

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

**“Expenses”** means the costs and expenditures accrued or incurred by Borrower, without duplication, in connection with the ownership, operation and management of the Mortgaged Property, specifically including in Expenses (1) periodic deposits required to be made into the Reserves; (2) capital expenditures incurred to the extent not paid from any Reserves or the proceeds of the Loan; and (3) management fees and specifically excluding from Expenses, however, (i) all expenditures to the extent funded from any Reserves, (ii) principal, interest and all other payments made by Borrower to Lender under the Loan Documents, (iii) federal or state income taxes, and (iv) depreciation and other non-cash expenses of the Mortgaged Property.

**“Financing Statements”** means the UCC-1 Financing Statements naming Borrower, as debtor, and Lender, as secured party, and filed with such filing offices as Lender may require.

**“FIRREA”** means The Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73 Stat. 183 (1989) and the regulations adopted pursuant thereto, as the same may be amended from time to time.

**“Force Majeure”** means a fire or other casualty, adverse weather, labor disputes or other causes beyond Borrower’s reasonable control, provided, however, that in no event shall a Force Majeure include any event arising due to the lack or unavailability of funds, financing or capital sources; provided, however, that when a Construction Contract or an Initial Construction Contract is entered into by Borrower and a Contractor or Initial Contractor, as applicable, the definition of Force Majeure as used in this Agreement and applicable to the work included in such contract shall be deemed to be the broader of the definition of Force Majeure (provided, however, such broader definition shall not include any event arising due to the lack or

unavailability of funds) set forth above or the definition for such term or similar term set forth in such contract.

“**GAAP**” means generally accepted accounting principles in the United States of America, consistently applied, as of the date in question.

“**General Intangibles**” means all of the items listed on **Exhibit C** hereto. In addition, the General Intangibles also include all of Borrower’s right, title and interest in and to all Contracts.

“**Governmental Authority**” means the United States of America, any state, any foreign governments and any political subdivision or regional division of the foregoing, and any agency, department, court, regulatory body, commission, board, bureau or instrumentality of any of them.

“**Gross Revenues**” means, for the applicable period, all Rents and all other income, rents, revenues, issues, profits, deposits, proceeds of rent loss insurance, lease termination or similar payments and all other payments actually received by or for the benefit of Borrower in cash or current funds or other consideration from any source whatsoever from or with respect to the Mortgaged Property; provided, however, that Gross Revenues shall exclude Proceeds (other than insurance proceeds in respect of rent loss insurance), litigation proceeds, sale or refinancing proceeds and any other non-recurring income from extraordinary events.

“**Group**” means any Person or Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Exchange Act, as in effect on the date hereof, together with all affiliates and associates (as defined in Rule 12b-2 under the Exchange Act, as in effect on the date hereof) thereof.

“**Guarantor**” means Alexion Pharmaceuticals, Inc., a Delaware corporation, and its successors.

“**Guarantor Lease**” means that Lease Agreement dated as of even date herewith, by and between Borrower and Guarantor for the Lease by Guarantor of the Improvements.

“**Guaranty**” means that certain Completion, Payment and Performance Guaranty executed by Guarantor in favor of Lender of even date herewith.

“**Hard Cost Contingency**” means Borrower’s contingency line item for Hard Costs as shown in the Development Budget.

“**Hard Costs**” means the total of all fees, expenses and costs for the completion of the Initial Construction Work, as shown in the Development Budget and Initial Construction Budgets.

“**Hazardous Materials**” means (a) any pollutants, toxic pollutants, oil, gasoline, petroleum products, asbestos, materials or substances containing asbestos, explosives, chemical liquids or solids, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other solid, liquid or other emission, substance, material, product or by-product, in each case defined, listed or regulated as a hazardous, noxious, toxic or solid substance, material or

waste or defined, listed or regulated as causing cancer or reproductive toxicity, or otherwise defined, listed or regulated as hazardous or toxic in, pursuant to, or by any federal, state or local law, ordinance, rule, or regulation, now or hereafter enacted, amended or modified, in each case to the extent applicable to the Mortgaged Property including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.); any so-called "Superfund" or "Superlien" law; the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601 et seq.); the Clean Water Act (33 U.S.C. Section 1251 et seq.); and the Clean Air Act (42 U.S.C. Section 7901 et seq.); (b) any substance which is or contains asbestos, radon, polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, lead paint, motor fuel or other petroleum hydrocarbons, and/or (c) fungus, mold, mildew, or other biological agents the presence of which may adversely affect the health of individuals or other animals or materially adversely affect the value or utility of the Mortgaged Property.

**"Impositions"** means all real estate and personal property taxes, and vault charges and all other taxes, levies, assessments and other similar charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of every kind and nature whatsoever, which at any time prior to, at or after the execution hereof may be assessed, levied or imposed by, in each case, a Governmental Authority upon the Mortgaged Property or upon the ownership, use, occupancy or enjoyment thereof, and any interest, cost or penalties imposed by such entity with respect to any of the foregoing. Impositions shall not include any sales or use taxes or any income taxes payable by Borrower.

**"Improvements"** means all buildings, improvements, alterations or appurtenances now, or at any time hereafter, located upon, in, under or above the Land or any part thereof. The term "Improvements" also includes all buildings, improvements, alterations or appurtenances not located on, in, under or above the land to the extent of Borrower's right, title and interest therein.

**"Indebtedness"** means with respect to any Person, without duplication, (a) any indebtedness of such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of any property or asset of such Person to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such property from such Person), (b) any obligations of such Person for the deferred purchase price of property or services, (c) any obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) any obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) any obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) any obligations of such Person as a result of any final judgment rendered against such Person or any settlement agreement entered into by such Person with respect to any litigation unless such obligations are stayed upon appeal (for so long as such appeal shall be maintained) or are fully discharged or bonded within thirty (30) days after the entry of such judgment or execution of such settlement agreement, (g) any obligations, contingent or otherwise, of such Person in respect of acceptances, letters of credit or similar extensions of credit, (h) any Contingent Obligations, (i) any Indebtedness of others referred to in clauses (a) through (h)

above or clause (j) below guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss, and (j) any Indebtedness referred to in clauses (a) through (i) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“**Indemnified Liabilities**” is defined in Section 11.3.

“**Indemnitees**” is defined in Section 11.3.

“**Independent Architect**” is defined in Section 7.14.

“**Initial Architect’s Agreements**” means all agreements between Borrower and an Initial Borrower’s Architect for the performance of all or any portion of design services, including architectural and engineering services, for the Initial Construction Work or the Project Improvements, together with any Change Orders thereto, and each such agreement is herein called an “**Initial Architect’s Agreement**”.

“**Initial Assignment of Contracts**” means the Assignment of Contracts, Agreements and Equipment Leases of even date herewith from Borrower to Lender.

“**Initial Assignment of Permits**” means the Assignment of Licenses, Permits and Approvals of even date herewith from Borrower to Lender.

“**Initial Borrower’s Architect**” means an architect or engineer, as applicable, which has entered into a written agreement to perform all or any portion of the design services, including architectural or engineering services, for the Initial Construction Work or the Project Improvements, which architect or engineer, as applicable, and applicable Initial Architect’s Agreement has been approved by Lender as set forth in Section 3.1.

“**Initial Construction Budget**” means, for each Initial Construction Contract, the detailed line item budget in a form and in such detail as Lender approves attached hereto as Schedule 1.1(E) setting forth the schedule of values for such Initial Construction Contract all costs to be incurred in connection with the Completion of Initial Construction Work included in such contract, which budget has been approved by Lender.

“**Initial Construction Contracts**” means all agreements between Borrower and an Initial Contractor for the completion of the Initial Construction Work, together with any Change Orders thereto, and each such agreement is herein called an “Initial Construction Contract”.



**“Initial Construction Draw Schedule”** means, for each Initial Construction Contract, a detailed schedule of Borrower’s estimate of chronological Development Advances, which schedule(s) is (are) attached hereto as Schedule 1.1(F).

**“Initial Construction Period”** means the period of time for performance of the Initial Construction Work as shown on the Initial Construction Schedule.

**“Initial Construction Schedule”** means the schedule for the completion of the Initial Construction Work, including dates for partial completion, set forth on Schedule 1.1(G).

**“Initial Construction Work”** means all labor, materials and equipment required for the construction, equipping, fixturing and furnishing of the Mortgaged Property, all as set forth in more detail in the Project Plans and Specifications.

**“Initial Contractor”** means the contractor(s) or construction manager(s) which has entered into a written agreement with Borrower to perform all or any portion of the Initial Construction Work, which contractor(s) or construction manager(s) and applicable Initial Construction Contract has been approved by Lender as set forth in Section 3.1.

**“Inspection Certificate”** means a certificate from an architect or other design professional approved by Lender in form and substance reasonably acceptable to Lender.

**“Insurance Reserve”** is the reserve for insurance premiums established pursuant to Section 5.5.

**“Insurance Reserve Account”** is defined in Section 6.1.

**“Interest Period”** means the period of time beginning on the 10<sup>th</sup> day of a Loan Month and ending on the 9<sup>th</sup> day of the following Loan Month, provided, however, the first Interest Period shall commence on the date the Loan commences to bear interest and continues to and includes August 9, 2006.

**“Interest Rate”** means the applicable of the Base Rate or the Default Rate.

**“Inventory”** means “inventory” (as defined in the UCC), including any and all goods, merchandise and other personal property, whether tangible or intangible, now owned or hereafter acquired by Borrower which is held for sale, lease or license to customers, furnished to customers under any contract or service or held as raw materials, work in process, or supplies or materials used or consumed in Borrower’s business, if any.

**“Investment”** means (A) any direct or indirect purchase or other acquisition by Borrower of any beneficial interest in, including stock, partnership interest or other Securities of, any other Person or (B) any direct or indirect loan, advance or capital contribution by Borrower to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business.

**“Land”** means the real estate comprising the Mortgaged Property, as more specifically described in the Mortgage, including all of Borrower’s right, title and interest in and to all oil, gas and mineral rights, oil, gas and minerals (whether before or after extraction), easements, appurtenances, water rights, water stock, rights in and to streets, roads and highways (whether before or after vacation thereof), hereditaments and privilege relating, in any manner whatsoever, to the Land. The Land is legally described on **Exhibit A**.

**“Late Charge”** is defined in Section 2.2(D).

**“Leases”** means any and all leases, subleases, occupancy agreements or grants of other possessory interests, whereby Borrower acts as the lessor, sublessor, licensor, grantor or in another similar capacity, now or hereafter in force, oral or written, covering or affecting the Land or Improvements, or any part thereof, together with all rights, powers, privileges, options and other benefits of Borrower thereunder and any and all guaranties of the obligations of the lessees, sublessees, occupants, and grantees thereunder, as such leases, subleases, occupancy agreements or grants may be extended, renewed, modified or replaced from time to time (exclusive of any ground lease having Borrower as ground lessee).

**“Legal Requirements”** means all applicable laws, statutes, ordinances, rulings, regulations, codes, decrees, orders, judgments, covenants, conditions, restrictions, approvals, permits and requirements under any Permitted Encumbrances or of, from or by any Governmental Authority, including zoning, subdivision, land use, environmental, building, safety, health, wetlands and landmark preservation, housing and fire laws and the Americans with Disabilities Act.

**“Lender’s Construction Consultant”** means such consultant as may be named by Lender in such capacity from time to time, and any of Lender’s internal representatives responsible for the review of the Initial Construction Work, and compliance with the covenants set forth in this Agreement.

**“Lender’s Consultant’s Report”** means a report addressed to Lender regarding the Project Plans and Specifications, Development Budget, and Initial Construction Budget, and such other matters pertaining to the Initial Construction Work as Lender may require.

**“Lender’s Estimate of Development Costs”** is defined in Section 3.2(D).

**“Lender’s Representative”** means an independent consulting architect, inspector and/or engineer designated by Lender in Lender’s sole discretion.

**“Licenses and Permits”** means all building permits, certificates of occupancy and other assignable governmental permits, licenses and authorizations, including all state, county and local occupancy certificates, and other licenses, in any way applicable to the Mortgaged Property or any part thereof or to the development, construction, ownership, use, occupancy, operation, maintenance, marketing and sale of the Mortgaged Property.

**“Lien”** means (a) any lien, mortgage, pledge, security interest, charge or monetary encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any

security interest) and (b) any negative pledge or analogous agreement including any agreement not to directly or indirectly convey, assign, sell, mortgage, pledge, hypothecate, grant a security interest in, grant options with respect to, transfer or otherwise dispose of, voluntarily or involuntarily, by operation of law or otherwise, any direct or indirect interest in an asset or direct or indirect interest in the ownership of an asset.

**“Loan”** means the loan in the aggregate amount of \$26,000,000 from Lender to Borrower as evidenced by the Note.

**“Loan Documents”** means this Agreement, the Note, the Mortgage, the Assignments, the Environmental Indemnity Agreement, the Cash Management Agreement, the Financing Statements, the Guaranty, the Assignment of Initial Architect’s Agreements, the Assignment of Initial Construction Contracts, the Initial Assignment of Contracts, the Initial Assignment of Permits and all other documents, instruments, certificates and other deliveries made by Borrower or Guarantor to Lender in accordance herewith or which otherwise evidence, secure and/or govern the Loan.

**“Loan Month”** means a calendar month.

**“Loan Quarter”** means a calendar quarter.

**“Lockout Expiration Date”** means the third anniversary of the Closing.

**“Management Agreement”** means the property management agreement for the Mortgaged Property between Borrower and Manager, if any.

**“Manager”** means the Person which is the manager of the Mortgaged Property from time to time, which Person must be a Qualified Manager.

**“Material Adverse Effect”** means (A) a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of Borrower, Guarantor or the Mortgaged Property taken as a whole, (B) the impairment, in any material respect, of the ability of Borrower or Guarantor to perform its respective obligations under any of the Loan Documents or of Lender to enforce any of the Obligations or (C) any material adverse effect on the ability of Borrower to construct and cause the Completion of Initial Construction Work on or before the Required Completion Date, (D) the cessation of the Initial Construction Work for any or no reason for more than ten (10) consecutive Business Days or more than forty-five (45) calendar days in the aggregate (provided, however, such ten (10) Business Day and forty-five (45) calendar day period shall be subject to further extension by reason of Force Majeure) and/or (E) any act, condition, event, circumstance or event which causes or is reasonably likely to cause the cessation of the Initial Construction Work for more than ten (10) consecutive Business Days or more than forty-five (45) calendar days in the aggregate (provided, however, such ten (10) Business Day and forty-five (45) calendar day period shall be subject to further extension by reason of Force Majeure). In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

**“Material Contracts”** means (a) the Permitted Encumbrances (not otherwise referred to in this definition of Material Contracts), and (b) those (i) Contracts set forth on Schedule 4.6(C), attached hereto and (ii) other Contracts which, if not complied with by Borrower, could reasonably be expected to have a Material Adverse Effect.

**“Maturity Date”** means the Maturity Date, as defined in Section 2.4(B), or such earlier date as the Loan is prepaid in full or accelerated.

**“Maximum Rate”** is defined in Section 2.2(C).

**“Moody’s”** means Moody’s Investors Services, Inc. and its successors and assigns.

**“Mortgage”** means the Construction Mortgage Deed, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith from Borrower to or for the benefit of Lender, constituting a first Lien on the Mortgaged Property as collateral for the Loan.

**“Mortgaged Property”** means the Land, the Improvements and the Equipment, Fixtures and Personalty, and all of Borrower’s now and/or hereafter existing right, title and interest in and to the Inventory, the Accounts, the General Intangibles, the Leases, the Rents and other Gross Revenues, the Proceeds, the Plans and Specifications and all other property of every kind and description used or useful in connection with the ownership, occupancy, operation and maintenance of the other components of the Mortgaged Property and all substitutions therefor, replacements and accessions thereto, and proceeds including “proceeds” (as defined in the UCC) derived therefrom, all as more specifically described in the Mortgage.

**“Multiemployer Plan”** means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making, or is accruing an obligation to make, contributions or has made, or been obligated to make, contributions within the preceding six (6) years, or for which Borrower or any ERISA Affiliate has any liability, including contingent liability.

**“Net Worth”** means, at any reporting date, for a Person, which shall include such Person’s subsidiaries, if any, on either a combined or consolidated basis pursuant to and determined in accordance with GAAP (such combined or consolidated entities are collectively herein called the **“Subject Person”**) the total assets of the Subject Person less (i) intangible assets of such Subject Person (including, goodwill, anticipated future benefits of tax loss carry forwards, and organization or developmental expenses and specifically excluding from the definition of intangible assets solely for purposes of this definition, patents, trademarks, service marks, trade names and copyrights) otherwise determined in accordance with GAAP, and less (ii) the total liabilities of such Subject Person, all on either a combined or consolidated basis, as applicable, determined in accordance with GAAP, in each case without duplication.

**“Note”** means the Promissory Note, together with the Substitute Notes and all future advances, extensions, renewals, substitutions, modifications and amendments of the Promissory Note and Substitute Notes.

**“Obligations”** means, in the aggregate, all obligations, liabilities and indebtedness of every nature of Borrower from time to time owed to Lender under the Loan Documents,

including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable to Lender under the Loan Documents whether before or after the filing of a proceeding under the Bankruptcy Code by or against Borrower. The term "Obligations" shall also include any judgment against Borrower or the Mortgaged Property with respect to such obligations, liabilities and indebtedness of Borrower.

"OFAC" is defined in Section 4.9.

"Officer's Certificate" means the certificate of a president, vice president, or other officer or representative with knowledge of the matters addressed in such certificate.

"Organizational Documents" means, as applicable, for any Person, such Person's articles or certificate of incorporation, by-laws, partnership agreement, trust agreement, certificate of limited partnership, articles of organization, certificate of formation, shareholder agreement, voting trust agreement, operating agreement, limited liability company agreement and/or analogous documents, as amended, modified or supplemented from time to time.

"Payment Date" means the 10<sup>th</sup> day of each calendar month commencing on September 10, 2006.

"Permitted Change Order" means a Change Order entered into at a time when no Event of Default exists which satisfies all of the following conditions:

(i) such Change Order does not change the cost of the Initial Construction Work by more than \$100,000 with respect to any individual line item for each individual Change Order or \$250,000 in the aggregate of such line items for each individual Change Order, (ii) such Change Order does not increase the time scheduled for completion of the Initial Construction Work or materially modify the scope, quality, functionality, or marketability of the Mortgaged Property after completion of the Initial Construction Work, (iii) if such Change Order increases the cost of the Initial Construction Work and the increased cost exceeds the amount remaining in the Hard Cost Contingency of the Development Budget, Borrower deposits the amount of such increase with Lender prior to execution of the Change Order in question, (iv) such Change Order does not materially adversely affect the structural components of the Mortgaged Property, (v) the total of all Change Orders taken in the aggregate do not exceed fifty percent (50%) of the Hard Cost Contingency, (vi) no portion of the Change Order deletes or reduces the Initial Construction Work in any way (it is not a deductive Change Order in whole or in part) and (v) Borrower provides a copy of such Change Order to Lender promptly after execution of such Change Order.

"Permitted Contest" is defined in Section 5.3(B).

"Permitted Encumbrances" means the matters identified on Exhibit D.

"Permitted Indebtedness" means (a) ordinary and customary trade payables incurred in the ordinary course of business of ownership and operation of the Mortgaged Property which are payable not later than thirty (30) days after receipt of the original invoice which are in fact not more than sixty (60) days overdue, and do not at any one time exceed \$500,000 in the aggregate

(not including any payables for Impositions or insurance premiums for which amounts have been deposited by Borrower in the Reserve Accounts) and (b) the Loan.

**“Permitted Investments”** means any of the investments identified on Schedule 6.4, and any other investments that are approved by Lender in its sole discretion, provided that at all times Lender has a perfected first priority security interest in such investment, and Borrower has provided evidence of such, in form and substance satisfactory to Lender, and provided further that the Lender has approved the maturity of such investments.

**“Person”** means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental person, the successor functional equivalent of such Person).

**“Physical Condition Report”** means the report(s) regarding the physical inspection of the Land and Improvements listed on Schedule 1.1(H).

**“Plans and Specifications”** means the final drawings and specifications for the development and construction of each component part of the applicable Construction (as the same may be amended in accordance with the provisions permitted by this Agreement), (other than and specifically excluding the Initial Construction Work) as applicable, which plans and specifications and all amendments thereto shall be (i) subject to Lender’s approval, which approval shall not be unreasonably withheld or delayed, and (ii) in accordance with all applicable Legal Requirements.

**“Post-Closing Endeavor Letter”** means a certain letter agreement of even date herewith between Borrower and Lender regarding satisfaction of certain conditions to the Closing.

**“Prepayment Premium”** means the greater of (i) one percent (1%) of the outstanding principal balance of the Loan and (ii) the Yield Maintenance Amount. However, if an Event of Default occurs on or before the Lockout Expiration Date and the Loan is accelerated to a date on or before the Lockout Expiration Date, the Prepayment Premium shall be equal to the sum of (a) the Yield Maintenance Amount and (b) five percent (5%) of the principal balance of the Loan.

**“Proceeds”** is defined in Section 8.1.

**“Project Completion Date”** means the earlier to occur of (i) August 31, 2007, or (ii) the Validation occurs; provided, however, that if such Validation is delayed due to Force Majeure, the Project Completion Date shall be extended by such time as determined by Lender based upon the delay caused by the Force Majeure, in no event to exceed 90 additional days.

**“Project Improvements”** means the site work and other improvements to be constructed upon the Land in accordance with the Project Plans and Specifications, including, the existing shell building located on the Land.

**“Project Plans and Specifications”** means the construction drawings, plans and specifications for the development and construction delivered by Borrower to, and approved by, Lender of each component of the Initial Construction Work (as the same may be amended in accordance with the provisions of this Agreement). The Project Plans and Specifications are identified on attached Schedule 1.1(I).

**“Promissory Note”** means the Promissory Note dated of even date herewith made by Borrower to the order of Lender in the original principal amount of \$26,000,000.

**“Proprietary Rights”** is defined in Section 4.11.

**“Punch-List Items”** means details of construction, decoration and mechanical and electrical adjustment which in the aggregate are minor in character and do not materially interfere with the intended use and operation of the applicable Construction and which can be completed within 30 days; provided, however, that in the event the applicable Construction is not completed within such thirty (30) days and Borrower is diligently pursuing the completion of such items, such original thirty (30) day period shall be extended for an additional thirty (30) days (for an aggregate of sixty (60) days in total); provided further that if Borrower has been diligently pursuing the completion of such item and thereafter continues to diligently pursue the completion of such items, such period shall be extended for an additional fifteen (15) days (for an aggregate of seventy-five (75) days in total).

**“Qualified Manager”** shall mean any property manager reasonably acceptable to Lender that, as of the date of such designation, is a nationally recognized management firm engaged in the business, operation and management of biopharmaceutical manufacturing facilities, office buildings and laboratories, or facilities for other similar uses containing in the aggregate at least 500,000 square feet of gross leaseable office space which are located in the United States and which is approved by Lender and with respect to which a Rating Agency Confirmation is provided.

**“Rating Agency Confirmation”** shall mean, collectively, an affirmation from each of the Rating Agencies that the credit rating by such Rating Agency of the securities issued in connection with a securitization of the Loan or otherwise secured by a pledge of the Note immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion provided, however if the Loan has not been securitized in connection with a Securitization in which some or all of the securities have been rated by one or more of the Rating Agencies, Rating Agency Confirmation means Lender’s approval, which approval is not to be unreasonably withheld or delayed.

**“Rating Agencies”** shall mean S&P and Moody’s or, if any of such firms shall for any reason no longer perform the functions of a securities rating agency, any other nationally recognized statistical rating agency reasonably designated by Lender; provided, however, that at any time during which the Loan is an asset of a securitization, “Rating Agencies” shall mean the rating agencies that from time to time rate the securities issued in connection with such

securitization. If the Loan is not an asset in a securitization, Rating Agency shall mean those rating agencies designated by Lender from time to time.

**“Rents”** shall mean all of Borrower’s right, title and interest in and to rents, income, receipts, royalties, profits, issues, service reimbursements, fees, termination payments receivables, accounts receivable and payments from or related to the Land and/or Improvements from time to time accruing from the operation of the Land and/or Improvements.

**“Request for Advance”** means a completed statement in the form attached as Schedule 1.1(J) executed by Borrower and delivered to Lender prior to each release of funds from the Development Fund by Lender after the Closing.

**“Request for Release”** means a request from Borrower to Lender in connection with a request for disbursement from the applicable Reserve accompanied by the following items, which request and items are subject to the approval of Lender not to be unreasonably withheld, conditioned or delayed: (a) currently dated certificate approved by Borrower from a Contractor, the Independent Architect, if any, and Lender’s Representative, if any, on a form to be reasonably approved by Lender; (b) the Required Lien Waivers in form and substance reasonably satisfactory to Lender; (c) if requested by Lender, from time to time, the requisitions for payment then the subject of such Request for Release from subcontractors and material suppliers engaged in the construction of the applicable Construction in form and content reasonably satisfactory to Lender; (d) an Inspection Certificate of an architect approved by Lender based upon an on-site inspection of the applicable Construction made by the Independent Architect and confirmed by Lender’s Representative, if any, which shall certify to all work for which such Request for Release has been completed; (e) evidence reasonably satisfactory to Lender of Construction Legal Compliance in the form of (i) a certificate of an Independent Architect as to items (a), (b) and (c) of the definition of Construction Legal Compliance (together with copies of the applicable entitlements, approvals, allocations, permits, licenses and conditional use permits), (ii) a certificate from the chief financial officer or similar officer of Borrower as to item (d) of the definition of Construction Legal Compliance (which certificate may, as to “threatened” matters, be qualified to “such Person’s knowledge following due inquiry”) and (iii) such other showings, certificates, reports and items as Lender or Lender’s Representative, if any, may reasonably request to confirm Construction Legal Compliance; (f) so long as and to the extent disbursements from the Development Fund are proceeds of the Loan, a date-down endorsement to the Title Policy dating the Title Policy down to the date and time of the requested disbursement, and so long as and to the extent disbursements from the Development Fund are not proceeds of the Loan, evidence satisfactory to Lender that no liens have been filed or are pending against the Mortgaged Property; and (g) such other information and documents as may be reasonably requested or required by Lender or Lender’s Representative, if any, including, but not limited to, certificates, inspections, date-down and other title policy endorsements, invoices, receipts, estoppel certificates, permits, licenses and certificates of occupancy, affidavits and other documents, appropriate for the applicable stage of Construction.

**“Required Completion Date”** means the earlier to occur of (i) May 31, 2007, or (ii) the Completion of Initial Construction; provided, however, that if such Completion of Construction Work is delayed due to Force Majeure, the Required Completion Date shall be extended by such



time as determined by Lender based upon the delay caused by the Force Majeure, in no event to exceed ninety (90) additional days.

**“Required Lien Waivers”** means, waivers of liens executed by (a) for each Request for Release and Request for Advance, each party which has entered into an Architect’s Agreement, Construction Contract, Initial Architect’s Agreement, or Initial Construction Contract respectively, waiving their respective rights, if any, and any right of a subcontractor claiming through or under any of them, to file or maintain any construction liens or claims, all in such form containing such provisions as may be reasonably required by Lender and in accordance with applicable law and (b) for each Request for Release and Request for Advance that includes a request for final payment to any subcontractor, such subcontractor, waiving its right to file or maintain any construction liens or claims, all in such form and containing such provisions as may be reasonably required by Lender executed with respect to and applicable to the extent such subcontractor has received payment. Such waivers may be conditioned upon payment for work performed and materials supplied; provided, that the Request for Release and Request for Advance that includes the request described in clause (b) above shall include (and in the case of the final Request for Release and Request for Advance, within ten (10) days after the funding of such final Request for Release and Request for Advance, Borrower shall deliver to Lender) a duly executed, unconditional waiver for each Person described in clause (a) or (b) above.

**“Required Restoration Date”** is defined in Section 8.1.

**“Reserve and Other Accounts Collateral”** is defined in Section 6.5.

**“Reserve Accounts”** means the Capital Expenditure Reserve Account, Insurance Reserve Account, the Tax Reserve Account and any other securities or deposit accounts required to be maintained pursuant to this Agreement or the other Loan Documents.

**“Reserves”** means the Tax Reserve, the Insurance Reserve and the Capital Expenditure Reserve.

**“Restoration”** is defined in Section 8.1.

**“S&P”** means Standard & Poor’s Rating Service and its successors and assigns.

**“Secure Areas”** means the aseptic manufacturing areas of the Mortgaged Property.

**“Securities”** means any stock, shares, voting trust certificates, bonds, debentures, options, warrants, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

**“Securitization”** is defined in Section 10.1.

**“Servicer”** is defined in Section 10.1.

“**Soft Cost Contingency**” means Borrower’s contingency line item for Soft Costs as shown in the Development Budget.

“**Soft Costs**” means the total of all fees, costs, and expenses, other than Hard Costs, relating to the Project Improvements including payment of Loan interest as shown in the Development Budget.

“**Special Purpose Bankruptcy Remote Entity**” is defined in Schedule 7.13.

“**Subcontracts**” means the subcontracts, if any, and any other contracts for the provisions of labor or materials for the Initial Construction Work entered into by an Initial Construction Contractor in accordance with its Initial Construction Contract.

“**Subsidiary**” means, with respect to any Person (the “**Parent**”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the Parent in the Parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the Parent or one or more Subsidiaries of the Parent or by the Parent and one or more Subsidiaries of the Parent.

“**Substantial Completion and Substantially Completed**” means the satisfaction of all of the following conditions: (a) the date when the applicable Construction shall have been completed (except for Punch List Items and minor items which can be fully completed without material interference with the use and operation of the Mortgaged Property) in accordance with the applicable Plans and Specifications as certified by the Independent Architect on standard AIA-G702 forms and approved by Lender’s Representative, if any, and Lender, such approval not to be unreasonably withheld or delayed; (b) all material permits and approvals required for the normal use and occupancy of the applicable Construction (including a final certificate of occupancy if required for occupancy under applicable Legal Requirements provided, that if only a temporary certificate is available, it shall be accepted for so long as it is effective and operative until Borrower obtains the final certificate) shall have been issued by the appropriate Governmental Authority and shall be in full force and effect; and (c) the applicable Construction shall have been equipped with all fixtures and equipment required for the intended use and operation of the Required Capital Improvements.

“**Substitute Note**” means all notes given in substitution or exchange for the Promissory Note or another Substitute Note.

“**Tax Reserve**” is the reserve for Impositions established pursuant to Section 5.5.

“**Tax Reserve Account**” shall have the meaning provided in Section 6.1.

**“Tenant Impairment Event”** means any one or more of the following has occurred: (a) the tenant under the Guarantor Lease has commenced or is the subject of a proceeding under the Bankruptcy Code; or (b) a default by the tenant under the Guarantor Lease shall have occurred which is not cured prior to the expiration of the applicable grace or curative period, if any, in such Lease.

**“Title Company”** means Chicago Title Insurance Company.

**“Title Policy”** means a the mortgagee’s policy of title insurance issued on the standard Texas form by the Title Company, together with such reinsurance and direct access agreements as Lender may require, insuring that the Mortgage is a valid first and prior enforceable lien on Borrower’s fee simple interest in the Mortgaged Property (including any easements appurtenant thereto but excluding any non-real estate property interests included in the definition of Mortgaged Property) subject only to the Permitted Encumbrances. The Title Policy shall contain such endorsements as Lender may require.

**“Total Debt/Capitalization”** means, at any reporting date, for a Person, the percentage equal to (A) the sum of the long term debt (including any amounts for operating lease debt equivalents) of such Person plus the amount of any current maturities, commercial paper and other short-term borrowings (the **“Total Debt”**) divided by (B) the sum of the Total Debt plus the amount of shareholder’s equity (including any preferred stock) plus minority interests.

**“Total Loss”** means (i) a casualty, damage or destruction of the Mortgaged Property, the cost of restoration of which (as reasonably determined by Lender) would exceed \$50,000,000, (ii) a permanent taking of fifty percent (50%) or more of the gross leaseable area of the Land or Improvements, (iii) a permanent taking of fifty percent (50%) or more of the automobile parking spaces located on the Land or such number of parking spaces as would cause the Borrower or the Mortgaged Property to cease to comply with applicable Legal Requirements or Material Contracts, or (iv) a permanent taking of so much of the Land or Improvements, in either case, such that it would be impracticable, in Lender’s reasonable discretion, even after restoration, to operate the Mortgaged Property as an economically viable whole.

**“Transfer”** means, (a) when used as a verb, to, directly or indirectly, lease, sell, assign, convey, give, exchange, devise, mortgage, encumber, pledge, hypothecate, alienate, grant a security interest, or otherwise create or suffer to exist any Lien, transfer or otherwise dispose, or to contract or agreement to do any of the foregoing, whether by operation of law, voluntarily, involuntarily or otherwise as well as any other action or omission which has the practical effect of initiating or completing the foregoing and (b) when used as a noun, a direct or indirect, lease, sale, assignment, conveyance, gift, exchange, devise, mortgage, encumbrance, pledge, hypothecation, alienation, grant of a security interest or other creation or sufferance of a Lien, transfer of other disposition, or contract or agreement by which any of the foregoing may be effected, whether by operation of law, voluntary or involuntary and any other action or omission which has the practical effect of initiating or completing the foregoing.

**“Treasury Rate”** means the annualized yield on securities issued by the United States Treasury having a maturity corresponding to the remaining term to the originally scheduled Maturity Date, as quoted in Federal Reserve Statistical Release H. 15(519) under the heading

“U.S. Government Securities – Treasury Constant Maturities” for the Treasury Rate Determination Date (as defined below), converted to a monthly equivalent yield. If yields for such securities of such maturity are not shown in such publication, then the Treasury Rate shall be determined by Lender by linear interpolation between the yields of securities of the next longer and next shorter maturities. If said Federal Reserve Statistical Release or any other information necessary for determination of the Treasury Rate in accordance with the foregoing is no longer published or is otherwise unavailable, then the Treasury Rate shall be reasonably determined by Lender based on comparable data.

“**Treasury Rate Determination Date**” means the date which is five (5) Business Days prior to the scheduled prepayment date.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York.

“**UCC Collateral**” is defined in Section 2.9.

“**Validation**” is defined as establishing documented evidence which provides a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes. Although the term ‘Validation’ relates to manufacturing processes, the overall validation effort also includes ‘Qualification’ of Utility Systems, Facility Environments, and Process Equipment to demonstrate that systems are qualified to be used for the process. The purpose of these qualification studies is to demonstrate that Utilities, Facilities, and Equipment are properly installed, operate properly, and are suitable for their application to manufacturing processes.

“**Yield Maintenance Amount**” means (A) the net present value of all future payments of principal and interest due for the remainder of the Term, discounted, each from the date such payments are due to the date of the prepayment, at the result of the Treasury Rate divided by 12, less (B) the then outstanding principal balance of the Loan; such Yield Maintenance Amount can never be less than zero; provided, however, for purposes of any partial prepayment, all references to the remaining outstanding principal balance of the Loan shall instead refer to the amount of such partial prepayment. For purposes of computing the Yield Maintenance Amount with regard to Section 2.4(C)(iii), the date of prepayment shall be deemed the date the Loan is accelerated.

## **1.2 Terms; Utilization of GAAP for Purposes of Financial Statements Under Agreement.**

For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in conformity with GAAP. Financial statements and other information furnished to Lender pursuant to subsection 5.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation. No Accounting Changes shall affect financial covenants, standards or terms in this Agreement; provided, that Borrower shall prepare footnotes to the financial statements required to be delivered hereunder that show the differences between the financial statements delivered (which reflect such Accounting Changes) and the basis for calculating financial covenant compliance (without reflecting such Accounting Changes).

### **1.3 Other Definitional Provisions.**

References to “Sections,” “Exhibits” and “Schedules” shall be to Sections, Exhibits and Schedules, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in Section 1.1 may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. In this Agreement, “hereof,” “herein,” “hereto,” “hereunder” and the like mean and refer to this Agreement as a whole and not merely to the specific section, paragraph or clause in which the respective word appears; words importing any gender include the other genders; references to “writing” include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; the phrase “and/or” shall mean that either “and” or “or” may apply; the phrases “attorneys’ fees,” “legal fees” and “counsel fees” shall include any and all attorneys’, paralegal and law clerk fees and disbursements, including court costs, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Mortgaged Property and the Collateral and enforcing its rights hereunder and/or the other Loan Documents; references to agreements and other contractual instruments shall be deemed to include subsequent amendments, assignments, and other modifications thereto, but only to the extent such amendments, assignments and other modifications are not prohibited by the terms of this Agreement or any other Loan Document; references to Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; references to a Person’s “knowledge” in this Agreement or the other Loan Documents refers to the actual knowledge of the Person in question and such knowledge as a reasonably prudent Person would have acquired by virtue of such inquiry and due diligence as a reasonably prudent Person would have undertaken and all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations.

## **SECTION 2 AMOUNTS AND TERMS OF THE LOAN**

**2.1 Loan Disbursement and Note.** Subject to the terms and conditions of this Agreement, Lender shall lend the Loan to Borrower on the Closing Date. The proceeds of the Loan shall be used to (i) acquire Mortgaged Property; (ii) satisfy actual, documented closing costs related to the Loan and approved by Lender; and (iii) redevelop the Mortgaged Property for Borrower’s use in manufacturing biopharmaceutical products. The disbursement of the Loan in accordance with the foregoing shall be made on the Closing Date. The Loan shall be evidenced by the Note. The Obligations of Borrower under this Agreement, the Note and the other Loan Documents are secured by, among other things, the Mortgage and the Liens created or arising under the other Loan Documents. On the Closing Date, Lender shall (a) wire transfer the amount required by the settlement statement agreed to by Lender and Borrower applicable to the Closing (“**Settlement Statement**”) in accordance with Borrower’s instructions to acquire the Mortgaged Property, (b) permit Borrower to direct the payment of costs and expenses, if any, which Borrower requests to be paid at Closing directly by Lender with the proceeds of the Loan, only to the extent Lender approves, in its sole discretion, such costs and expenses and (c) deposit the balance of the Loan Proceeds into an escrow account (the “**Development Fund**”), with Bank in which escrow

account Lender shall have a first priority security interest and the right to approve all disbursements therefrom. On the Closing Date, Borrower shall deposit into the Equity Account an amount equal to the amount set forth for Borrower's Contribution on the Settlement Statement ("**Borrower's Initial Equity Contribution**"), which monies shall be held and disbursed in accordance with the terms of this Agreement. Money in each of the Development Fund and the Equity Account shall be invested in Permitted Investments, designated by and for the benefit of Borrower, and all earnings from such Permitted Investments shall be retained in the Development Fund or the Equity Account, as applicable. The Loan and the other funds contained in the Development Fund (including, without limitation, the Borrower's Initial Equity when such amounts are transferred from the Equity Account into the Development Fund as set forth in Section 3.2(A) below) will be released from the Development Fund and advanced to pay for the costs attributed to the Initial Construction Work in accordance with each line item category in the Initial Construction Budget and as otherwise as provided in and subject to the other terms and conditions contained in Section 3.3 of this Agreement (such advances being referred to herein collectively, as the "**Development Advances**").

## **2.2 Interest.**

(A) **Interest Rate.** Subject to the provisions of Section 2.2(C) hereof, the outstanding principal balance of the Loan shall bear interest at the Base Rate. However, (a) upon and during the continuance of any Event of Default by Borrower in the payment of any sum of principal, interest or other Indebtedness of Borrower owing Lender when due, (b) during the existence of any other Event of Default, or (c) after the Maturity Date or earlier upon acceleration of the Loan, the principal amount of the Loan shall bear interest ("**Default Interest**") at the Default Rate. With respect to any scheduled payments of principal and interest (excluding the payment due on the Maturity Date), Borrower will be entitled to a grace period of five (5) days from such date before Default Interest is imposed by reason of such late payment; provided, however, such grace period will not be available more than once in any twelve (12) Loan Month period and if Borrower fails to make the required payment within said five (5) day period, Default Interest will be calculated from the original due date. Except as set forth in the preceding sentence, the Default Interest shall commence, without notice, immediately upon and from the occurrence of (a), (b) or (c) above, as the case may be, and shall continue until Events of all Defaults are cured and all sums then due and payable under the Loan Documents are paid in full; provided that in the event of any monetary Event of Default, Default Interest shall be calculated from the date the applicable Events of Default actually occurred. Default Interest shall be payable upon demand, and, to the extent unpaid, shall be compounded monthly at the Default Rate.

(B) **Computation and Payment of Interest.** Interest on the Loan and all other Obligations owing to Lender shall be computed on the daily principal balance of the Note on the basis of actual days elapsed and a three hundred sixty (360)-day year. Interest on the Loan is payable in arrears. Payments of interest shall be paid to Lender as specified in Section 2.3. In addition, all accrued and unpaid interest shall be paid to Lender on the earlier of the date of prepayment (to the extent prepayment is permitted under Section 2.4) and maturity, whether by acceleration or otherwise. The Loan shall commence to bear interest on the date the proceeds of the Loan are to be disbursed to or for the order of Borrower, provided, however, if the proceeds are disbursed to an escrowee, the Loan shall commence to bear interest from and including the

date of disbursement to such escrowee regardless of the date such proceeds are disbursed from escrow.

(C) **Interest Laws.** Notwithstanding any provision to the contrary contained in this Agreement or the other Loan Documents, Borrower shall not be required to pay, and Lender shall not be permitted to collect, any amount of interest in excess of the maximum amount of interest permitted by law (“**Excess Interest**”). If any Excess Interest is provided for or determined by a court of competent jurisdiction to have been provided for in this Agreement or in any of the other Loan Documents, then in such event: (1) the provisions of this Section shall govern and control; (2) Borrower shall not be obligated to pay any Excess Interest; (3) any Excess Interest that Lender may have received hereunder shall be, at Lender’s option, (a) applied as a credit against the outstanding principal balance of the Obligations due and owing to Lender (without any prepayment penalty or premium therefor) or for accrued and unpaid interest thereunder (not to exceed the maximum amount permitted by law), (b) refunded to the payor thereof, or (c) any combination of the foregoing; (4) the interest rate(s) provided for herein shall be automatically reduced to the maximum lawful rate allowed from time to time under applicable law (the “**Maximum Rate**”), and this Agreement and the other Loan Documents shall be deemed to have been and shall be, reformed and modified to reflect such reduction; and (5) Borrower shall not have any action against Lender for any damages arising out of the payment or collection of any Excess Interest. Notwithstanding the foregoing, if for any period of time interest on any Obligation due and owing to Lender is calculated at the Maximum Rate rather than the applicable rate under this Agreement, and thereafter such applicable rate becomes less than the Maximum Rate, the rate of interest payable on such Obligations due and owing to Lender shall, to the extent permitted by law, remain at the Maximum Rate until Lender shall have received or accrued the amount of interest which Lender would have received or accrued during such period on Obligations due and owing to Lender had the rate of interest not been limited to the Maximum Rate during such period.

(D) **Late Charges.** If any scheduled payment of principal and/or interest or other amount owing pursuant to this Agreement or the other Loan Documents (excluding the payment due on the Maturity Date) is not paid when due, Borrower shall pay to Lender, in addition to all sums otherwise due and payable, a late charge (“**Late Charge**”) in an amount equal to five percent (5%) of the unpaid amount. With respect to regular monthly payments of principal and/or interest, Borrower will be entitled to a grace period of five (5) days from the date due before a late charge is imposed by reason of such late payment; provided, however, such grace period will not be available more than once in any consecutive twelve (12) month period. Any unpaid late charge shall bear interest at the Default Rate until paid.

### **2.3 Payments.**

Interest for the period commencing on the date of disbursement of the Loan and ending on August 9, 2006 shall be paid on the Closing Date. On each Payment Date thereafter commencing with the Payment Date occurring on September 10, 2006, Borrower shall pay to Lender interest on the outstanding principal of the Loan accrued from and including the immediately preceding Payment Date, to, but not including, the Payment Date on which such payment is to be made. Commencing on March 10, 2009, and on each Payment Date thereafter, principal of the Loan evidenced by the Note shall be paid to Lender in equal monthly

installments of principal in an amount equal to Two Hundred Eighty-Eight Thousand Eight Hundred Eighty-Eight and 89/100 Dollars (\$288,888.89) per month, which amount shall be sufficient to amortize the full principal amount outstanding as of the date of disbursement of the Loan over a seven and one-half (7.5) year term (such amortization schedule also setting forth interest at the Base Rate (assuming all payments are timely made) is attached hereto as Schedule 23).

#### **2.4 Payments and Prepayments on the Loan.**

(A) **Manner and Time of Payment.** Borrower agrees to pay all of the Obligations relating to the Loan as such amounts become due or are declared due pursuant to the terms of this Agreement and the other Loan Documents. All payments shall be made without deduction, defense, setoff or counterclaim by the wire transfer of good immediately available wire transferred federal funds to Lender's account at JP Morgan Chase Bank for the account of Lender, Reference: Alexion Pharmaceuticals Loan No.: M001313: 1, or at such other place as Lender may direct from time to time by written notice to Borrower. Borrower shall receive credit for such funds on the date received if such funds are received by Lender by 1:00 P.M. (New York time) on such day. In the absence of timely receipt, such funds shall be deemed to have been paid by Borrower on the following Business Day. Whenever any payment to be made under the Loan Documents shall be stated to be due on a day that is not a Business Day, or any time period relating to a payment to be made hereunder is stated to expire on a day that is not a Business Day, the payment may be made on the following Business Day and the period will not expire until the following Business Day.

(B) **Maturity.** The outstanding principal balance of the Loan, all accrued and unpaid interest thereon and all other sums owing to Lender pursuant to the Loan Documents, shall be due and payable on August 10, 2016 (the "**Maturity Date**").

#### **(C) Prepayments.**

(i) No prepayment of the Loan shall be allowed in whole or in part, on or prior to the Lockout Expiration Date other than principal payments required pursuant to Section 2.3. Thereafter, the Loan may be prepaid, in whole, but not in part, upon not less than sixty (60) days' irrevocable prior notice to Lender. Any prepayments on the principal balance of the Loan evidenced by the Note whether voluntary or involuntary, shall be accompanied by payment of interest accrued to the date of prepayment, together with the applicable Prepayment Premium. Any prepayments made pursuant to the foregoing shall be made on a Payment Date, provided, however, Borrower may elect to make any such prepayments on a Business Day which is not a Payment Date if, in addition to all interest which has accrued to and including the date of prepayment and the Prepayment Premium, Borrower also pays all interest which would accrue on the Loan to, but not including, the Payment Date following the date of prepayment. Amounts prepaid shall not be re-borrowed.

(ii) If, following an Event of Default, payment of all or any part of the Loan is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be deemed a voluntary prepayment by Borrower in violation of the prohibition against



prepayment set forth in Section 2.4(C)(i) and Borrower shall pay to Lender, in addition to the other Obligations, the Prepayment Premium. If the Maturity Date is accelerated, due to an Event of Default or otherwise, or if any prepayment of all or any portion of the Loan hereunder occurs, whether in connection with Lender's acceleration of the Loan or otherwise, or if the Mortgage is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure or by any other means, then the Prepayment Premium shall become immediately due and owing and Borrower shall immediately pay the Prepayment Premium to Lender. Nothing contained in this Section 2.4(C)(iii) shall create any right of prepayment.

**2.5 Lender's Records; Mutilated, Destroyed or Lost Notes.** The balance on Lender's books and records shall be presumptive evidence (absent manifest error) of the amounts due and owing to Lender by Borrower; provided that any failure to so record or any error in so recording shall not limit or otherwise affect Borrower's obligation to pay the Obligations. In case any Note shall become mutilated or defaced, or be destroyed, lost or stolen, Borrower shall, upon request from Lender, execute and deliver a new Note of like principal amount in exchange and substitution for the mutilated or defaced Note, or in lieu of and in substitution for the destroyed, lost or stolen Note. In the case of a mutilated or defaced Note, the mutilated or defaced Note shall be surrendered to Borrower upon delivery to Lender of the new Note. In the case of any destroyed, lost or stolen Note, Lender shall furnish to Borrower, upon delivery to Lender of the new Note (i) certification and affidavit of the destruction, loss or theft of such Note and (ii) such security or indemnity as may be reasonably required by Borrower to hold Borrower harmless.

**2.6 Taxes.** Any and all payments or reimbursements made under the Agreement, the Note or the other Loan Documents shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto arising out of or in connection with the transactions contemplated by the Loan Documents; excluding, however, the following: taxes imposed on the income of Lender by any jurisdiction or any political subdivision thereof; taxes that are not directly attributable to the Loan; and any "doing business" taxes, however denominated, charged by any state or other jurisdiction (all such taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto, excluding such taxes imposed on income, taxes not directly attributable to the Loan and any "doing business" taxes, herein "**Tax Liabilities**"). If Borrower shall be required by law to deduct any such amounts from or in respect of any sum payable hereunder to Lender, then the sum payable hereunder shall be increased as may be necessary so that, after making all required deductions, Lender receives an amount equal to the sum it would have received had no such deductions been made. In the event that, subsequent to the Closing Date, (1) any changes in any existing law, regulation, treaty or directive or in the interpretation or application thereof, (2) any new law, regulation, treaty or directive enacted or any interpretation or application thereof, or (3) compliance by Lender with any new request or directive (whether or not having the force of law) from any governmental authority, agency or instrumentality does or shall subject Lender to any tax of any kind whatsoever with respect to this Agreement, the other Loan Documents or the Loan, or change the basis of taxation of payments to Lender of principal, fees, interest or any other amount payable hereunder (except for income taxes, or franchise taxes imposed in lieu of income taxes, imposed generally by federal, state or local taxing authorities with respect to interest or commitment or other fees payable hereunder or changes in the rate of interest or tax on the overall income of Lender, taxes that are not directly attributable to the Loan and any

“doing business” taxes, however denominated, charged by any state or other jurisdiction) and the result of any of the foregoing is to increase the cost to Lender of making or continuing its Loan hereunder, as the case may be, or to reduce any amount receivable hereunder, then, in any such case, Borrower shall promptly pay to Lender, within thirty (30) days after its demand, any additional amounts necessary to compensate Lender, on an after-tax basis, for such additional cost or reduced amount receivable, as determined by Lender with respect to this Agreement or the other Loan Documents. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.6, it shall promptly notify Borrower of the event by reason of which Lender has become so entitled.

**2.7 Application of Payments.** Except as otherwise expressly provided in the last sentence of this Section 2.7, all payments made hereunder shall be applied first, to the payment of any Late Charges and other sums (other than principal and interest) due from Borrower to Lender under the Loan Documents, second, to any interest then due at the Default Rate, third to interest then due at the Base Rate, and last to the principal amount. Following and during the continuance of an Event of Default, all sums collected by Lender shall be applied in such order of priority to such items set forth below as Lender shall determine in its sole discretion: (i) to the costs and expenses, including reasonable attorneys’ and paralegals’ fees and costs of appeal, incurred in the collection of any or all of the Loan due or the realization of any collateral securing any or all of the Loan; and (ii) to any or all unpaid amounts owing pursuant to the Loan Documents in any order of application as Lender, in its sole discretion, shall determine.

**2.8 Commitment Fee.** Borrower shall pay the Commitment Fee to Lender on the Closing Date.

**2.9 Security Agreement.** To secure the payment, performance and discharge of the Obligations, Borrower hereby grants, assigns, transfers, conveys and sets over unto Lender, and hereby grants to Lender a continuing first priority, perfected security interest in all of Borrower’s right, title and interest in, to and under any and all of the following, whether now and/or existing and/or now owned and/or hereafter acquired and/or arising:

- (1) the Accounts;
- (2) the Contracts;
- (3) the Reserve Accounts and other Reserve and Other Accounts Collateral;
- (4) the Equipment, Fixtures and Personalty;
- (5) the General Intangibles;
- (6) the Leases;
- (7) the Inventory;
- (8) the Management Agreement(s);
- (9) the Rents and other Gross Revenues;
- (10) the Proceeds; and
- (11) together with all accessions to, substitutions for, and replacements of, any of the foregoing and any and all products and cash and non-cash proceeds of any of the foregoing (collectively, the “**UCC Collateral**”).

With respect to all UCC Collateral constituting a part of the Mortgaged Property, including, without limitation, the Accounts, this Agreement shall constitute a “security agreement” within

the meaning of, and shall create a security interest under, the UCC. Borrower hereby acknowledges and agrees that Lender shall be permitted to file one or more financing statements naming Borrower as debtor and Lender as secured party identifying "the Accounts, the Contracts, the Reserve Accounts and other Reserve and Other Accounts Collateral, the Equipment, Fixtures and Personalty, the General Intangibles, the Leases, the Inventory, the Management Agreements, the Rents and other Gross Revenues and the Proceeds" of Borrower in the collateral description thereon. As to the UCC Collateral, the grant, transfer, and assignment provisions of this Section 2.9 shall control over the grant provision of Section 2.1 of the Mortgage. Borrower represents and warrants that, except for any financing statement filed by Lender, no presently effective financing statement covering the Collateral or any part thereof has been filed with any filing officer, and no other security interest has attached to or has been perfected in the Collateral or any part thereof. Borrower shall from time to time within twenty (20) days after request by Lender, execute, acknowledge and deliver, or authorize the filing of any financing statement, renewal, affidavit, certificate, continuation statement or other document as Lender may reasonably request in order to evidence, perfect, preserve, continue, extend or maintain this security agreement and the security interest created hereby as a first priority Lien on the UCC Collateral, subject only to the Permitted Encumbrances.

**2.10 Certain Secured Party Remedies.** If an Event of Default shall have occurred and be continuing, Lender shall have all the remedies of a secured party under the UCC and all other rights and remedies now or hereafter provided or permitted by law, including, without limitation, the right to take immediate and exclusive possession of the UCC Collateral, or any part thereof, and for that purpose Lender may, as far as Borrower can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any premises on which any of the Collateral or any part thereof may be situated. Without limitation of the foregoing, Lender shall be entitled to hold, maintain, preserve and prepare all of the Collateral for sale and to dispose of said Collateral, if Lender so chooses, from the Mortgaged Property provided that Lender may require Borrower to assemble such UCC Collateral and make it available to Lender for disposition at a place to be designated by Lender from which the UCC Collateral would be sold or disposed of, and provided further that, for a reasonable period of time prior to the disposition of such UCC Collateral, Lender shall have the right to use same in the operation of the Mortgaged Property. Borrower will execute and deliver to Lender any and all forms, documents, certificates and registrations as may be necessary or appropriate to enable Lender to sell and deliver good and clear title to the UCC Collateral to the buyer at the sale as herein provided. Unless the UCC Collateral is of the type customarily sold on a recognized market, Lender will give Borrower at least ten (10) days' written notice of the time and place of any public sale of such UCC Collateral or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is given to Borrower in writing at least ten (10) days before the time of the sale or disposition. Lender may buy at any public sale and, if the UCC Collateral is of a type customarily sold in a recognized market or is a type which is the subject of widely distributed standard price quotations, it may buy at private sale. Unless Lender shall otherwise elect, any sale of the UCC Collateral shall be solely as a unit and not in separate lots or parcels, it being expressly agreed, however, that Lender shall have the absolute right to dispose of such UCC Collateral in separate lots or parcels. Lender shall further have the absolute right to elect to sell the UCC Collateral as a unit with, and not separately from, the Land and Improvements constituting a portion of the Mortgaged Property. The net proceeds realized upon any

disposition of the UCC Collateral, after deduction for the expenses of retaining, holding, preparing for sale, selling and the like and the attorneys' fees and legal expenses incurred by Lender shall be applied towards satisfaction of such of the Obligations secured hereby, and in such order of application, as Lender may elect. If all of the Obligations are satisfied, Lender will account to Borrower for any surplus realized on such disposition.

**2.11 Potential Loan Increase.** Provided no Event of Default then exists, if Borrower or Guarantor obtains Drug Approval on or before December 31, 2007, Borrower may provide Lender with Borrower's written request to increase the amount of the Loan by \$9,000,000 upon the terms and conditions contained in this Section 2.11. Within forty-five (45) days of Landlord's receipt of such written request, Borrower and Lender shall cooperate with each other to enter into one or more documents as deemed necessary or desirable by Borrower and Lender to amend the existing Loan Documents to provide for the following:

(A) increase the Loan by adding a new tranche B, with the existing Loan becoming tranche A, which new tranche B would be in the amount of \$9,000,000 (and is herein called the "**Tranche B Loan**");

(B) the Tranche B Loan would have a separate base rate of interest (non-default) equal to the yield to maturity of 10-year U.S. Treasury securities plus a spread equal to 4.0%, calculated at the time of disbursement of the Tranche B Loan;

(C) the Tranche B Loan would be a part of the definition of "**Loan**" in the Loan Documents and secured by all collateral and security securing the Loan under the Loan Documents on the Closing; and

(D) Borrower providing updated or new opinions of counsel, officer's certifications, title insurance policies and other closing deliveries as customary to obtain with an amendment increasing the amount of a first priority mortgage loan, all upon the closing of the Tranche B Loan; all of which shall be acceptable to Borrower and Lender.

### **SECTION 3** **CONDITIONS TO LOAN**

**3.1 Conditions to Funding of the Loan on the Closing Date.** The obligation of Lender to disburse the Loan, and thereafter to make disbursements from the Development Account, is subject to the prior or concurrent satisfaction of the conditions set forth below.

(A) **Performance of Agreements; Truth of Representations and Warranties; No Injunction.** Borrower, Guarantor and all other Persons executing any Loan Document on behalf of Borrower and Guarantor shall have performed in all material respects all agreements which any of the Loan Documents provide shall be performed on or before the Closing Date. The representations and warranties contained in the Loan Documents shall be true, correct and complete in all material respects on and as of the Closing Date to the same extent as though made on and as of that date. No Legal Requirements shall have been adopted, no order, judgment or decree of any Governmental Authority shall have been issued or entered, and no litigation shall be pending or threatened, which in the reasonable judgment of Lender would

enjoin, prohibit or restrain, or impose or result in an adverse effect upon the making, borrowing or repayment of the Loan or the execution, delivery or performance of the Loan Documents. No Event of Default shall have occurred and then be continuing.

(B) **Opinion of Counsel.** Lender shall have received and approved written opinions of counsel for Borrower and Guarantor, in form and substance reasonably satisfactory to Lender and its counsel, dated as of the Closing Date. By execution of this Agreement, Borrower authorizes and directs its counsel to render and deliver such opinions to Lender.

(C) **Loan Documents.** On or before the Closing Date, Borrower shall execute and deliver and cause to be executed and delivered, to Lender all of the Loan Documents, each, unless otherwise noted, dated the Closing Date, duly executed, in form and substance satisfactory to Lender and in quantities designated by Lender (except for the Promissory Note, of which only the original shall be executed). Borrower hereby authorizes Lender to file the financing statements in such filing offices as Lender elects.

(D) **Officer's Certificate.** Lender shall have received and approved an Officer's Certificate executed by the chief financial officer or similar officer of Borrower stating that: (a) on such date, and after giving effect to the Loan, no Default or Event of Default exists; (b) no material adverse change in the financial condition or operations of the business of Borrower or Guarantor has occurred since March 31, 2006; and (c) the representations and warranties of Borrower and Guarantor set forth in this Agreement and the other Loan Documents are true, and correct in all material respects on and as of such date with the same effect as though made on and as of such date.

(E) **Insurance Policies and Endorsements.** Lender shall have received and approved the original policies of insurance required to be maintained under this Agreement and the other Loan Documents, together with endorsements satisfactory to Lender naming Lender as additional insured under such policies. If such policies are not delivered to Lender, Lender must receive and approve a copy of the insurance policies in question and evidence of such insurance required to be maintained in connection with this Agreement.

(F) **Organizational and Authorization Documents.** Lender shall have received all documents reasonably requested by Lender, including all Organizational Documents, with regard to the due organization, existence, internal governance, power and authority, due authorization, execution and delivery, authorization to do business and good standing of Borrower and Guarantor, the validity and binding effect of the Loan Documents and other matters relating thereto, in form and substance reasonably satisfactory to Lender.

(G) **Closing Statement.** Lender shall have received and approved a closing and disbursement statement executed by Borrower with respect to the disbursement of the proceeds of the Loan.

(H) **Financial Statements.** Lender shall have received and approved financial statements of Guarantor as of March 31, 2006. Lender shall have received (a) audited financial statements for Guarantor for the calendar years 2004 and 2005, and unaudited financial statements for the calendar year 2006 (to date); and (b) a pro forma balance sheet of Borrower

dated the Closing Date giving effect to the making of the Loan and the transactions occurring on the Closing Date, each accompanied by an Officer's Certificate of the chief financial officer or similar officer of Borrower.

(I) **Appointment of Agent for Service of Process.** Lender shall have received and approved a letter appointing (and accepted by) Corporation Service Company as Borrower's and Guarantor's agent for service of process.

(J) **Material Contracts and Other Agreements.** Lender shall have received and approved true, correct and complete certified copies of each Material Contract, all other operating agreements, service contracts and equipment leases and all permits, licenses and documents pertaining to the Proprietary Rights relating to the Mortgaged Property.

(K) **Environmental Assessments, Physical Condition Reports and Lender's Inspection and Plans and Specifications.** Lender shall have received and approved the Environmental Reports and Physical Condition Reports relating to the Mortgaged Property, together with letters from the preparer(s) thereof permitting Lender (and Persons designated by Lender) to rely upon the Environmental Reports and Physical Condition Reports. To the extent in the possession of, or reasonably obtainable by, the Borrower, a true, correct and complete copy of "as-built" plans and specifications for the Improvements.

(L) **Title Policy, Survey, Searches, Perfection and Priority.** Lender shall have received and approved (i) the Title Policy and (ii) a plat of survey of the Land, Improvements and other components of the Mortgaged Property constituting real estate certified to such Persons as Lender may designate and prepared in accordance with Lender's requirements. Lender shall have received and approved copies of Uniform Commercial Code financing statement, judgment, tax lien, bankruptcy and litigation search reports of such jurisdictions and offices as Lender may reasonably designate with respect to Borrower, Guarantor and such other Persons as Lender may reasonably require. Lender shall have received such other evidence as Lender may require confirming that Lender has a perfected first priority security interests and Lien upon the Collateral.

(M) **Reserve Accounts and Deposits.** The Reserve Accounts shall have been established in a manner satisfactory to Lender. The initial deposits into the Reserves on the Closing Date, shall have been made (which amounts may, with Lender's approval, be made from the proceeds of the Loan).

(N) **Commitment Fee.** Lender shall have received its Commitment Fee.

(O) **Other Documents and Deliveries.** Borrower shall have delivered such other documents and deliveries as are set forth on the Closing Checklist attached hereto as **Exhibit E.**

(P) **Leases.** Lender shall have received true, correct and complete certified copies of each of the Leases, including, the Guarantor Lease.

(Q) **Legal Fees; Closing Expenses.** Borrower shall have paid any and all legal fees and expenses of counsel to Lender, together with all recording fees and taxes, title insurance premiums, and other costs and expenses related to the Loan.

(R) **Guaranty.** Guarantor shall have executed and delivered the Guaranty.

(S) **Equity.** Borrower shall have deposited at least the Borrower's Initial Equity Contribution into the Equity Account.

(T) **Logo.** Borrower shall execute and deliver or cause the owner thereof to execute and deliver, a consent consenting to Lender's use of Borrower's logo and the logo associated with Guarantor solely for the purpose specified in Section 11.12.

(U) **Licenses, Permits and Approvals.** Lender shall have received a building permit for the Initial Construction Work or, to the extent not so received, then all necessary permits applicable to construction then being conducted and thereafter obtaining such other required permits needed for each portion of the Initial Construction Work prior to commencing such portion of the Initial Construction Work. Borrower will have obtained and delivered to Lender all other applicable licenses, permits and approvals as Lender or any Governmental Authority may require. Evidence satisfactory to Lender that the Project Improvements may be completed in accordance with applicable Legal Requirements and that any such Legal Requirements are in full force and effect and Borrower is in full compliance therewith. Notwithstanding Section 3.1(U), no certificate of occupancy will be required for the Project Improvements as a condition to initial disbursement of the Loan.

(V) **Zoning.** Lender shall have received evidence satisfactory to Lender as to the compliance of the Mortgaged Property with all applicable Legal Requirements.

(W) **Development Budget and Construction Budget.** Lender shall have received the final Development Budget and all Initial Construction Budgets listing all Hard Costs and all Soft Costs, all in a form and substance acceptable to Lender.

(X) **Initial Construction Contracts and Agreements.** Lender shall have received: (i) a certified copy of each Initial Construction Contract, together with certified copies of all Subcontracts relating to the Initial Construction Work which Lender may request, and (ii) a certified copy of each Initial Architect's Agreement, all such agreements and contracts being in a form and substance acceptable to Lender and consistent with the Development Budget and Initial Construction Budgets, as applicable. Each Initial Contractor and each Initial Borrower's Architect shall have consented to the Assignment of Initial Construction Contract and the Assignment of Initial Architect's Agreement, as applicable, pursuant to a consent satisfactory in form and substance to Lender.

(Y) **Project Plans and Specifications.** Lender shall have received and approved two (2) sets of the Project Plans and Specifications for the Initial Construction Work.

(Z) **Architect Certificate.** The Initial Borrower's Architect having primary responsibility for the design of the Project Improvements and such other design professionals as Lender may require shall have provided Lender with a certificate regarding the Project Improvements, the Project Plans and Specifications and the Initial Construction Work satisfactory in form and substance to Lender.

(AA) **Lender's Consultant's Report.** Lender's Construction Consultant shall have provided Lender with the Lender's Consultant's Report, such report to be satisfactory to Lender.

(BB) **Construction Schedule.** Lender shall have received the final Development Schedule and Construction Schedule, each as approved by Lender.

### 3.2 **Advances Generally.**

(A) **Advances.** So long as no Event of Default or Default exists, Lender shall, on the terms and conditions set forth below, make disbursements from the Development Fund (as applicable) to pay a portion of Borrower's Hard Costs and Soft Costs incurred in connection with the Completion of Initial Construction Work. The Development Advances shall be made in accordance with the terms and conditions of this Article 3. From time to time, to the extent there are insufficient funds in the Development Fund to satisfy a Development Advance, Lender may transfer (without any direction or further authorization from Borrower) funds from the Equity Account into the Development Fund, which amounts shall then be disbursed in accordance with Section 3.3 of this Agreement.

(B) **No Advances for Interest.** Lender may, with or without Borrower's having made a Request for Advance, approve Development Advances for purposes of paying Lender all sums including interest and principal which are then due and payable from Borrower to Lender under this Agreement and any other Loan Document.

(C) **Development Budget.** Borrower represents and warrants that the Development Budget is accurate and complete and includes all Hard Costs and Soft Costs of the Initial Construction Work, including all costs and expenses necessary to satisfy, fulfill, comply with and perform all terms, conditions, requirements and obligations under and pursuant to Legal Requirements, all Initial Construction Contracts, all Initial Architect's Agreements and all Material Contracts, other than those, if any, which a Governmental Authority has agreed, in writing, to perform, together with a Hard Cost Contingency and Soft Cost Contingency as approved by Lender.

(D) **Loan Balancing; Right to Require Deposits.** Notwithstanding anything to the contrary herein, it is expressly understood and agreed that the Loan shall at all times be "in balance." The Loan shall be deemed to be "in balance" only at such time and from time to time, as Lender may reasonably determine that either: (a) the amount left in the Development Fund (plus, giving effect to the amounts in the Equity Account, all escrow reserves, retainage and that portion of the Hard Cost Contingency and Soft Cost Contingency available for Borrower's then current use as permitted by this Agreement) equals or exceeds the amount necessary to pay for (i) all Hard Costs for work done and not theretofore paid for or to be done in connection with the Completion of Initial Construction Work in accordance with the Project Plans and Specifications based on "Lender's Estimate of Development Costs" (as defined below), and (ii) all Soft Costs and other costs payable by Borrowers under this Agreement or otherwise in connection with the Initial Construction Work and equipping of the Mortgaged Property until Completion of the Initial Construction Work also based on Lender's Estimate of Development Costs, in each case based on the Development Budget (as modified to reflect cost savings and/or reallocations to the extent permitted hereunder), or (b) the amount left in the Development Fund (including, the



amounts in the Equity Account) does not equal or exceed the foregoing described respective amount or amounts, but Borrower has deposited into the Development Fund cash sufficient to bring the Loan "in balance". In the event that the Loan is not "in balance" prior to the full disbursement of the funds held in the Development Fund, all additional funds deposited by Borrower into the Development will be disbursed by Lender for Hard Costs and Soft Costs in accordance with the Development Budget (as it may be modified by Lender's Estimate of Development Costs) prior to any further Development Advance. Borrower agrees that Lender shall have the right to make from time to time in Lender's discretion an estimate of all Hard Costs and Soft Costs which estimate is herein sometimes called "Lender's Estimate of Development Costs." In the first instance, Lender's Estimate of Development Cost shall be made upon the basis of the Initial Construction Contracts, executed Subcontracts and purchase orders, or, in those instances where Subcontracts or purchase orders have not yet been let, upon the basis of either written bids with responsible contractors, tradesmen and material suppliers obtained by Borrower and approved by Lender, or Lender's estimate of such costs where written bids have not been obtained, and shall take into account all Soft Costs and other costs and expenses to be paid by Borrower hereunder through the Completion of the Initial Construction Work, with such allowances for reserves and contingencies as Lender shall deem appropriate in its discretion. Thereafter, Lender's Estimate of Development Costs will take into account, in addition to the Initial Construction Contract, Subcontracts and purchase orders, and other considerations which Lender, in its sole judgment, deems relevant or likely to have an impact upon all Hard Costs and Soft Costs. Borrower agrees that if for any reason the amount of funds in the Development Fund shall at any time be or become insufficient for the purposes described herein and subject to the provisions of Section 3.6, regardless of how such condition may have been brought about, upon ten (10) Business Days' written notice to Borrower during which time Borrower shall have the right to bring the Loan into balance, and upon Borrower's failure to bring the Loan into balance, it shall be an Event of Default hereunder and, in addition to any other rights or remedies of Lender hereunder or at law or in equity, Lender shall not be obligated to disburse the Loan during the period of such insufficiency. Borrower agrees that the determination of Lender's Estimate of Development Costs and the determination of whether the Loan is "in balance" shall be done on a line item basis and not on a gross or aggregate funds available basis and be subject to the provisions of Section 3.6, it being understood that all limitations on reallocation of line items as set forth herein shall be observed and taken into account when making Lender's Estimate of Development Costs and determining whether the Loan is "in balance."

(E) Notwithstanding the foregoing or anything in this Agreement which is or may appear to be to the contrary, to the extent Lender does not receive all deliveries and approvals it is entitled to receive (with and without request) for all of the Initial Construction Work and all Project Improvements contemplated by the Development Budget as a condition to Lender's disbursement of funds from the Development Account pursuant to Sections 3.1(u), (w), (x), (y), (z), (AA) and (BB) above (collectively the "**Initial Construction Conditions**") and Lender disburses funds from the Development Account, then Lender shall have no further obligation to make one or more subsequent disbursements of funds from the Development Account for any portion of the Initial Construction Work (or other development costs related thereto) for which such Initial Construction Conditions have not been satisfied. To the extent Lender has received and approved the Initial Construction Conditions applicable to a portion of the Initial Construction Work (or other development costs related thereto) and all other conditions and

requirements applicable thereto are satisfied, Lender shall make disbursements of funds from the Development Account for such purposes.

**3.3 Advances from Development Fund.** Lender shall, if no Event of Default exists, make each Development Advance within ten (10) Business Days following the satisfaction, in the sole discretion of Lender, of each of the following conditions:

(A) Lender shall have no obligation to make any Development Advance for Hard Costs after the Required Completion Date.

(B) No Development Advance except the final Development Advance shall be made in an amount of less than \$100,000.

(C) At all times prior to and including the date all Advances made for Completion of Construction have been fully funded, Borrower shall submit a Request for Advance no more frequently than once per month with no more than 45 days between each request. Lender shall make no more than one Development Advance per month.

(D) Borrower shall have submitted to Lender an executed completed Request for Advance.

(E) Borrower shall have delivered to Lender all Required Lien Waivers deemed necessary by Lender and the Title Company for services and materials provided in connection with the Initial Construction Work through the date of the applicable Development Advance; provided, however, that for all non-final payments Lender shall only require then current Required Lien Waivers from all parties Borrower or Guarantor have directly contracted with ("**Direct Contractors**") and only require those Required Lien Waivers from any Person who is a sub-consultant, sub-contractor, or otherwise directly or indirectly contracting with a Direct Contractor applicable to the immediately prior Request for Advance.

(F) With respect to the Development Advances, the Initial Borrower's Architect involved with such advance shall have certified to Lender in form satisfactory to Lender that the requested Development Advance is for the payment of construction costs incurred in connection with Initial Construction Work which has been completed in accordance with the Project Plans and Specifications as set forth in the Request for Advance.

(G) Borrower shall provide Lender with true and correct copies of all invoices and bills for Hard Costs and Soft Costs incurred in connection with the then completed Initial Construction Work, and there shall be no material deviation from the Initial Construction Budget (except with Lender's prior written approval) in connection with the Initial Construction Work which has been completed to date. Specifically, no advance (or advances, as appropriate) for a specific line item in the Initial Construction Budget, including any retainage for said line item, will exceed the amount of said line item in the Initial Construction Budget subject to changes based upon Permitted Change Orders. For purposes of this Section 3.3 and except as set forth in subsection 3.3(v) below for Stored Materials, costs shall be deemed to have been "incurred" by a Borrower at the following times: (i) Hard Costs - when the labor has been performed or the materials have been supplied and incorporated into the Property, payment therefore has been requested by the contractor or supplier thereof, and such contractor or supplier is entitled thereto;

and (ii) Soft Costs – when such costs are due and payable (or have been paid by Borrower) and the services relating thereto have been rendered or the value thereof has been received by Borrower.

(H) All Hard Costs and Soft Costs are to be certified by Borrower in accordance with the Request for Advance and verified by Lender or to the extent Lender has retained a separate Lender’s Consultant, Lender’s Consultant as having been incurred. Verification of the monthly progress of the Initial Construction Work, the Hard Costs and the Soft Costs which have been incurred by Borrower, and the estimated total Hard Costs and Soft Costs of Completion of Initial Construction Work may be made by Lender consistent with the Development Budget.

(I) The funds in the Development Fund (excluding the retainage provided for in the next paragraph) shall be sufficient, in Lender’s sole discretion, to pay all remaining Hard Costs and Soft Costs in connection with the Completion of Initial Construction Work, including the payment of all sums owed to Lender prior to the Completion of Initial Construction Work or Borrower shall have deposited with Lender pursuant to Section 3.2(D) such additional funds as Lender deems necessary, together with said amounts then held in the Development Fund, to pay all remaining Hard Costs and Soft Costs in connection with the Completion of Initial Construction Work.

(J) Except as provided below, Borrower shall not request in a progress payment, but rather withhold payment from the Initial Contractors as evidenced in each progress payment, the amount of 10% of the ‘Contract Sum’ eligible for payment (the **“Retainage”**) to each Initial Contractor until such Contractor’s portion of the Initial Construction Work is Completed. To the extent permitted by an Initial Construction Contract, Borrower may request in writing that Lender approve and Lender agrees to approve (subject to the remaining requirements for such Advance) any of the following actions following completion of the applicable requirements set forth below.

(1) Upon or following the Initial Construction Work of any Subcontractor being fifty percent (50%) complete, no further Retainage being withheld on payments made to Initial Contractor for such Subcontractor’s work performed following such fifty percent (50%) (or greater as requested) completion of such Subcontractor’s work.

(2) Upon or following all Initial Construction Work being fifty percent (50%) complete, no further Retainage being withheld on payments made to Initial Contractor for Initial Contractor’s general conditions items and fee, as applicable, which apply to Initial Construction Work following such fifty percent (50%) (or greater, as requested) completion of all Initial Construction Work.

(3) Upon the final Completion of any Subcontractor’s portion of Initial Construction Work, the release of all or a portion of the Retainage owed to such Subcontractor; provided that if the request is for a release of all such Retainage owed to such Subcontractor, then such request must be accompanied by all lien waivers and other deliveries required for final payment under both the applicable Subcontract and Section 3.5 below.

(K) Lender may make Development Advances (i) payable directly to Borrower, (ii) payable jointly to Borrower and to the applicable contractor or supplier. Lender may elect to make all Development Advances through a construction or other escrow agreement with the Title Company.

(L) Borrower shall be deemed to have remade, as of the date of each advance, each and every representation and warranty made by Borrower in this Agreement and in every other Loan Document, and every such representation and warranty shall be true and correct at the time of each Development Advance.

(M) So long as any portion of the Loan proceeds are being disbursed from the Development Fund, Borrower shall have delivered to Lender an endorsement to the Title Policy, which endorsement: (i) insures Lender against filed and unfilled mechanics' liens; and (ii) insures that, since the date of the policy or the most recent endorsement to the policy, there has been no change in the status of title to the Premises (except for the lien of unpaid taxes, not yet due and payable) and thereafter, so long as and to the extent funds are disbursed from the Development Fund which are not Loan proceeds, evidence satisfactory to Lender that no liens have been filed or are pending against the Mortgaged Property.

(N) With respect to Hard Costs, Borrower shall have provided Lender with (i) evidence satisfactory to Lender that the Construction Work complies with all building, zoning and other Legal Requirements, (ii) all necessary Licenses and Permits, approvals and consents required for the use, occupancy and operation of the Land and Improvements, as altered by the Initial Construction Work as applicable to the then current state of the Initial Construction Work, and (iii) evidence satisfactory to Lender that all Initial Construction Work completed on the date of the Request for Advance has been inspected and approved by each Governmental Authority and by each other person or entity (including any tenants) having the right to inspect and approve the Initial Construction Work and (iv) all other elements required for the Initial Construction Work to achieve Construction Legal Compliance through and including the date of the requested Development Advance.

(O) Borrower shall have provided Lender with such other information and material relating to the Initial Construction Work as Lender reasonably requests.

(P) With respect to Hard Costs, Lender shall have received a written report from Lender's Construction Consultant with respect to the applicable Request for Advance stating: (i) that, in the opinion of Lender's Construction Consultant, all Change Orders and modifications or amendments to the Plans and Specifications, any Initial Construction Budget or any Initial Construction Schedule required hereby to be approved by Lender are satisfactory to Lender's Construction Consultant; (ii) that, in the opinion of Lender's Construction Consultant, the Initial Construction Work theretofore completed has been completed in accordance with the Project Plans and Specifications; (iii) what percentage of the Initial Construction Work, in the aggregate, has been completed as of the date of the applicable Request for Advance; (iv) the extent to which, if any, the undisbursed Development Advances for the Hard Costs and Soft Costs not yet incurred but necessary for Completion of Initial Construction Work are not sufficient to permit Completion of Initial Construction Work in accordance with the Initial Construction Schedule;

and (v) whether Completion of Initial Construction Work can, in Lender's Construction Consultant's opinion, be completed prior to the Required Completion Date.

(Q) No Change Orders, other than Permitted Change Orders, shall be made to any Initial Construction Contract, the Project Plans and Specifications or the Development Budget without obtaining Lender's prior written consent to such Change Order. All Change Orders shall be made in accordance with all Legal Requirements. Borrower shall promptly notify Lender of any anticipated changes in line items of the Development Budget, which if approved, would result in a net increase in the total amount of the Development Budget. Any agreement, other than in connection with a Permitted Change Order, which causes a net increase in the Development Budget shall require Lender's prior written consent.

(R) Borrower shall have satisfied such other conditions to any Development Advance which Lender may reasonably require or impose.

(S) No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Lender in connection with the Initial Construction Work or otherwise in connection with the Loan, unless Borrowers shall have (a) paid and discharged the same using funds other than Loan funds, (b) effected the release thereof by delivering to Lender a surety bond complying with the requirements of applicable Legal Requirements for such release, or (c) taken such other actions as Lender may approve in writing to release Lender from any obligation or liability with respect to such stop notice.

(T) No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Mortgaged Property or any portion thereof, unless Borrower shall have (a) paid and discharged the same, (b) effected the release thereof by delivering to Lender a surety bond complying with the requirements of applicable Legal Requirements for such release, (c) delivered to Lender an endorsement to the Title Policy insuring over such lien, notice, claim or similar document or instrument in form customarily used and approved by Lender, or (d) taken such other actions as Lender may approve in writing to release Lender from any obligation or liability with respect to such claim of lien, notice and claim of mechanic's lien, or other similar document or instrument.

(U) Lender shall be satisfied, based on Lender's Consultant's Reports, that the Initial Construction Work is progressing satisfactorily in conformance with all applicable Legal Requirements and with the requirements set forth in this Agreement.

(V) Disbursements for materials stored offsite in the United States of America or delivered to the site but not yet incorporated into the Project ("**Stored Materials**") shall be subject to Lender's having received satisfactory evidence that the following are true:

(i) The Stored Materials are ready for installation and appropriate for purchase in accordance with the Development Schedule, unless otherwise approved by Lender;

(ii) The Stored Materials are stored either (1) at the Project site, (2) in a bonded public warehouse or (3) any other facility or location acceptable to Lender in its

reasonable discretion, and such Stored Materials are protected in a manner reasonably acceptable to Lender against theft or damage;

(iii) Ownership of the Stored Materials for which Lender has previously disbursed funds has vested in Borrower free of all security interests except the liens evidenced by the Loan Documents and no other Person has asserted that it has any rights to or interest in such Stored Materials;

(iv) Borrower has caused the Initial Contractor and any other Person that (1) is not a warehouseman (as such term is defined in Section 7-102 of the Uniform Commercial Code) and (2) possesses, holds or controls access to any Stored Materials, to execute and deliver to Lender a bailment letter in the form of **Exhibit G**;

(v) Borrower has caused any warehouseman (as such term is defined in Section 7-102 of the Uniform Commercial Code) that possesses, holds or controls access to any Stored Materials to execute and deliver to Lender (1) a bailment letter in the form of **Exhibit G** and (2) a nonnegotiable warehouse receipt covering the Stored Materials in its possession or under its control in a form sufficient to enable Lender to have a perfected security interest in the Stored Materials pursuant to the requirements set forth in Section 9-312(d)(1) of the Uniform Commercial Code;

(vi) If reasonably requested by Lender, Borrower has provided Lender with the results of Uniform Commercial Code searches (from all appropriate Uniform Commercial Code offices) on Initial Contractor or any other bailee of Stored Materials showing no liens or other security interests affecting such Stored Materials;

(vii) Without limiting any of the foregoing provisions of this Section 3.3(V), Lender has a perfected, first-priority security interest in the Stored Materials for which Lender or any other Person has previously disbursed funds;

(viii) The Stored Materials are covered by insurance as required by Section 5.4 and names Lender as a loss payee;

(ix) The materialmen have delivered lien waivers and invoices for the full amount of the Stored Materials for which Lender or any other Person has previously disbursed funds; and

(x) Initial Borrower's Architect, if any, has provided a certification in form and substance satisfactory to Lender verifying the stored materials are in conformance with the Project Plans and Specifications.

The foregoing provisions are not intended to apply to disbursements from the Development Fund which are made for the purpose of making customary deposits which are required by certain vendors with respect to purchase orders of construction materials, so long as the same have been approved by Lender, which approval shall not be unreasonably withheld; provided, however, that if and when any materials are paid for in full by Borrower the provisions of this Section 3.3(V) above shall apply.

(W) Prior to each Development Advance, Borrower will have obtained and delivered to Lender all applicable Licenses and Permits relating to the construction of the Improvements comprising the Project in order to permit Initial Construction Work to continue in accordance with the Initial Construction Schedule, subject to Force Majeure, including evidence satisfactory to Lender that (i) the Initial Construction Work may be completed in accordance with applicable Legal Requirements and that Borrower is in full compliance therewith, and (ii) the Project Plans and Specifications required to continue construction in accordance with the Initial Construction Schedule have been approved by all Governmental Authorities.

**3.4 Conditions to Final Development Advance.** Lender shall make the final disbursement from the Development Fund for costs of the Initial Construction Work for each Initial Construction Contract provided that all of the following conditions have been complied with and satisfied, and Borrower agrees to satisfy the following conditions on or before the Required Completion Date, in each case for such Initial Construction Work included in such Initial Construction Contract:

- (i) The Initial Construction Work shall be Substantially Completed in accordance with the Project Plans and Specifications, and except for the amount then being requested and retainage, all costs and expenses thereof have been paid in full.
- (ii) Borrower has furnished Lender with final lien waivers and sworn statements as to the Initial Construction Work from all Initial Contractors, Subcontractors including material suppliers who have provided materials, labor or both, with respect to the Initial Construction Work.
- (iii) If then prepared and finalized Borrower shall have delivered to Lender two (2) final and complete sets of the final as-built Project Plans and Specifications, in form satisfactory to Lender, including operations and maintenance manuals, warranties and other applicable close-out documentation, showing all changes from the Project Plans and Specifications approved by Lender as of the date thereof; provided, however, that if the foregoing are not completed as of the date of the final disbursement, Borrower shall have an additional ninety (90) days to deliver the same to Lender.
- (iv) Borrower shall have furnished Lender with: (i) a final unconditional certificate of occupancy for the Mortgaged Property from the applicable Governmental Authority having jurisdiction thereof, or a temporary certificate of occupancy for the Mortgaged Property as to which such final certificate of occupancy has not been issued, which temporary certificate of occupancy is subject only to conditions which are customary for similar projects in the same geographic location and is otherwise satisfactory to Lender in its sole discretion; and (ii) such other certificates, approvals, Licenses and Permits of each Governmental Authority required (or customarily procured) concerning the then existing construction, use, occupancy and operation of the Mortgaged Property and that the Mortgaged Property, as renovated, is in compliance with all applicable Legal Requirements of all applicable Governmental Authorities, including zoning regulations and building restrictions, environmental requirements, occupational safety and health requirements and similar laws, ordinances and regulations.

(v) There shall be no governmental actions, proceedings or investigations pending or overtly threatened (evidencing an intent to sue or to commence such a proceeding or investigation) against or filed by Borrower which might: (i) have a material adverse effect on the Mortgaged Property or the value of the Mortgaged Property or (ii) adversely impair Lender's security for full and timely performance of all obligations hereunder.

(vi) The Mortgaged Property shall be undamaged by fire or other cause (unless Restoration is taking place as permitted by and pursuant to the terms and conditions of this Agreement) and there shall be no material condemnation or eminent domain proceedings pending or overtly threatened (evidencing an intent to sue or to commence such a proceeding or investigation) against the Mortgaged Property.

(vii) Borrower shall have furnished to Lender a certificate from Borrower currently dated, certifying that: (i) no notices from any Governmental Authority of any claimed violations of ordinances arising from the construction or operation of the Mortgaged Property which have not been cured were served upon Borrower or, to Borrower's best knowledge, any contractor or subcontractor, including any Initial Contractors or any Subcontractor, or their respective agents or representatives and (ii) Borrower is not aware of any circumstances which could give rise to the issuance of any such notice of claimed violation.

(viii) Lender shall have received a certificate from Lender's Construction Consultant that the Initial Construction Work has been Substantially Completed in accordance with the Project Plans and Specifications.

(ix) All personal property contemplated under the Development Budget and the Project Plans and Specifications to be incorporated into or installed in the Mortgaged Property by the date of the final Development Advance shall have been incorporated or installed free and clear of all liens and security interests other than the Permitted Exceptions.

(x) Lender shall have received six (6) final as-built surveys in form satisfactory to Lender, each of which complies with all of Lender's survey requirements.

(xi) Lender shall have received a final and comprehensive endorsement to the Title Policy which deletes the "pending disbursements" paragraph, if any, in the Title Policy.

(xii) All other requirements of this Agreement for disbursement of Loan proceeds shall have been satisfied.

### **3.5 Performance of Construction.**

(A) **Construction.** Borrower shall: (i) cause Completion of Initial Construction Work in a good and workmanlike manner and Construction Legal Compliance not later than the Required Completion Date; (ii) commence the Initial Construction Work within ten (10) days following the Closing Date and pursue the Initial Construction Work diligently to completion;



(iii) after commencement of the Initial Construction Work, not permit cessation of said Initial Construction Work for a period in excess of ten (10) continuous Business Days or more than thirty (30) calendar days in the aggregate, provided, however, that following a cessation of said Initial Construction Work for either such period, if, within thirty (30) days of Lender's written demand Borrower commences the Initial Construction Work, such period(s) shall be deemed extended until such Initial Construction Work is re-commenced but in no event beyond thirty (30) days of Lender's written demand, without the prior written consent of Lender; (iv) cause the progress of the Initial Construction Work to adhere, without deviation, with the Initial Construction Schedule; (v) cause Completion of Initial Construction Work entirely on the Land and so as not to encroach upon any easement, right-of-way or land of others, and so as to not violate any set-back lines, applicable public or private use restrictions, other restrictions or regulations, any Legal Requirements or any other requirement of any Governmental Authority; and (vi) cause all design and construction work associated with the Initial Construction Work to be performed in accordance with all Construction Legal Requirements and only by Initial Construction Contractors which are approved by Lender and which are fully licensed in the state where the Mortgaged Property are being constructed.

(B) **Compliance with Laws.** Borrower shall cause the Initial Construction Work to be constructed in accordance with all applicable Legal Requirements and otherwise be in Construction Legal Compliance at all times.

(C) **Compliance with Plans.** Subject to Section 3.6, Borrower shall not deviate from any Initial Construction Budget and Project Plans and Specifications as approved by Lender in any respect, or issue (accept or agree to) any Change Orders, other than Permitted Change Orders, without the prior written consent of Lender.

(D) **Construction Contracts.** Borrower shall perform faithfully all of its obligations under the Initial Construction Contracts. Borrower shall not modify, terminate or amend any Initial Construction Contract without first obtaining the written approval of Lender, in its sole discretion.

(E) **Compliance with Schedule.** Borrower shall diligently perform the Initial Construction Work using all commercially reasonable efforts in accordance with the Initial Construction Schedule. Borrower, from time to time, may modify or adjust individual line items within the Initial Construction Schedule to reflect actual and projected conditions but in no event extend or delay the completion dates for the following milestones without Lender's written approval.

- (i) Infrastructure-Rough Mechanical, Electrical & Plumbing (MEP)
- (ii) Infrastructure Building Envelope
- (iii) Substantial Completion/Temporary Certificate of Occupancy (TCO)
- (iv) Final Completion/Final Certificate of Occupancy

(F) **Construction Draw Schedule.** Without excusing Borrower's noncompliance with this Agreement, Borrower shall provide to Lender, for Lender's review and approval, an

updated Initial Construction Draw Schedule, concurrently with each modification of any Initial Construction Budget or any Initial Construction Schedule permitted under this Agreement. Each such update shall be accompanied by a written narrative explanation setting forth, in reasonable detail, the deviations, if any, set forth in such update to the such Initial Construction Draw Schedule, as previously updated, and the reason(s) for such deviations. Each such update shall be accompanied by a certificate from the Borrower to the effect that all deviations as reflected in such updated Initial Construction Draw Schedule are permitted under this Agreement or have been expressly consented to by Lender.

### **3.6 Contingency; Cost Reallocation.**

(A) The Development Budget shall include a “contingency” amount of not less than \$1,302,615.00 for Hard Costs (including contingency for the Initial Construction Contract) (“**Hard Cost Contingency**”), and not less than \$1,200,000.00 for Soft Costs (“**Soft Cost Contingency**”) at Closing. From time to time, upon the request of Borrower and subject to the approval of Lender, not to be unreasonably withheld, the Hard Cost Contingency and Soft Cost Contingency may each be used on a pro rata basis according to the percentage of total Hard Costs expended (excluding land costs) to pay for other Hard Costs or Soft Costs, as applicable; and, (b) the Soft Cost Contingency may be used on a pro rata basis according to the percentage of total Hard Costs expended (excluding hard costs) to be reallocated to the Hard Cost Contingency. Upon Completion of all Initial Construction Work, any funds remaining in the Hard Cost Contingency line item which are attributable, in Lender’s sole discretion, to verified Hard Costs savings may be, at Borrower’s option, reallocated from the Hard Cost Contingency to the Soft Cost Contingency.

(B) Any savings in line item costs contained on the summary page of the Development Budget, as verified and determined by Lender in its reasonable discretion, resulting from any change in the Project Plans and Specifications approved by Lender or realized upon completion of a Development Budget line item and thereby resulting in savings (“**Completion Savings**”) shall be reallocated to the Hard Cost Contingency or to other such line item to “balance” the line item (assuming such increase in the budgeted line item is not subject to a Change Order to be funded by the Hard Costs Contingency) with Lender approval, not to be unreasonably withheld.

(C) Any savings in any line item costs for Hard Costs contained on the summary page of the Development Budget and up to an aggregate amount equal to the lesser of (i) 5.0% of said line item or (ii) \$500,000, as verified and determined by Lender, resulting from any change in the Plans and Specifications or realized upon Completion of a single line item and thereby resulting in savings may be reallocated to another Hard Cost line item to “balance” the line item (assuming such increase in the budgeted line item is not subject to a Change Order to be funded by the Hard Cost Contingency). Additionally, any savings in line item costs for Soft Costs contained on the summary page of the Development Budget and up to an aggregate amount equal to the lesser of (i) 5.0% of said line item or (ii) \$200,000, as verified and determined by Lender, resulting from any change in the Plans and Specifications or realized upon Completion of a single line item and thereby resulting in savings may be reallocated to another Soft Cost line item to “balance” the line item (assuming such increase in the budgeted line item is not subject to a Change Order to be funded by the Soft Costs contingency); provided, however, (i) there shall

be no reallocation of the line items for Loan interest or sales commissions and (ii) any reallocation of line items in excess of the greater of (i) 5.0% of said line item and (ii) \$500,000 in the case of Hard Costs or \$200,000 in the case of Soft Costs, shall require prior approval of Lender. Additional direct or indirect line item cost savings that have been allocated to their respective contingency line items may be available and reallocated by Borrower to another cost line item and such amounts will not be subject to the pro rata allocation set forth in the preceding sentence.

**3.7 Other Remedies of Lender.** Upon the occurrence and continuance of an Event of Default, in addition to any other remedies available to Lender by the terms of this Agreement or any other Loan Document or by law, Lender may at its sole discretion: (a) cause Completion of Initial Construction Work in accordance with the Project Plans and Specifications (with such changes as Lender shall deem appropriate), all at the risk, cost and expense of Borrower; (b) discontinue at any time the Construction Work; (c) engage builders, contractors, engineers, architects and others for the purpose of furnishing labor, material and equipment in connection with the Initial Construction Work, which personnel may, but need not, be the same as those engaged by Borrower; (d) pay, compromise or settle any and all bills or claims incurred in connection with the Initial Construction Work; (e) exercise any or any or all of its rights under the applicable Loan Documents; (f) take or refrain from taking such action with respect to the Initial Construction Work as Lender may from time to time determine; and (g) through an advance of Loan proceeds, make payments due for the cost of Initial Construction Work directly to any Initial Contractor, any Subcontractor, including any material supplier or any vendor of Fixtures and Personality, if any, owned by Borrower. All such action shall be at Borrower's sole cost and expense, such sums being secured by the Mortgage.

**3.8 Protection Against Liens.** Borrower shall take all actions reasonably required to prevent the assertion of claims of lien against the Mortgaged Property. In the event that any claim of lien is asserted against the Mortgaged Property by any person furnishing labor or materials to the Initial Construction Work, Borrower shall immediately give notice of the same to Lender and shall, promptly and in any event within ten (10) days after Lender's demand, (a) pay and discharge the same, (b) effect the release thereof by delivering to Lender a surety bond complying with the requirement of applicable Legal Requirements for such release, (c) with respect to mechanic's liens, deliver to Lender an endorsement to the Title Policy insuring over such lien in form customarily used and approved by Lender, or (d) take such other action as Lender may approve in writing to release Lender from any obligation or liability with respect to such stop notice or claim.

**3.9 Nonliability of Lender.** Borrower acknowledges and agrees that:

(A) The relationship between Borrower and Lender is and shall remain solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility to review, inspect, supervise, approve or inform Borrower of any matter in connection with any of the Initial Construction Work, including matters relating to: (i) the Project Plans and Specifications, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of any of the Initial Construction Work and its conformity with the Project Plans and Specifications; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection,

supervision, approval or information supplied to Borrower by Lender in connection with such matters is solely for the protection of Lender and that neither Borrower nor any third party is entitled to rely on it;

(B) Notwithstanding any other provision of any Loan Document: (i) Lender is not a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Borrower and Lender does not intend to ever assume any such status; and (ii) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower;

(C) Lender shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Mortgaged Property (except to the extent proximately caused by Lender's or Lender's agent's, servant's, employee's or contractor's negligence or willful misconduct), whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; or (iii) any accident on the Property or any fire or other casualty or hazard thereon; and

By accepting or approving anything required to be performed or given to Lender under the Loan Documents, Lender shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Lender to anyone.

#### **SECTION 4** **REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Lender that, after giving effect to the Loan, as of the Closing Date:

**4.1 Organization, Powers, Qualification and Organization Chart.** Borrower is a limited liability company duly formed, validly existing and in good standing under the laws of its state of formation. Borrower has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and proposed to be conducted, and to enter into each Loan Document to which it is a party and to perform the terms thereof. Guarantor is a corporation, duly organized, validly existing and in good standing under the laws of its state of formation and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted, and to enter into each Loan Document to which it is a party and to perform the terms thereof. Borrower's U.S. taxpayer identification number is set forth on Schedule 4.1(A)-1. Borrower and Guarantor are each duly qualified and in good standing wherever necessary to carry on its present business and operations. Guarantor owns one hundred percent (100%) of the ownership interests in Borrower. The organization chart attached hereto as Schedule 4.1(A)-2 correctly identifies each Subsidiary, if any, of Borrower and each Person directly owning (and/or indirectly owning five percent (5%) or more of) the ownership interests in Borrower; provided that such organizational chart shall not identify any Person owning, directly or in directly, any ownership interests of Guarantor. The principal place of business and chief executive office of Borrower is set forth on Schedule 4.1(A)-3. Borrower has filed in a

timely manner all reports, documents and other materials required to be filed by it with any Governmental Authorities and the information contained in each of such filings is true, correct and complete in all respects). Borrower has retained all records and documents required to be retained by it pursuant to any law, ordinance, rule, regulation, order, policy, guideline or other requirement of any Governmental Authority. Borrower has no Subsidiaries and has not made an Investment in any Person.

**4.2 Authorization of Borrowing; No Conflicts; Governmental Consents; Binding Obligations and License and Security Interests of Loan Documents.**

Borrower has the power and authority to incur the Obligations evidenced by the Note and other Loan Documents to which it is a party, to execute and deliver the Loan Documents to which it is a party and to perform its Obligations, to own the Mortgaged Property and to continue its businesses and affairs as presently conducted. Guarantor has the power and authority to execute and deliver the Guaranty, the Environmental Indemnification Agreement and the other Loan Documents to which it is a party. The incurring of the Obligations and the execution, delivery and performance by Borrower and Guarantor of each of the Loan Documents to which either is a party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary partnership, corporate or limited liability company action, as the case may be. The incurring of the Obligations and the execution, delivery and performance by Borrower and Guarantor of the Loan Documents to which either is a party and the consummation of the transactions contemplated thereby do not and will not: (1) violate any provision of law applicable to Borrower, Guarantor or the Mortgaged Property, the respective other Organizational Documents of, or applicable to, Borrower or Guarantor, as the case may be, or any order, judgment or decree of any court or other agency of government binding on Borrower or Guarantor or their respective properties including the Mortgaged Property; (2) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contracts or any other agreement or document to which such Person is a party or by which such Person or its property may be bound; (3) result in or require the creation or imposition of any Lien upon the Mortgaged Property or assets of Borrower or Guarantor (other than the Liens of Lender); or (4) require any approval or consent of any Person under any Material Contracts or any other agreement or document to which such Person is a party or by which such Person or its property may be bound (except to the extent such approvals or consents have been unconditionally obtained on or before the Closing Date). The incurring of the Obligations, the execution, delivery and performance by Borrower and Guarantor of the Loan Documents and the consummation of the transactions contemplated thereby do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any federal, state or other Governmental Authority or regulatory body (except to the extent unconditionally obtained on or before the Closing Date). The Loan Documents, when executed and delivered by Borrower and Guarantor, as applicable, will be the legally valid and binding obligations of Borrower and Guarantor, as applicable, enforceable against Borrower and Guarantor, subject to bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting creditors' rights generally and to the application of general equitable principles in connection with the enforcement thereof. The Mortgage, together with the Financing Statements to be filed in connection therewith, create a valid, enforceable and perfected first priority lien and security interest in the Mortgaged Property subject to no other interests, Liens or encumbrances, other than the Permitted Encumbrances. Article 6 of this Agreement creates a valid, enforceable and perfected first priority security interest in the Reserve and Other Accounts Collateral.

Borrower is a “registered organization” (as defined in the UCC) organized under the laws of the State of Delaware.

**4.3 Financial Statements.** All financial statements concerning Borrower and Guarantor which have been or will hereafter be furnished by Borrower and Guarantor to Lender pursuant to this Agreement have been or will be prepared in accordance with GAAP consistently applied (except as disclosed therein, to the extent Lender approves such disclosure) and do or will, in all material respects, present fairly the financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

**4.4 Indebtedness.** As of the Closing Date, after giving effect to the transactions contemplated hereby, Borrower does not have any Indebtedness except for Permitted Indebtedness. All Expenses owing or accrued as of the Closing Date, have been paid in full or have been reserved for by deposit into the Reserves. No claim of any creditor of Borrower exists which would have a Material Adverse Effect.

**4.5 No Material Adverse Change.** Since March 31, 2006, no event or change has occurred that has caused or evidences, either individually or together with such other events or changes, a Material Adverse Effect.

**4.6 Title to Property; Liens; Zoning; Contracts; Condition of the Mortgaged Property.**

(A) Borrower has good and marketable fee simple title to the Land, the Improvements and the other components of the Mortgaged Property, subject only to the Permitted Encumbrances. Borrower owns all real and personal property necessary for the operation of the Mortgaged Property subject only to the Permitted Encumbrances. Except for the Permitted Encumbrances, the Mortgaged Property is free and clear of Liens and other encumbrances. Except as otherwise identified on Schedule 4.6(A), there are no outstanding Claims and all work, services or materials the provision of which might ripen into a Claim have been fully paid for. There are no assessments for improvements or other similar outstanding charges or Impositions affecting the Mortgaged Property. No Improvements lie outside the boundaries and building restriction lines of the Land or encroach onto any easements to any extent (unless affirmatively insured by the Title Policy), and no improvements on adjoining properties encroach upon the Land to any extent which would materially impair the Mortgaged Property. The Title Policy premium has been fully paid. Except for customary gap undertakings, neither Borrower, nor, to Borrower’s knowledge, any other Person, has provided any title indemnities (or analogous documentation) or deposits of cash or other security to the title insurer to obtain the Title Policy. The Permitted Encumbrances do not and will not materially interfere with the security intended to be provided by the Mortgage, the use or operation of the Mortgaged Property or the marketability or value of the Mortgaged Property. Borrower will preserve its right, title and interest in and to the Mortgaged Property for so long as the Obligations remain outstanding and will warrant and defend same and the validity and priority of the Mortgage and the Liens arising pursuant to the Loan Documents from and against any and all claims whatsoever other than the Permitted Encumbrances.

(B) The Mortgaged Property is zoned for use as a biopharmaceutical manufacturing facility with related office and lab facilities, which zoning designation is unconditional, is in full

force and effect, and is beyond all applicable appeal periods. Borrower is not in violation of, and, the Mortgaged Property is in full compliance with all applicable zoning, subdivision, land use and other Legal Requirements. No legal proceedings are pending or, to Borrower's knowledge threatened, with respect to the compliance of the Mortgaged Property with Legal Requirements. Neither the zoning nor any other right to construct, use or operate the Mortgaged Property is in any way dependent upon or related to any real estate other than the Mortgaged Property and validly created, existing appurtenant perpetual easements insured in the Title Policy or use of public rights of way. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other Legal Requirements applicable thereto and without the necessity of obtaining any variances or special permits. The Mortgaged Property contains not less than 119 parking spaces, which is enough permanent parking spaces to satisfy all requirements imposed by applicable Legal Requirements with respect to parking. All licenses, permits and other Proprietary Rights necessary to operate the Mortgaged Property as it is currently operated are in full force and effect including all water permits and approvals. Borrower has not received any written notice of any violation of any such licenses, permits, authorizations, registrations or approvals that materially impair the value of the Mortgaged Property for which such notice was given or which would affect the use or operation of the Mortgaged Property in any material respect, which noticed violation remains uncured.

(C) Borrower has provided Lender with true and complete copies of all Material Contracts, all of which are specifically listed on Schedule 4.6(C) hereof, other than the Permitted Encumbrances. Except for the Loan Documents and as set forth on Schedule 4.6(C), Borrower is not a party to and neither it nor the Mortgaged Property is bound by any material agreement, document or instrument which is binding upon the Mortgaged Property other than the Loan Documents, the Permitted Encumbrances, the other Material Contracts, if any, and such party's organizational documents, true, correct and complete copies of which have been delivered to Lender. Except for the Loan Documents and the Material Contracts, neither Borrower nor Guarantor are parties to or bound by, nor is any of their respective property subject to or bound by, any contract or other agreement which restricts its ability to conduct its business at the Mortgaged Property in the ordinary course or, either individually or in the aggregate, has a Material Adverse Effect or could reasonably be expected to have a Material Adverse Effect. Borrower and Guarantor are not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Material Contract of any such Person which could have a Material Adverse Effect. No Default or Event of Default exists.

(D) All of the Improvements are in good condition and repair. To Borrower's knowledge, except as disclosed in the Physical Condition Report, there are no latent or patent structural or other significant defects or deficiencies in the Improvements or Equipment, Fixtures and Personalty. Municipal or private water supply, storm and sanitary sewers, and electrical, gas and telephone facilities are available to the Mortgaged Property to the boundary lines of the Mortgaged Property through publicly dedicated streets or highways or perpetual appurtenant easements insured on the Title Policy as appurtenant easements, are sufficient to meet the reasonable needs of the Mortgaged Property as now used or as otherwise presently contemplated to be used, and are connected to, and is in full unimpaired operation with respect to the Improvements and no other utility facilities are necessary to meet the reasonable needs of the

Mortgaged Property as now used. To Borrower's knowledge, the design and as-built conditions of the Mortgaged Property are such that surface and storm water does not accumulate on the Mortgaged Property and does not drain from the Mortgaged Property across land of adjacent property owners or others in any manner which would have a Material Adverse Effect or which require any approvals or easements not already obtained. Except as set forth on Schedule 4.6(D) or on the plat of survey delivered to Lender, no part of the Mortgaged Property is within a flood plain or in a flood hazard area as currently shown on the most recent Flood Hazard Boundary Maps prepared by the Department of Housing and Urban Development and (except to the extent validly created and existing perpetual appurtenant easements insured in the Title Policy have been created therefor) none of the Improvements create encroachments over, across or upon any of the Mortgaged Property's boundary lines, rights of way or easements, and no building or other improvements on adjoining land create such an encroachment other than as shown on the survey delivered pursuant to Section 3.1(L). All irrigation lines servicing the Mortgaged Property are entirely located on the Mortgaged Property or are located on adjacent property pursuant to validly created and existing perpetual appurtenant easements insured as appurtenant easements in the Title Policy. The Land and Improvements have legally adequate contiguous rights of access to public ways. All roads necessary for the full utilization of the Land and Improvements for their current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. No offsite improvements are necessary or used for the ownership, use or operation of the Mortgaged Property, other than public utilities. The Improvements, the Land, the Equipment, Fixtures and Personalty and the Inventory located on the Land constitutes all of the real property, equipment, fixtures and other tangible property currently owned or leased by Borrower or used in the operation of the Mortgaged Property and the Equipment, Fixtures and Personalty owned by the Borrower are sufficient to own, operate and use the Land and Improvements as currently operated. Except as identified in the Permitted Encumbrances, Borrower has not entered into any agreement or option, and is not otherwise bound, to sell the Mortgaged Property (or any part thereof). Borrower has not entered into any agreement or option, and is not otherwise bound, to acquire any additional real estate or Investments. As of the date hereof, no portion of the Improvements constituting part of the Mortgaged Property or on the Land has been materially damaged, destroyed or injured by fire or other casualty which has not been fully restored.

**4.7 Litigation.** Except as set forth on Schedule 4.7, there are no judgments outstanding against Borrower or Guarantor or are binding upon the Mortgaged Property or any property of, Borrower or Guarantor, nor is there any litigation, governmental investigation or arbitration pending or, to Borrower's knowledge and to the extent having a Material Adverse Effect, threatened against Borrower or Guarantor. The judgments, litigation, investigations and arbitrations set forth on Schedule 4.7 will not result, if adversely determined, and could not reasonably be expected to result, either individually or in the aggregate, in any Material Adverse Effect and do not relate to and will not affect the consummation of the transactions contemplated hereby. No petition in bankruptcy, whether voluntary or involuntary, or assignment for the benefit of creditors, or any other action involving debtors' and creditors' rights has ever been filed under the laws of the United States of America or any state thereof, or threatened, by or against, Borrower or Guarantor. Except as set forth on Schedule 4.7, there are no mechanics' or materialmen's liens, alienable bills or other claims constituting or that may constitute a Lien on the Mortgaged Property or any part thereof, and no work for which any such Lien could be asserted has been performed which has not been fully paid for. Borrower has not received any



notice from any governmental or quasi-governmental body or agency or from any person or entity with respect to and Borrower does not know of any actual or threatened taking of the Land or Improvements, or any portion thereof, for any public or quasi-public propose or of any moratorium which may affect the use, operation or ownership of the Mortgaged Property.

**4.8 Payment of Taxes.** All tax returns and reports of Borrower and Guarantor required to be filed by such Persons have been timely filed, and all taxes, assessments, fees and other governmental charges upon such Person and upon the Mortgaged Property, assets, income and franchises which are due and payable or which have been levied, imposed or assessed have been paid in full. To Borrower's knowledge, no tax returns of Borrower or Guarantor is under audit. No tax liens have been filed and, to Borrower's knowledge no claims are being asserted with respect to any such taxes. The charges, accruals and reserves on the books of Borrower and Guarantor in respect of any taxes or other governmental charges are in accordance with GAAP. Except as described in Schedule 4.8, Borrower and Guarantor have not given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of taxes of Borrower and Guarantor or for which Borrower and Guarantor may be liable. All taxes that Borrower and Guarantor is or was required by Legal Requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the applicable Governmental Authority. All tax returns filed by (or that include on a consolidated basis) Borrower and Guarantor are true, correct and complete. There is no tax sharing agreement that will require any payment by Borrower and Guarantor after the date of this Agreement. Borrower is taxed as a partnership for all federal and state income (or analogous) tax purposes. The Borrower does not intend to treat the Loan and related transactions hereunder as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4). In the event the Borrower determines to take any action inconsistent with the previous sentence, it will promptly notify the Lender thereof. If the Borrower so notifies Lender, the Borrower acknowledges that Lender may treat the Loan as part of a transaction that is subject to Treasury Regulation Section 301.6112-1, and that Lender may maintain any lists and other records required by such Treasury Regulation.

**4.9 Governmental Regulation; Margin Loan.** Borrower and Guarantor are not, nor after giving effect to the Loan, will be, subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money. Borrower shall use the proceeds of the Loan only for the purposes set forth in this Agreement and consistent with all applicable laws, statutes, rules and regulations. No portion of the proceeds of the Loan shall be used by Borrower in any manner that might cause the borrowing or the application of such proceeds to violate Regulation U, Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Exchange Act or any other Legal Requirements. The Loan is an exempt transaction under the Truth-in-Lending Act (15 U.S.C.A. §§ 1601 et seq.). Borrower is not a non-resident alien for purposes of U.S. income taxation and neither Borrower nor Guarantor is a foreign corporation, partnership, foreign trust or foreign estate (as said terms are defined in the United States Internal Revenue Code). Borrower, Guarantor or any of their respective Subsidiaries are not, and shall not become, a Person with whom Lender is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially

Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or other governmental action relating to terrorism financing, terrorism\* support and/or otherwise relating to terrorism and are not and shall not engage in any dealings or transaction or otherwise be associated with Persons named on OFAC's Specially Designated and Blocked Persons list. At all times throughout the term of the Loan, including after giving effect to any Transfers, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any government or other Person subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder or any other laws, regulations or executive orders administered by the Office of Foreign Assets Control with the result that an investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law ("**Embargoed Person**"); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly) is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable, have been derived from any unlawful activity with result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.10 Employee Benefit Plans; ERISA; Employees.** Except for the Employee Benefit Plans set forth on Schedule 4.10, neither Borrower nor any ERISA Affiliate of Borrower maintains or contributes to, or has any obligation under, any Employee Benefit Plans. Borrower is not an "employee benefit plan" (within the meaning of section 3(3) of ERISA) to which ERISA applies and the Mortgaged Property and Borrower's assets do not constitute plan assets. No actions, suits or claims under any laws and regulations promulgated pursuant to ERISA are pending or, to Borrower's knowledge, threatened against Borrower. Borrower has no knowledge of any material liability incurred by Borrower which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan, or of any lien which has been imposed on Borrower's assets pursuant to section 412 of the Code or section 302 or 4068 of ERISA. The Loan, the execution, delivery and performance of the Loan Documents and the transactions contemplated by this Agreement do not constitute a non-exempt prohibited transaction under ERISA. Borrower is not a party to any collective bargaining or other employment agreement other than the agreements identified on Schedule 4.10.

**4.11 Intellectual Property.** Schedule 4.11 sets forth a true, correct and complete list of all of the patents, trademarks, tradenames, technology, other intellectual property rights and other Proprietary Rights owned by Borrower and used in connection with the ownership, operation and management of the Mortgaged Property. Borrower possesses, owns or has valid licenses, permits, certificates of public convenience, service marks, authorizations, licenses, patents, patent rights or licenses, trademarks, trademark rights, trade name rights, trade styles, trade dress, logos and other source or business affiliation identifiers, and copyrights, certificates, consents, orders, approvals and other authorizations from, and have made all declarations and filings with, all federal, state, local and other Governmental Authority, all self-regulatory organizations and all courts and other tribunals (collectively, together with the goodwill

associated therewith, “**Proprietary Rights**”) presently required or necessary to own or lease, as the case may be, and to operate, the Mortgaged Property and to carry on its business as now conducted, except where the failure to obtain same would not, individually or in the aggregate, have a Material Adverse Effect. Borrower has fulfilled and performed all of its obligations with respect to such permits, and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or could result in any other material impairment of the rights of the holder of any such permit; and Borrower has not received any notice of any proceeding relating to unenforceability, invalidity, revocation or modification of any Proprietary Rights, except where such revocation, unenforceability, invalidity, or modification would not, individually or in the aggregate, have a Material Adverse Effect. Borrower has not received any notice that any Proprietary Rights have been declared unenforceable or otherwise invalid by any court or Governmental Authority other than notices relating to Proprietary Rights the loss of which would not, individually or in the aggregate, have a Material Adverse Effect. Borrower has not received any notice of infringement of, or conflict with, and Borrower does not know of any such infringement of or conflict with, asserted rights of others with respect to any Proprietary Rights which, if such assertion of infringement or conflict were sustained, would have a Material Adverse Effect.

**4.12 Broker’s Fees.** No broker’s or finder’s fee, commission or similar compensation will be payable with respect to the Loan, the issuance of the Note or any of the other transactions contemplated hereby or by any of the Loan Documents based upon any broker or lender engaged by Borrower, Guarantor or any affiliate of Borrower. Borrower shall indemnify and hold Lender harmless from and against any and all claims of all brokers or finders claiming by, through or under Borrower and in any way related to the Loan or any of the transactions contemplated hereby.

**4.13 Environmental Compliance.** There are no claims, liabilities, investigations, litigation, administrative proceedings, whether pending or, to Borrower’s knowledge threatened, or judgments or orders relating to any Hazardous Materials (collectively called “**Environmental Claims**”) asserted or threatened against Borrower, tenant or operator or relating to any real property currently or formerly owned, leased or operated by Borrower including the Mortgaged Property. Except as disclosed in the Environmental Reports, to Borrower’s knowledge, neither Borrower nor any other Person has caused or permitted any Hazardous Material to be used, generated, reclaimed, transported, released, treated, stored or disposed of in a manner which could form the basis for an Environmental Claim against Borrower. Except as disclosed in the Environmental Reports, to Borrower’s knowledge, no Hazardous Materials in violation of applicable Environmental Laws are or were stored or otherwise located, and no underground storage tanks or surface impoundments are or were located, on real property currently or formerly owned, leased or operated by Borrower, including the Mortgaged Property, or to the knowledge of Borrower, on adjacent parcels of real property, and no part of such real property or, to the knowledge of Borrower no part of such adjacent parcels of real property, including the groundwater located thereon, is presently contaminated by Hazardous Materials in violation of applicable Environmental Laws or to any extent which has, or might reasonably be expected to have, a Material Adverse Effect. Except as disclosed in the Environmental Reports, to Borrower’s knowledge, Borrower and the Mortgaged Property has been and is currently in compliance with all applicable Environmental Laws, including obtaining and maintaining in effect all permits, licenses or other authorizations required by applicable Environmental Laws.

**4.14 Solvency.** As of the date of this Agreement and after giving effect to the consummation of the transactions contemplated by the Loan Documents, Borrower: (A) owns and will own assets the fair saleable value of which are (1) greater than the total amount of liabilities (including Contingent Obligations) of Borrower, and (2) greater than the amount that will be required to pay the probable liabilities of Borrower's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to Borrower; (B) has capital that is not insufficient in relation to its business as presently conducted or any contemplated or undertaken transaction; and (C) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due. Borrower has not entered into the Loan Documents or the transactions contemplated under the Loan Documents with the actual intent to hinder, delay, or defraud any creditor. After giving effect to the transactions occurring on the Closing Date, no Default or Event of Default exists, No material adverse change in the financial conditions or operation of the business of Borrower and Guarantor has occurred since the applicable dates of the financial statements of the applicable Person provided on or before the Closing Date.

**4.15 Disclosure.** The representations and warranties of Borrower and Guarantor contained in the Loan Documents, the financial statements referred to in Section 5.1 (A), and any other documents, certificates or written statements furnished to Lender by or on behalf of Borrower or Guarantor for use in connection with the Loan do not contain any untrue statement of a material fact or omit or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. There is no material fact known to Borrower that has had or will have a Material Adverse Effect that has not been disclosed in this Agreement or in such other documents, certificates and statements furnished to Lender by or, on behalf of, Borrower for use in connection with the Loan.

**4.16 Insurance.** Schedule 4.16 sets forth a complete and accurate description of all policies of insurance that will be in effect as of the Closing Date for Borrower and such policies of insurance satisfy all of the requirements of Section 5.4. All premiums thereon have been paid in full through the first anniversary of the Closing Date, no notice of cancellation has been received with respect to such policies and Borrower is in compliance, in all material respects, with all conditions contained in such policies.

**4.17 Intentionally Omitted.**

**4.18 Accounts.** Schedule 4.18 sets forth a complete and accurate itemization of all of Borrower's time, demand, securities or similar Accounts that are in existence as of the Closing Date.

**4.19 Management Agreement.** Borrower is not party to any Management Agreement nor has it otherwise contracted with any managing agent to assist Borrower in the management and operation of the Mortgaged Property.

**4.20 Special Assessments; Taxes.** There are no pending or, to the knowledge of Borrower proposed, special or other assessments for public improvements or otherwise affecting the Mortgaged Property, nor, to Borrower's knowledge, are there any contemplated improvements to

the Mortgaged Property that may result in such special or other assessments. Borrower has provided Lender with true, correct and complete copies of all bills and invoices for Impositions which have been levied or assessed against or are outstanding with respect to the Mortgaged Property. Schedule 4.20 sets forth a true, correct and complete schedule of the assessment of the Mortgaged Property in effect as of the Closing Date. Borrower has not received any notice that any portion of the Mortgaged Property has been re-assessed or is currently the subject of a reassessment. No portion of the Mortgaged Property is exempt from taxation or constitutes an "omitted" tax parcel. No Impositions are currently delinquent or outstanding with respect to the Mortgaged Property. The conveyance of the Mortgaged Property to Borrower did not, in and of itself, constitute the basis for any reassessment of all or any part of the Mortgaged Property or the basis for any increase in any currently outstanding or previously satisfied Impositions which has not already been imposed and disclosed in writing to Lender by Borrower. No tax contests of any Impositions or assessments are currently pending. The Land and Improvements constitute a separate tax lot or lots, with a separate tax assessment or assessments, independent of any other land or improvements not constituting a part of the Mortgaged Property and no other land or improvements is assessed and taxed together with any portion of the Mortgaged Property.

**4.21 Leases.** Except for the Guarantor Lease, there are no Leases or other arrangements for occupancy of space within the Mortgaged Property that are currently in effect. Borrower has provided Lender with a true, complete and correct copy of the Guarantor Lease, including any amendments or modifications thereto. The Mortgaged Property is occupied solely by Guarantor.

**4.22 Representations Remade.** Borrower warrants and covenants that the foregoing representations and warranties will be true and shall be deemed remade as of the date of the Closing. All representations and warranties made in the other Loan Document or in any certificate or other document delivered to Lender by or on behalf of Borrower pursuant to the Loan Documents shall be deemed to have been relied upon by Lender, notwithstanding any investigation made by or on behalf of Lender. All such representations and warranties shall survive the making of the Loan and shall continue in full force and effect until such time as the Loan has been paid in full.

## **SECTION 5**

### **AFFIRMATIVE COVENANTS**

Borrower covenants and agrees that so long as this Agreement shall remain in effect or the Note shall remain outstanding, Borrower shall perform and comply with all covenants in this Section 5.

**5.1 Financial Statements and Other Reports.** Borrower will maintain a system of accounting in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP and proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower with respect to all items of income and expense in connection with the operation of the Mortgaged Property.

**(A) Financial Statements.** Within one hundred twenty (120) days after the end of each calendar year, Borrower shall provide to Lender true and complete annual audited consolidated financial statements for Guarantor and true and complete annual unaudited financial

statements for Borrower and the operation of the Mortgaged Property, all prepared in accordance with GAAP. All audited financial statements shall be audited by a so-called "Big-4" accounting firm or another independent certified public accounting firm reasonably satisfactory to Lender. All financial statements (whether or not audited) shall include a balance sheet as of the end of such year, profit and loss statements for such year and a statement of cash flow for such year, with such detailed supporting schedules covering the operation of the Mortgaged Property as Lender shall reasonably require including a reconciliation to the monthly reports and statements delivered to Lender and include an itemized accounting of all Gross Revenues and Expenses for the Mortgaged Property. As soon as reasonably practicable (but in any event within forty-five (45) days) after the end of each calendar quarter, Borrower shall provide to Lender a true and complete quarterly cash flow, balance sheet, and operating statement for Borrower, Guarantor and the Mortgaged Property (none of which are required to be audited) certified by the president or vice president of Borrower and Guarantor which quarterly statements shall be in form and substance acceptable to Lender. Such quarterly statements shall be compared to the prior year's quarter and year-to-date. Borrower shall also provide (and cause Guarantor to provide), such other financial information as Lender may, from time to time, reasonably request certified (if requested by Lender) by the applicable chief financial officer (or similar position). Borrower will deliver, concurrently with the annual and quarterly statements, a certificate of its chief financial officer (or analogous position) certifying that no Default or Event of Default has occurred. In the event Borrower enters into a Management Agreement subsequent to the date hereof, as soon as available, and in any event within twenty (20) days after the end of each Loan Month, Borrower will deliver to Lender a copy of the periodic reporting package required to be delivered to Borrower by a Manager pursuant to such Management Agreement.

(B) **Accountants' Certification.** Together with each delivery of annual financial statements of Borrower and Guarantor pursuant to subsection 5.1 (A), Borrower shall request as part of the engagement of its independent certified public accountant, and shall use best efforts to obtain, a written statement by such independent certified public accountant (1) stating that the examination has included a review of the terms of this Agreement as such terms relate to accounting matters, (2) stating whether, in connection with the examination, any condition or event that constitutes an Event of Default (of which said accountants may be aware from said review, and without obligation to review other aspects of this Agreement or to review any of the other Loan Documents) has come to their attention, and (3) if such a condition or event has come to their attention, specifying the nature and period of existence thereof; provided that the requirements set forth in this subsection (B) shall be waived for so long as (i) Borrower's financial statements are prepared on a consolidated basis with the financial statements of Guarantor and (ii) Guarantor is a reporting company under the Exchange Act, and provided further that, for purposes of the foregoing, "best efforts" shall not require a change in Borrower's independent certified public accountant.

(C) **Accountants' Reports.** Promptly upon receipt thereof, Borrower will deliver copies of all significant reports submitted to Borrower or Guarantor, as applicable, by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower or Guarantor, as applicable, made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit; provided that the requirements set forth in this subsection (C) shall be waived for so long as (i) Borrower's financial statements are prepared on a consolidated basis with the

financial statements of Guarantor and (ii) Guarantor is a reporting company under the Exchange Act.

(D) **Intentionally Omitted.**

(E) **Notices, Events of Default and Litigation.** Borrower shall promptly deliver, or cause to be delivered, copies of all notices, demands, reports or requests given to, or received by Borrower from, any Governmental Authorities or with respect to any Indebtedness of Borrower or any Material Contracts, and shall notify Lender within two (2) Business Days after Borrower receives notice or acquires knowledge of, any violation of Legal Requirements, investigation, subpoena or audit by any Governmental Authority or default with respect to the Mortgaged Property or any Indebtedness or Material Contracts. Promptly upon Borrower obtaining knowledge of any of the following events or conditions, Borrower shall deliver to Lender a written notice specifying the nature and period of existence of such condition or event and what action Borrower has taken, is taking and proposes to take with respect thereto: (1) any condition or event that constitutes an Event of Default; and/or (2) any fact, circumstance, event or condition which has, or would reasonably be expected to have, a Material Adverse Effect. Promptly upon Borrower obtaining knowledge of (i) the institution of any action, suit, proceeding, governmental investigation or arbitration against or affecting Borrower or Guarantor or the Mortgaged Property, or any other property of Borrower that would reasonably be expected to have a Material Adverse Effect or (ii) any material development in any action, suit, proceeding, governmental investigation or arbitration at any time pending against or affecting Borrower or Guarantor or the Mortgaged Property or any other property of Borrower that would reasonably be expected to have a Material Adverse Effect, Borrower will give notice thereof to Lender and provide such other information as may be available to it to enable Lender and its counsel to evaluate such matters.

(F) **ERISA.** Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as Lender, in its sole discretion, may reasonably request, that (A) Borrower is not and does not maintain an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (B) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) one or more of the following circumstances is true: (i) equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); or (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

(G) **Tax Returns.** Borrower will deliver to Lender copies of all federal and state income and other tax returns, schedules, statements and reports to its owners within twenty (20) Business Days after the earlier of filing or delivery of such tax returns or other items with the Internal Revenue Service or the applicable Governmental Authority or delivery to its owners; provided, however, so long as Guarantor’s is making filings with the United States Securities and Exchange Commission (which filings are available to the public on the internet), Borrower will not be required to deliver copies of the foregoing information to Lender.

(H) **Estoppel Certificates.** Within ten (10) Business Days following a request by Lender, Borrower shall provide to Lender, a duly acknowledged written statement confirming the amount of the outstanding Obligations, the terms of payment and maturity date of the Note, the date to which interest has been paid, and whether, to Borrower's knowledge, any offsets or defenses exist against the Obligations, and if any such offsets or defenses are alleged to exist, the nature thereof shall be set forth in detail.

(I) **Other.** With reasonable promptness, Borrower will deliver such other information and data with respect to Borrower as from time to time may be reasonably requested by Lender. Borrower shall also provide Lender with a copy of each 8K, 10Q and 10K (each as defined in the Exchange Act) or their successor forms under the Exchange Act, filed by Guarantor from time to time with the United States Securities and Exchange Commission not later than ten (10) Business Days after the filing thereof; provided, however, so long as such filings are available to the public on the internet, Borrower will not be required to deliver copies of the foregoing to Lender. Borrower shall deliver, or cause to be delivered, to Lender annually, concurrently with the renewal of the insurance policies required hereunder, an Officer's Certificate stating that the insurance policies required to be delivered to Lender pursuant to Section 5.4 are maintained with insurers who comply with the terms of Section 5.4, setting forth a schedule describing all premiums required to be paid by Borrower to maintain the policies of insurance required under Section 5.4, and confirming full payment of all such premiums.

(J) **Electronic Format.** To the extent then available, Borrower will provide to Lender a copy of any reports, notices, statements or other deliveries required pursuant to this Section 5.1 in an electronic format reasonably satisfactory to Lender.

**5.2 Existence; Qualification.** Borrower will be and continue to be, qualified in the jurisdiction in which the Mortgaged Property is located and keep in full force and effect its existence in the jurisdiction in which the Mortgaged Property is located.

### **5.3 Payment of Impositions and Lien Claims; Permitted Contests.**

(A) Subject to Section 5.3(B) and the provisions of the Loan Documents relating to the Tax Reserve Account, Borrower will pay, or cause payment of, (i) all Impositions before in each instance any penalty or fine is incurred with respect thereto, (ii) all claims ("**Claims**") (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon the Mortgaged Property or Borrower, before in each instance any penalty or fine is incurred with respect thereto, and (iii) all federal, state and local income taxes, sales taxes, excise taxes and all other taxes and assessments levied, imposed, confirmed or assessed against Borrower, its business, income, liabilities or assets or the Mortgaged Property, before in each instance any penalty or fine is incurred with respect thereto.

(B) With prior notice to Lender, Borrower shall have the right to pay Impositions, in full, under "protest." Notwithstanding Section 5.3(A), Borrower shall not be required to pay, discharge or remove or cause payment, discharge or removal of any Imposition or Claims pertaining to labor, services, materials and supplies supplied to the Land and Improvements so long as Borrower contests (each such contest, a "**Permitted Contest**") in good faith such Imposition or Claims or the validity, applicability or amount thereof by an appropriate legal



proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof so long as: (a) at least thirty (30) days prior to the date on which such Imposition or Claims would otherwise have become delinquent, Borrower shall have given Lender notice of its intent to contest said Imposition, (b) at least thirty (30) days prior to the date on which such Imposition would otherwise have become delinquent, Borrower shall have deposited with Lender (or with a court of competent jurisdiction or other appropriate Person approved by Lender) such additional amounts or other security as are necessary to keep on deposit at all times, an amount equal to at least one hundred twenty-five percent (125%) (or such higher amount as may be required by applicable law) of the total of (x) the balance of such Imposition then remaining unpaid, and (y) all interest, penalties, costs and charges accrued or accumulated thereon, (c) no risk of sale, forfeiture or loss of any interest in the Mortgaged Property or any part thereof arises, in Lender's reasonable judgment, during the pendency of such contest, (d) such contest does not, in Lender's reasonable discretion, have a Material Adverse Effect and (e) in the case of Claims, the liens, if any, securing the Claims in question have been defeased or bonded against in a manner satisfactory to Lender. Each Permitted Contest shall be prosecuted, at Borrower's sole cost and expense, with reasonable diligence, and Borrower shall promptly pay, or cause payment of, the amount of such Imposition or Claims as finally determined, together with all interest and penalties payable in connection with such Permitted Contest. Lender, in its sole discretion, may apply any amount or other security deposited with Lender under this subsection or otherwise to the payment of any unpaid Imposition or Claims to prevent the sale, loss or forfeiture of the Mortgaged Property or any portion thereof. Any surplus retained by Lender after payment of the Imposition or Claims for which a deposit was made shall be repaid to Borrower unless an Event of Default exists, in which case the surplus may be applied by Lender to the Obligations. Notwithstanding any provision of this Section 5.3 to the contrary, Borrower shall promptly pay any Imposition or Claims which it might otherwise be entitled to contest if, in reasonable determination of Lender, the Mortgaged Property or any portion thereof is in jeopardy or in danger of being forfeited or foreclosed. If Borrower refuses to pay any such Imposition or Claims, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender within five (5) Business Days of written notice by Lender for all such advances which advances will bear interest at the Default Rate.

(C) Subject to Section 2.6, Borrower shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Lender by reason of its interests in, or measured by amounts payable under, the Note, this Agreement, the Mortgage or any other Loan Document (other than income, franchise and doing business taxes), and shall pay all stamp taxes and other taxes required to be paid on the Note or any of the other Loan Documents. If Borrower fails to make such payment within five (5) days after notice thereof from Lender, Lender may (but shall not be obligated to) pay the amount due, and Borrower shall reimburse Lender within five (5) Business Days of written notice by Lender for all such advances which will bear interest at the Default Rate. If applicable law prohibits Borrower from paying such taxes, charges, filing, registration and recording fees, excises, levies, stamp taxes or other taxes, then Lender may declare Borrower's Obligations to be immediately due and payable, upon ninety (90) days' prior written notice.

#### 5.4 Insurance.

(A) Borrower shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Lender, the following policies of insurance with respect to the Mortgaged Property and Borrower, as applicable:

(i) Property insurance on an “all risk” and “special perils” basis (special form cause of loss) for one hundred percent (100%) of the replacement value of the Mortgaged Property with customary deductibles as approved by Lender. The policy should contain the following endorsements: (a) Replacement Cost (without any deduction made for depreciation), (b) Agreed Amount (waiving co-insurance penalties), (c) Building Ordinance and Law coverage and (d) a standard mortgagee clause acceptable to Lender. Such policy will also include the following coverage: (i) comprehensive boiler and machinery coverage in amounts as reasonably determined by Lender; (ii) earthquake and earth movement coverage in sufficient amount as reasonably determined by Lender; and (iii) flood insurance coverage if the Improvements are located in a special flood hazard area as designated by the Director of the Federal Emergency Management Agency, in sufficient amount as reasonably determined by Lender.

(ii) Commercial general liability insurance covering bodily injury and property damage occurring on, in or about the Mortgaged Property and any adjoining streets, sidewalks, and passageways arising out of or connected with the possession, use, leasing, operation, or condition of the Mortgaged Property. Policy limits will be not less than \$1,000,000 per occurrence, \$2,000,000 per location in the aggregate with respect to the Mortgaged Property and \$1,000,000 per occurrence, \$2,000,000 per location in the aggregate with respect to Borrower. Such coverage shall include but not be limited to premises/operations, personal injury and liquor liability (if applicable).

(iii) During the clinical testing process, umbrella excess liability insurance for not less than \$15,000,000 in the aggregate with respect to the Mortgaged Property and Borrower, including products liability coverage. After the Borrower or Guarantor has received approval for the sale of any medicine, umbrella excess liability insurance for not less than \$20,000,000 in the aggregate with respect to the Mortgaged Property and Borrower, including products liability coverage.

(iv) During the course of construction of Improvements, Borrower will obtain (1) commercial general liability insurance including contractual liability, in the amount of \$1,000,000 primary and \$10,000,000 excess liability in the aggregate (the policy shall provide coverage on an occurrence basis against claims for personal injury, bodily injury and death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways). In addition, Borrower shall require all contractors and subcontractors, architects and engineers to provide appropriate insurance coverage; and (2) Builder’s risk completed value form insurance against “all risks” of physical loss, including collapse, water damage, flood, earthquake and transit coverage (coverage should be on a non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) with deductibles approved by Lender). Borrower agrees to

consult with Lender prior to commencing the construction of any Improvements and to comply with all reasonable special insurance requirements of Lender pertaining to any construction.

(B) No policies shall contain any exclusion for terrorism, terrorist activities or similar activities defined under the Terrorism Risk Insurance Act of 2002 (“**TRIA**”) and will be endorsed to insure such risks.

(C) All insurance policies required pursuant to this Agreement shall be endorsed to provide that: (i) Lender, its successors, and/or assigns, is named as mortgagee with respect to the all risk property; as a loss payee with respect to all rent loss coverage; as additional named insured on all liability coverage, with the understanding that any obligation imposed upon the insureds (including the liability to pay premiums) shall be the sole obligation of Borrower and not of any other insured; (ii) the interests of Lender shall not be invalidated by any action or inaction of Borrower or any other Person, and such policies shall insure Lender regardless of any breach or violation by Borrower or any other Person of any warranties, declaration or conditions in such policies; (iii) the insurer under each such policy shall waive all rights of subrogation against Lender, any right to set-off and counterclaim and any other right to deduction, whether by attachment or otherwise; (iv) such insurance shall be primary and without right of contribution of any other insurance carried by or on behalf of Lender with respect to its interest in the Mortgaged Property; (v) if such insurance is canceled for any reason whatsoever, including nonpayment of premium or, if any substantial modification, change or reduction is made in the coverage which affects the interests of Lender, such cancellation, modification, change or reduction in coverage shall not be effective as to Lender until thirty (30) days after receipt by Lender of written notice sent by registered mail from such insurer; and (vi) any such insurance shall be endorsed to provide in as much as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(D) Borrower shall deliver to Lender a certificate of insurance with further evidence of such insurance acceptable to Lender. Renewal certificates should be provided no later than five (5) days prior to the expiration of each policy. Upon request of Lender, Borrower shall deliver a renewed policy or policies, or duplicate original or originals thereof, marked “premium paid,” or accompanied by such other evidence of payment satisfactory to Lender with standard non-contributory mortgagee clause in favor of and acceptable to Lender. Borrower shall comply promptly with and conform to (i) all provisions of each such insurance policy and (ii) all requirements of the insurers applicable to Borrower as respects use, occupancy, possession, operation, maintenance, alteration or repair of the Mortgaged Property. Borrower shall not use or permit the use of the Mortgaged Property in any manner that would permit any insurer to cancel any insurance policy or void coverage required to be maintained by this Agreement. No insurance policy may provide for assessments to be made against Lender or Lender’s servicer, if any. The insurance coverage required under this Section 5.4 may be effected under a blanket policy or policies covering the Mortgaged Property and other properties and assets not constituting a part of the Mortgaged Property; provided that any such blanket policy shall specify the portion of the total coverage of such policy that is allocated to the Mortgaged Property, and any sublimits in such blanket policy applicable to the Mortgaged Property, which amounts shall

not be less than the amounts required pursuant to this Section 5.4 and which shall in any case comply in all other respects with all of the requirements of this Section 5.4. Borrower shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon the Mortgaged Property or cause or permit any condition to exist thereon which would be prohibited by any insurance requirement, or would invalidate insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Mortgaged Property pursuant to this Section 5.4. Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that any insurance which Borrower shall cause any tenant to provide that shall otherwise be in compliance with all of the terms and conditions of this Section 5.4 shall satisfy Borrower's obligations with respect thereto hereunder. Borrower shall cause each tenant to provide business interruption, products/completed operations and workers compensation coverage in amounts reasonably acceptable to Borrower to insure risks of each tenant's business. Borrower will not take out separate insurance contributing in the event of loss with that required to be maintained pursuant to this Section 5.4 unless such insurance complies with this Section 5.4. All insurance policies shall be in form, with endorsements, risk coverage, deductibles and amounts and maintained with companies approved by Lender, such approval not to be unreasonably withheld, conditioned or delayed. Without limiting Lender's ability to approve the aforementioned, an insurance company shall not be reasonably satisfactory unless such insurance company (a) has a rating of a least A with financial size of Class X or better as specified in Best's Key Rating Guide, (b) is licensed or authorized to do business, as required under applicable law, in the State where the Mortgaged Property is located and (c) a claims-paying ability rating by S&P of not less than "A" and an equivalent rating by another Rating Agency. All insurance policies insuring against casualty, rent loss and other appropriate policies shall provide that no claims be paid thereunder without twenty (20) days' advance written notice to Lender. Such notice may be given by Borrower. Lender shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Borrower hereby expressly assumes Ml responsibility therefore and all liability, if any, with respect thereto. If Borrower fails to provide to Lender the policies of insurance required by this Section 5.4 or any other Loan Documents, Lender may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Lender's interest and Borrower will pay all premiums thereon within five (5) Business Days of written notice by Lender, and until such payment is made by Borrower, the amount of all such premiums shall bear interest at the Default Rate and shall constitute additions to the Obligations.

**5.5 Tax Reserve and Insurance Reserve.** Borrower shall deposit (or cause to be deposited) with Lender (or such agent of Lender as Lender may designate in writing to Borrower from time to time), monthly, on each Payment Date, 1/12th of the annual charges (as estimated by Lender) for all Impositions relating to the Mortgaged Property and all insurance premiums with respect to the insurance that relate specifically to the Mortgaged Property (including documentation reasonably acceptable to Lender demonstrating premium allocation for the premiums that relate specifically to the Mortgage Property) as required pursuant to Section 5.4(A)(i), (ii) and (iv). Borrower shall also deposit with Lender, simultaneously with such monthly deposits and/or on the Closing Date, a sum of money which, together with such monthly deposits, will be sufficient to make the payment of each such charge at least thirty (30) days prior to the date finally delinquent. Should such charges not be ascertainable at the time any deposit is required to be

made, the deposit shall be made on the basis of Lender's reasonable estimate. When the charges are fixed for the then current year or period, Borrower shall deposit any deficiency within fifteen (15) days following Lender's written demand. Should an Event of Default occur and be continuing, the funds so deposited may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Obligations or any other charges affecting the Mortgaged Property as Lender in its sole and absolute discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided. Borrower shall provide Lender with bills and all other documents necessary for the payment of the foregoing charges at least ten (10) days prior to the date on which each payment thereof shall first become delinquent. So long as (i) no Event of Default exists, (ii) Borrower has provided Lender with the foregoing bills and other documents in a timely manner, and (iii) sufficient funds are held by Lender for the payment of the Impositions and insurance premiums relating to the Mortgaged Property, as applicable, Lender shall pay said items or allow such funds to be used to pay said items or to reimburse Borrower for such items upon Lender's receipt of reasonable evidence documenting Borrower's payment of such items. All refunds of Impositions and insurance premiums shall be deposited into the applicable of the Tax Reserve Account or the Insurance Reserve Account.

**5.6 Maintenance of Mortgaged Property.** Borrower will maintain or cause the Mortgaged Property to be maintained in compliance with all Legal Requirements and in good repair, working order and condition and will make or cause to be made all appropriate repairs, renewals and replacements thereof. Without regard as to whether Proceeds are made available to Borrower for such purposes, Borrower will promptly restore and repair all loss or damage occasioned by (i) any casualty which has occurred to at least the condition existing prior to any such casualty or (ii) any condemnation to an economically and structurally integrated unit. Borrower will prevent any act or thing which might materially impair the value or usefulness of the Mortgaged Property. Borrower will not commit or permit any waste of the Mortgaged Property or any part thereof.

**5.7 Inspection; Lender Meeting.** Borrower shall, upon request from Lender and at reasonable times, permit (and cause to be permitted) Lender's designated representatives to (a) visit, examine, audit, and inspect the Mortgaged Property, (b) examine, audit, inspect, copy, duplicate and abstract Borrower's financial, accounting and other books and records, and (c) discuss Borrower's and the Mortgaged Property's affairs, finances and business with Borrower's officers, representatives, independent public accountants and agents. Lender acknowledges and agrees that any inspection or entry to the Mortgaged Property by Lender or Lender's designated representatives shall be conducted (i) during Borrower's normal business hours, (ii) in accordance with Borrower's safety and security procedures then applicable to the Mortgaged Property in general and to the Secure Areas in particular that are, in each instance, in effect from time to time, (iii) at Borrower's option, accompanied by an employee or representative of Borrower and/or Guarantor, (iv) in accordance with the confidentiality requirements of Section 11.12 and (v) in such a manner so as to minimize any disruption or interference with Borrower's use or operation of the Mortgaged Property. Borrower shall cause its books and records to be maintained at Borrower's principal offices located at c/o Alexion Pharmaceuticals, Inc., 352 Knotter Driver, Chesire, CT 06410. Borrower will not change its principal offices or the location where its books and records are kept without giving at least thirty (30) days' advance notice to Lender. Borrower shall pay Lender's costs and expenses incurred

in connection with such audit if an Event of Default has occurred and is continuing or if any audit reveals any material discrepancy, in Lender's reasonable judgment, in the financial information provided by Borrower. All audits, inspections and reports shall be made for the sole benefit of Lender. Neither Lender nor Lender's auditors, inspectors, representatives, agents or contractors assumes any responsibility or liability (except to Lender) by reason of such audits, inspections or reports. Borrower will not rely upon any of such audits, inspections or reports. The performance of such audits, inspections and reports will not constitute a waiver of any of the provisions of the Loan Documents. Neither Lender nor any other of Lender's inspectors, representatives, agents or contractors, shall be responsible for any matters related to design or construction of the Improvements, the Initial Project Improvements or any Construction. Borrower shall cooperate, from time to time, with Lender and use reasonable efforts to assist Lender in obtaining an appraisal of the Mortgaged Property. Such cooperation and assistance from Borrower shall include reasonable access to the Mortgaged Property and books and records pertaining to the Mortgaged Property for Lender and its appraiser. The appraiser performing any such appraisal shall be engaged by Lender. Borrower shall not be responsible for the expenses of any such appraisal, provided, however, Borrower shall pay the fees of such appraiser in connection with one appraisal of the Mortgaged Property during the term of the Loan and any such appraisal when conducted following the occurrence and during the continuation of an Event of Default. Borrower shall cooperate with Lender with respect to any proceedings before any Governmental Authority which may in any way affect the rights of Lender under any of the Loan Documents and, in connection therewith, not prohibit Lender, at its election, from participating in any such proceedings.

**5.8 Environmental Compliance.** Borrower shall: (a) comply (or cause compliance) at all times with all applicable Environmental Laws, and (b) promptly take, or cause to be taken, any and all necessary remedial actions upon obtaining knowledge of the presence, storage, use, disposal, transportation, release or discharge of any Hazardous Materials on, under or about the Mortgaged Property which has a Material Adverse Effect or is in violation of any Environmental Laws. Borrower shall cause all remedial action with respect to Hazardous Material on, under or about the Mortgaged Property, to comply with all applicable Environmental Laws and the applicable policies, orders and directives of all federal, state and local Governmental Authorities. If Lender at any time has a reasonable basis to believe that there may be a violation of any Environmental Law by, or any liability arising thereunder of, Borrower or related to the Mortgaged Property, Borrower shall, upon request from Lender, provide Lender with such reports, certificates, engineering studies and other written material or data as Lender may reasonably require to confirm compliance by Borrower and the Mortgaged Property with all applicable Environmental Laws. Borrower shall permit Lender, its authorized representatives, consultants or other Persons retained by Lender to enter upon, examine, test and inspect the Mortgaged Property with regard to compliance with Environmental Laws, the presence of Hazardous Materials and the environmental condition of the Mortgaged Property and properties adjacent to the Land. Such entry, examination, testing and inspecting and reporting shall be at the expense of Borrower if (x) an Event of Default has occurred or (y) Lender has reasonably determined that there may be a violation of Environmental Law or any liability arising under Environmental Law, which expense shall be paid by Borrower to Lender within five (5) Business Days of written notice by Lender.

**5.9 Environmental Disclosure.** Borrower shall immediately upon becoming aware thereof advise Lender in writing and in reasonable detail of: (1) any release, disposal or discharge of any Hazardous Material at the Mortgaged Property required to be reported to any federal, state or local governmental or regulatory agency under all applicable Environmental Laws; (2) any and all written communications sent or received by Borrower or its agents with respect to any Environmental Claims or any release, disposal or discharge of Hazardous Material required to be reported to any federal, state or local governmental or regulatory agency; (3) any remedial action taken by Borrower or any other Person in response to any Hazardous Material on, under or about any real property owned, leased or operated by Borrower or the Mortgaged Property or its agents, the existence of which could result in an Environmental Claim; (4) the discovery by Borrower or its agents of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause such real property or any part thereof to be classified as "border-zone property" or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws; and (5) any request for information from any Governmental Authority that indicates such Governmental Authority is investigating whether Borrower or another present or former occupant of the Mortgaged Property may be potentially responsible for a release, disposal or discharge of Hazardous Materials from any of the Mortgaged Property. Borrower shall promptly notify Lender of any proposed action to be taken by Borrower to commence any operations that could reasonably be expected to subject Borrower to additional laws, rules or regulations, including laws, rules and regulations requiring additional or amended environmental permits or licenses. Borrower shall, at its own expense, provide copies of such documents or information as Lender may reasonably request in relation to any matters disclosed pursuant to this Section 5.9.

**5.10 Compliance with Laws, Employee Benefit Plans and Contractual Obligations.** Borrower will promptly and faithfully (A) comply and cause the Mortgaged Property to comply, in all material respects, with the requirements of all Legal Requirements and the orders and requirements of any Governmental Authority in all jurisdictions in which it is now doing business or may hereafter be doing business and of every board of fire underwriters or similar body exercising similar functions, (B) maintain all licenses, certificates of occupancy, permits and Proprietary Rights now held or hereafter acquired by it or with respect to which a Material Adverse Effect will result if same are not existing and held by Borrower and (C) perform, observe, comply and fulfill all of its obligations, covenants and conditions contained in the Loan Documents and the Material Contracts. Borrower shall: (i) promptly notify Lender of any claim made against Borrower that Borrower is in default beyond any applicable notice and cure period under any Material Contract or that any other party is in default beyond any applicable notice and cure period under any Material Contract; (ii) not terminate, or permit termination of, any Material Contract, and (iii) not enter into, amend or modify any Material Contract without first obtaining the prior written approval of Lender. Except for the plans described in Schedule 4.10, Borrower is not a party to, and will not establish, any Employee Benefit Plan. Except for the plans described in Schedule 4.10, Borrower will not commence making contributions to (or obligate itself to make contributions to) any Employee Benefit Plan.

**5.11 Further Assurances.** Borrower shall, from time to time, at its sole cost and expense, execute and/or deliver, or cause execution and/or delivery of, such documents, agreements and reports, and perform such acts as Lender at any time may reasonably request to carry out the purposes and otherwise implement the terms and provisions provided for in the Loan

Documents. Borrower shall execute any documents and take any other actions necessary to provide Lender with a first priority, perfected security interest in the Reserves and the other Collateral. Borrower shall, at Borrower's sole cost and expense: (i) upon Lender's request therefore given from time to time (but not more frequently than once per calendar year unless an Event of Default then exists) pay for (a) current reports of Uniform Commercial Code, federal tax lien, state tax lien, judgment and pending litigation searches with respect to Borrower and Guarantor, (b) current good standing and existence certificates with respect to Borrower and Guarantor and (c) current searches of title to the Mortgaged Property, each such search to be conducted by search firms reasonably designated by Lender in each of the locations reasonably designated by Lender; and (ii) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary, to evidence, preserve and/or protect the Reserve and Other Accounts Collateral and the other Collateral at any time securing or intended to secure the Obligations, as Lender may require in Lender's reasonable discretion. Borrower shall promptly execute, acknowledge, deliver, file or do, at its sole cost and expense, all acts, assignments, notices, agreements or other instruments as Lender may require in order to effectuate, assure, convey, secure, assign, transfer and convey unto Lender any of the rights granted by this Agreement and to more fully perfect and protect any assignment, pledge, lien and security interest confirmed or purported to be created under the Loan Documents or to enable Lender to exercise and enforce their rights and remedies hereunder, in respect of the Collateral.

**5.12 Capital Expenditure Reserve.** On the Closing Date, Borrower shall deposit the amount required to be deposited into the Capital Expenditure Reserve Account on the Settlement Statement into the Capital Expenditure Reserve Account and thereafter Borrower shall deposit (or cause to be deposited) with Lender (or such agent of Lender as Lender may designate in writing from time to time) into the Capital Expenditure Reserve Account, monthly, on each Payment Date, an amount equal to \$3,000.00 for the purpose of establishing and maintaining a reserve (the "**Capital Expenditure Reserve**") for the completion of capital improvement items and for equipment for use at the Mortgaged Property ("**Capital Improvements**") which are approved in advance by Lender ("**Approved Capital Improvements**"). The funds contained in the Capital Expenditure Reserve shall be utilized by Borrower solely for Approved Capital Improvements. So long as no Default or Event of Default exists at the time of any requested distribution of funds from the Capital Expenditure Reserve, Lender shall make funds in the Capital Expenditure Reserve available to Borrower subject to satisfaction of each of the following terms and conditions: (a) all Capital Expenditure Reserve funds released by Lender to Borrower shall be used to pay for or reimburse Borrower for the reasonable expenses actually incurred and paid by Borrower for Approved Capital Improvements; (b) Borrower shall have given Lender a Request for Release satisfactory to Lender; (c) disbursements from the Capital Expenditure Reserve shall not be made more frequently than once per Loan Month; (d) each request for a disbursement shall be in an amount of not less than \$10,000.00; and (e) upon request of Lender, Borrower shall also provide Lender with additional evidence satisfactory to Lender that Borrower is the owner or lessee of any capital improvements or equipment for which reimbursement is sought, free of any Liens (other than the first priority security interest in favor of Lender). Lender shall make each disbursement of the Capital Expenditure Reserve funds within fifteen (15) days after satisfaction of all the conditions to that disbursement. If an Event of Default exists, Lender may apply the Capital Expenditure Reserve funds, together with any interest accrued thereon, to Borrower's Obligations in such order and priority as Lender may



determine. Notwithstanding the foregoing, to the extent that in any calendar year Borrower has expended sums on capital improvements and equipment approved in advance by Lender in excess of the sums required to be deposited into the Capital Expenditure Reserve hereunder for such period, Borrower may request that Lender approve (which approval shall be in Lender's sole but good faith discretion) a reduction in the amount Borrower shall be required to deposit in the Capital Expenditure Reserve for the remaining portion of the calendar year to reflect the amount of such excess expenditures. Borrower shall furnish to Lender on or prior to the thirtieth (30th) day following the end of each Loan Quarter a statement ("**Capital Expenditure Reserve Statement**") setting forth (a) all deposits into and disbursements from the Capital Expenditure Reserve, (b) calculation of the aforesaid monthly deposits, including support documentation for the calculation of the applicable monthly Gross Revenues, and (c) a schedule of capital improvements and related expenses to which disbursements from the Capital Expenditure Reserve were applied during the applicable Loan Quarter, including, to the extent not previously provided to, and approved by, Lender, invoices, receipts, lien waivers and other documentation as Lender shall request. Lender shall not make any disbursements from the Capital Expenditure Reserve until (i) Lender has approved the expenditures proposed by Borrower, (ii) all conditions to such disbursement have been satisfied and (iii) Borrower has provided Lender with all invoices, receipts, lien waivers and other documentation reasonably requested by Lender. Lender may audit Borrower's calculation of amounts deposited into the Capital Expenditure Reserve to determine the accuracy of Borrower's calculation and, if such audit discloses a shortfall in the amounts theretofore deposited into the Capital Expenditure Reserve, Borrower shall promptly deposit the amount of such shortfall into the Capital Expenditure Reserve.

**5.13 Equity Account.** Simultaneous with the Closing, Borrower shall deposit (or cause to be deposited) the Borrower's Initial Equity Contribution into a segregated account of Borrower with a financial institution reasonably satisfactory to Lender (the "Equity Account"). Borrower hereby grants to Lender a security interest in the Equity Account. It shall be an Event of Default hereunder if Borrower withdraws any funds from the Equity Account in violation of the terms of this Agreement.

**5.14 Drug Approval.** On or before December 31, 2007, Borrower shall obtain and shall deliver to Lender evidence (reasonably satisfactory to Lender) that the drug commonly known as "Soliris" has received final approval from the Food & Drug Administration Agency in the United States or the European Medicines Agency (EMA) (the "Drug Approval").

**5.15 Acceptable Letter of Credit.** In the event Borrower delivers an Acceptable Letter of Credit as a cure for failing to obtain Drug Approval in accordance with Section 5.14 of this Agreement, Borrower shall, if the Issuer ceases to have a Credit Rating of both "A+" or higher by S&P and "A1" or higher by Moody's, Borrower shall, within twenty (20) Business Days of the rating downgrade, replace the Acceptable Letter of Credit with one issued by a bank having such rating. Borrower shall pay any and all costs and expenses associated with Borrower's changing the Issuer or substituting a new letter of credit for the then existing Acceptable Letter of Credit.

**5.16 Validation.** Borrower shall cause Validation to occur on or before the Project Completion Date.

#### 5.17 [Intentionally Omitted.]

**5.18 Management.** Borrower shall provide competent, responsible management for the Mortgaged Property, which management, Lender acknowledges, is currently being provided, at no expense or cost to Borrower, by employees of Guarantor. In the event Borrower enters into a Management Agreement subsequent to the date hereof, the Manager and such Management Agreement must contain subordination and termination provisions and must be otherwise satisfactory to Lender. Borrower shall not enter into any management agreement or arrangement with any Person with respect to the management of the Mortgaged Property without Lender's prior written consent. Borrower shall cause management subordination agreements in form and substance satisfactory to Lender to be executed by the Manager. Borrower shall not modify, amend or terminate any approved management agreement without Lender's prior written consent. Borrower shall provide Lender with written notice of the occurrence of any event of default or condition which with the giving of notice or passage of time, or both, would constitute an event of default under any Management Agreement or which would entitle the Manager to terminate the Management Agreement. Any Management Agreement entered into by Borrower shall be terminated by Borrower, at Lender's request, upon thirty (30) days' prior notice to Borrower (i) upon the occurrence of an Event of Default or (ii) if such Manager commits any act which would permit termination by Borrower under such Management Agreement. If a Manager is terminated pursuant hereto, Borrower shall immediately seek to appoint a replacement manager which is a Qualified Manager, and Borrower's failure to appoint an acceptable Manager within thirty (30) days after Lender's request of such Borrower to terminate the Management Agreement shall constitute an immediate Event of Default.

**5.19 Construction Matters.** Without limitation of Lender's rights and Borrower's Obligations set forth elsewhere in the Loan Documents, Borrower shall: (1) cause the Restoration and all other Construction to proceed with reasonable diligence and continuously, with sufficient workers employed and sufficient materials supplied for that purpose so that the applicable Construction is substantially completed by the applicable Required Completion Date, or, if no Required Completion Date is applicable, as promptly as reasonably practicable or, in the case of Restoration, the Restoration is Substantially Completed prior to the Required Restoration Date; (2) cause all Construction to be performed in accordance with the applicable Plans and Specifications or plans and specifications for the work in question, in substantial conformity with the Legal Requirements, the requirements of all insurers and fire underwriters, and with the requirements set forth herein and in the other Loan Documents, in compliance with the Material Contracts and in a good, safe and workmanlike manner; (3) cause all materials acquired or furnished in connection with the Construction and Restoration to be new and stored under adequate safeguards to minimize the possibility of loss, theft, damage or commingling with other materials or projects; (4) utilize, or permit utilization of, only contractors approved by Lender (such approval not to be unreasonably withheld, conditioned or delayed); (5) not permit the revision of Plans and Specifications without consent of Lender (not to be unreasonably withheld, conditioned or delayed); and (6) from time to time upon the reasonable request of Lender deliver to Lender such certificates and other documentation confirming the matters set forth in the preceding clauses (1) through (5). Promptly upon the giving or receipt of such notice, Borrower shall forward to Lender copies of all material written notices given or received by, or on behalf of, Borrower with respect to the Construction to or from: (x) Contractor or any subcontractor or material supplier, or any of the design professionals (including notices relating to any

nonconforming construction, any refusal or inability to pay or perform pursuant to the terms of any contract or other agreement or any delay, default or change order) or (y) any claim of default, or relating to any work stoppage, notice of violation or cease and desist order, stop order, construction liens, strike, claim, litigation, damage, loss or any other materially adverse condition, circumstance or event. Borrower shall pay and discharge or cause to be paid and discharged promptly all payments due for labor, materials and supplies unless the same shall be contested by Borrower in accordance with Section 5.3(B). Borrower shall make available for inspection at all times by Lender and its representatives copies of all contracts for Construction and, to the extent available to or reasonably obtained by Borrower, entered into by Contractor and design professionals relating to the Construction. Within ninety (90) days after Substantial Completion of applicable Construction activities, Borrower shall (i) complete, or cause to be completed, all Punch-List Items, (ii) deliver to Lender two (2) copies of the as-built Plans and Specifications and such other as-built surveys and plans and specifications as Lender may reasonably require and (iii) obtain all final permits and approvals required for the normal use and occupancy of the Improvements in question (including a permanent certificate of occupancy if required for occupancy under applicable laws or its equivalent for the Improvements in question, to the extent available) provided, however, to the extent Borrower is diligently pursuing the items in (i), (ii) and (iii) and cannot complete such requirements within such ninety (90) day period, such ninety (90) days shall be extended by an additional thirty (30) days; provided further, however, and notwithstanding the foregoing to the extent that applicable Legal Requirements require satisfaction of items (i), (ii) or (iii) prior to the expiration of such ninety (90) or one hundred twenty (120) day period, the date such items must be satisfied prior to the date satisfaction is required pursuant to the applicable Legal Requirements.

## **SECTION 6**

### **ACCOUNTS/CASH MANAGEMENT**

#### **6.1 Establishment of Accounts.**

(A) Accounts. Borrower and Lender confirm that Lender has established, and agrees that Borrower and Lender shall maintain at Bank, the following segregated securities accounts (each a "Reserve Account" and, collective the "Reserve Accounts") shall be maintained by Borrower with Bank:

(i) Account No. 230444156, captioned "Alexion Manufacturing LLC/iStar Financial Inc./Insurance Reserve" for the retention of collateral in respect of insurance premiums for the Mortgaged Property as provided in Section 5.5 (the "**Insurance Reserve Account**");

(ii) Account No. 230444164, captioned "Alexion Manufacturing LLC/iStar Financial Inc./Tax Reserve" for the retention of collateral for the payment of Impositions for the Mortgaged Property as provided in Section 5.5 ("**Tax Reserve Account**"); and

(iii) Account No. 230444172, captioned "Alexion Manufacturing LLC/iStar Financial Inc./Capital Expenditure Reserve Account" for the retention of collateral in respect of capital improvements as provided in Section 5.12 ("**Capital Expenditure Reserve Account**").

(B) Type and Control of Accounts. Borrower represents, warrants, covenants and agrees that (A) each of the Reserve Accounts are and shall be maintained as a "securities account" (as in Section 8-501 (a) of the UCC); (B) Lender is entitled to exercise the rights that comprise any financial asset credited to such Reserve Accounts; (C) Borrower shall have no right to give entitlement orders with respect to such Reserve Accounts and, except as provided in this Agreement, no Reserve and Other Accounts Collateral shall be released to Borrower from such Reserve Accounts; and (D) all securities or other property underlying any financial assets credited to the Reserve Accounts shall be registered in the name of Bank or indorsed to Bank or in blank and in no case will any financial asset credited to the Reserve Accounts be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower.

(C) Eligible Accounts. Each of the Reserve Accounts shall be an Eligible Account.

(D) Cash Management Agreement. Borrower agrees that: (i) the Reserve Accounts shall be maintained in accordance with the terms hereof and of the Cash Management Agreement; and (ii) prior to the indefeasible re-payment in full of the Loan and indefeasible satisfaction of the Obligations, the Cash Management Agreement shall not be amended, supplemented or modified without the prior written consent of Lender, which consent Lender may grant or withhold in its sole and absolute discretion.

(E) No Other Accounts. Borrower represents and warrants that there are no deposit, securities or similar Accounts other than the Reserve Accounts maintained by Borrower or any other Person with respect to the collection of Gross Revenues. Borrower agrees that, until the Loan is indefeasibly re-paid in full and the indefeasible satisfaction of the Obligations neither Borrower nor any other Person shall open any Accounts for the collection or holding of Gross Revenues, except for the Reserve Accounts. The foregoing shall not prohibit Borrower from (i) utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to Borrower pursuant to Section 6.3 of this Agreement or (ii) maintaining a separate bank account for the collection of Rents under the Guarantor Lease. Borrower covenants and agrees that it will not pledge, or create or permit to exist any security interest in, the foregoing accounts.

(F) Miscellaneous Account Provisions. The Reserve Accounts shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Interest accruing on the Reserve Accounts, if any, shall be periodically added to the principal amount of the applicable Reserve Account and shall be held, disbursed and applied in accordance with the provisions of this Agreement. All statements relating to the Reserve Accounts shall be issued simultaneously by Bank to Lender and Borrower. Borrower shall be the beneficial owner of the Reserve Accounts for federal and state income tax purposes and shall report all income on the Reserve Accounts.

## **6.2 Deposits into Accounts**

(A) Initial Deposits. On the Closing Date, Borrower agrees, represents and warrants that it has deposited or caused to be deposited the following amounts into the Accounts:

(i) \$0.00 into the Insurance Reserve Account; (ii) \$70,210.79 into the Tax Reserve Account, and (iii) \$0.00 in the Capital Expenditure Reserve Account.

(B) Continuing Deposits. Borrower agrees to deposit on each Payment Date funds in the following amounts:

(i) funds in an amount equal to the deposit for insurance premiums due under Section 5.5 on the applicable Payment Date shall be deposited into the Insurance Reserve Account;

(ii) funds in an amount equal to the deposit for Impositions due under Section 5.5 on the applicable Payment Date shall be deposited into the Tax Reserve Account; and

(iii) funds in an amount equal to the deposit due under Section 5.12 on the applicable Payment Date in which the transfer is made shall be transferred to the Capital Expenditure Reserve Account.

### **6.3 Payments from Reserve Accounts.**

(A) No Event of Default. Borrower hereby irrevocably authorizes Lender to withdraw, and, Lender shall withdraw or re-allocate, the following payments or allocations, as applicable, from the applicable Reserve Accounts to the extent of the monies on deposit in the applicable Reserve Account if no Event of Default exists:

(i) funds from the Tax Reserve Account and Insurance Reserve Account sufficient to pay (A) Impositions and (B) insurance premiums for the insurance required to be maintained pursuant to the terms of the Agreement, on the due date therefore, and pay such funds to the Governmental Authority or insurance company having the right to receive such funds, provided, that Lender shall only be required to make such payments if Borrower has delivered to Lender an Officer's Certificate identifying (1) the amount of such required payments, (2) the due date of such payments and (3) the person entitled to receive such payments, at least five (5) Business Days prior to the due date thereof, provided further, if Borrower shall have paid Impositions or insurance proceeds directly, the funds will be paid to Borrower in reimbursement thereof provided no Event of Default exists and Borrower provides evidence reasonably satisfactory to Lender of payment of the item in question; and

(ii) funds from the Capital Expenditure Reserve Account in amounts determined by Lender to be required to be disbursed pursuant to Section 5.12.

(B) Event of Default Exists. If an Event of Default exists and during the continuance of the same, Borrower hereby irrevocably authorizes Lender to make any and all withdrawals from and transfers between any Reserve Account, as Lender shall determine in Lender's sole and absolute discretion.

**6.4 Accounts**. Borrower shall not, without the prior written consent of Lender, change the account location of any Reserve Account, the Development Fund and/or the Equity Account and,

as a condition precedent to any such change, the bank to which Borrower proposes to relocate such Reserve Account and/or Development Fund shall have executed an appropriate acknowledgment letter, in accordance with the provisions set forth above. With respect to the Reserve and Other Accounts Collateral, Lender shall not be liable for any acts, omissions, errors in judgment or mistakes of fact or law, except for those arising as a result of Lender's investment of such Reserve and Other Accounts Collateral in other than Permitted Investments or from gross negligence or willful misconduct. Funds in the Accounts shall (a) be used only to pay Expenses related to the Mortgaged Property prior to any distributions by Borrower and (b) not be disbursed in violation of any provision of this Agreement.

**6.5 Creation of Security Interest in Accounts.** Borrower hereby pledges, transfers and assigns to Lender, and grants to Lender, as additional security for the Obligations, a continuing perfected first priority security interest in and to, and a first lien upon: (i) the Reserve Accounts, the Development Fund, the Equity Account and all amounts which may from time to time be on deposit in each of the Reserve Accounts, the Development Fund and the Equity Account, respectively; (ii) all of Borrower's right, title and interest in and to all cash, property or rights transferred to or deposited in each of the Reserve Accounts, the Development Fund and Equity Account from time to time; (iii) all certificates and instruments, if any, from time to time representing or evidencing any such Reserve Account, Development Fund, Equity Account or any amount on deposit in any thereof, or any value received as a consequence of possession thereof, including all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the Reserve Accounts, the Development Fund or the Equity Account, as applicable; (iv) all monies, chattel paper, checks, notes, bills of exchange, negotiable instruments, documents of title, money orders, commercial paper, and other security instruments, documents, deposits and credits from time to time in the possession of Lender representing or evidencing such Reserve Accounts, Development Fund, or Equity Account, as applicable; (v) all other property, held in, credited to, or constituting part of any of the Reserve Accounts, Development Fund or the Equity Account as applicable; (vi) all earnings and investments held in any Reserve Account, Development Fund or the Equity Account, as applicable, in accordance with this Agreement; and (vii) to the extent not described above, any and all proceeds of the foregoing, (collectively, the "**Reserve Account and Other Accounts Collateral**"). This Agreement and the pledge, assignment and grant of security interest made hereby secures payment of all Obligations in accordance with the provisions set forth herein. This Agreement shall be deemed a security agreement within the meaning of the Uniform Commercial Code.

**6.6 Certain Matters Regarding Lender following an Event of Default.** Borrower agrees that the Bank shall pay over to Lender all amounts deposited in the Reserve Accounts on demand, without notice to Borrower, if, in making such demand, Lender shall give notice, in writing, signed by Lender or an authorized agent thereof, that an Event of Default exists. Lender may exercise in respect of the Reserve Account and Other Accounts Collateral all rights and remedies available to Lender hereunder or under the other Loan Documents, or otherwise available at law or in equity. If an Event of Default exists, Lender may exercise in respect of the Reserve and Other Accounts Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party upon default under the Uniform Commercial Code then in effect in the applicable jurisdiction. Without limiting the generality of the foregoing, Borrower agree(s) that, upon the occurrence and during

the continuance of an Event of Default, it will have no further right to request or otherwise require Lender to disburse funds from any Account in accordance with the terms of this Agreement, it being agreed that Lender may, at its option, (i) direct the Bank to continue to hold the funds in the Reserve Accounts, (ii) continue, from time to time, to apply all or any portion of the funds held in the Reserve Accounts to any payment(s) which such funds could have been applied to prior to such Event of Default (or to pay Expenses directly), to the extent and in such order and manner as Lender in its sole discretion may determine, and/or (iii) direct the Bank to disburse all or any portion of the funds held in the Reserve Accounts or other Reserve and Other Accounts Collateral then or thereafter held by the Bank to Lender, in which event Lender may apply the funds held in the Reserve Accounts or other Reserve and Other Accounts Collateral to the Obligations, in any order and in such manner as Lender may determine in its sole discretion. If an Event of Default exists, Lender may, at any time or from time to time: (1) collect, appropriate, redeem, realize upon or otherwise enforce its rights with respect to the Reserve and Other Accounts Collateral, or any part thereof, without notice to any Borrower and without the need to institute any legal action, make demand to or upon any Borrower or any other Person, exhaust any other remedies or otherwise proceed to enforce its rights; (2) execute (in the name, place and stead of Borrower) any endorsements, assignments or other instruments of conveyance which may be required for the withdrawal and negotiation of the Reserve and Other Accounts Collateral; and/or (3) exercise all other rights and remedies available to Lender hereunder and under any of the other Loan Documents. Notwithstanding anything to the contrary contained herein: (w) Borrower shall remain liable under the Loan Documents to the extent set forth herein and therein to perform all of its respective obligations thereunder, to the same extent as if this Agreement had not been executed; (x) the exercise by Lender of any of its rights hereunder shall not release Borrower from its obligations under any of the Loan Documents, nor shall it constitute an election of remedies by Lender or a waiver by Lender of any of its rights and remedies under the Loan Documents; (y) except as expressly set forth in this Agreement or in any of the other Loan Documents, Lender shall not have any obligation or liability by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of Borrower hereunder or to take any action, in each case, to collect or enforce any claim for payment assigned hereunder; and (z) Lender shall not have to resort to using the Reserve and Other Accounts Collateral before making demand upon or bringing an action against Borrower under any Loan Document under any guaranty given in connection with the Loan. No failure on the part of Lender to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right under this Agreement or the other Loan Documents. The remedies provided in this Agreement, the Note and the other Loan Documents are cumulative and not exclusive of any remedies provided at law or in equity.

**6.7 Representations and Warranties Regarding Reserve Account and Other Accounts Collateral.** In addition to any representations or warranties contained in this Agreement, Borrower represents and warrants as follows: (a) Borrower is the legal and beneficial owner of the Reserve and Other Accounts Collateral, respectively, free and clear of any Liens, except for the Liens in favor of Lender created by this Agreement and the other Loan Documents; (b) upon execution by Borrower of this Agreement, the pledge and assignment of the Reserve and Other Accounts Collateral pursuant to this Agreement will create a valid, first priority security interest in the such Reserve and Other Accounts Collateral, securing the payment and performance of the

Obligations; and (c) Borrower is not a party to any credit agreement or other borrowing facility including, but not limited to, a line of credit or overdraft line, with the Bank.

**6.8 Covenants Regarding Reserve Account and Other Accounts Collateral.** Borrower will not, without the prior consent of Lender, (a) sell, assign (by operation of law or otherwise), pledge, or grant any option with respect to, any of the Gross Revenues or any interest in the Reserve and Other Accounts Collateral or (b) create or permit to exist any assignment, lien, security interest, option or other charge or encumbrance upon or with respect to any Gross Revenues or any Reserve and Other Accounts Collateral, except for the Liens in favor of Lender under this Agreement and the other Loan Documents. Borrower will give Lender not less than thirty (30) days' prior written notice of any change in the address of its chief executive office or its principal office. Borrower agrees that all records of Borrower with respect to the Reserve and Other Accounts Collateral will be kept at Borrower's principal office and will not be removed from such addresses without the prior written consent of Lender. Borrower will not make or consent to any amendment or other modification or waiver with respect to any Reserve and Other Accounts Collateral, or enter into any agreement, or permit to exist any restriction, with respect to any Reserve and Other Accounts Collateral. Borrower will, at its expense, defend Lender's right, title and security interest in and to the Reserve and Other Accounts Collateral against the claims of any Person. Borrower will not take any action which would in any manner impair the enforceability of this Agreement or the security interests created hereby. Borrower will not enter into any credit agreement or other borrowing facility including a line of credit or overdraft line, with Bank. Nothing contained in this Section 6 shall impair or otherwise limit Borrower's obligations to timely make the payments (including interest and principal) required by the Note and the other Loan Documents, it being understood that such payments shall be so timely made in accordance with the Loan Documents, regardless of the amounts on deposit in any Account. Lender may, from time to time, at its sole option, perform any act which Borrower agrees hereunder to perform which Borrower shall fail to perform after being requested in writing to so perform within 30 days of such request (or such shorter period as may be required by law) and Lender may from time to time take any other action which Lender deems necessary for the maintenance, preservation or protection of any of the rights granted to Lender hereunder. With respect to the powers conferred on Lender hereunder, Lender shall not have any duty as to the Accounts or the other Reserve and Other Accounts Collateral, or any responsibility for (i) ascertaining or taking action with respect to any matters relative to the Accounts or the other Reserve and Other Accounts Collateral, whether or not Lender has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to the Accounts or the other Reserve and Other Accounts Collateral.

**6.9 Cash Management Fees.** All fees, costs and expenses associated with the Cash Management Agreement and Reserve and Other Accounts Collateral shall be paid by Borrower when due.



**SECTION 7**  
**NEGATIVE COVENANTS**

Borrower covenants and agrees that from the date hereof and so long as this Agreement shall remain in effect or the Note remains outstanding, Borrower shall comply with all covenants and agreements in this Section 7.

**7.1 Indebtedness.** Borrower will not directly or indirectly create, incur, assume, guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except Permitted Indebtedness.

**7.2 Liens and Related Matters.** Borrower will not directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to the Mortgaged Property or other Collateral whether now owned or hereafter acquired, or any income or profits therefrom, except the Liens in favor of Lender under this Agreement and the Permitted Encumbrances. Borrower shall have the right to contest any such Lien securing Claims in accordance with Section 5.3(B), except by their own terms or in accordance with a specific termination right granted thereunder.

**7.3 Material Rights.** Without Lender's consent, which consent shall not be unreasonably withheld, conditioned or delayed, Borrower shall not (a) amend, modify or waive the performance of material obligations with regard to the Material Contracts or Proprietary Rights, (b) request a waiver or consent from, any party to, or issuer of any of the Material Contracts or Proprietary Rights or (c) terminate or permit termination of any Material Contracts or Proprietary Rights.

**7.4 Restriction on Fundamental Changes.** Borrower shall not: (1) amend, modify or waive in any material respect any term or provision of its Organizational Documents, (2) liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution); or (3) acquire by purchase or otherwise all or any part of the business or assets of, or stock or other evidence of beneficial ownership of, any Person. Borrower shall not issue, sell, assign, pledge, convey, dispose or otherwise encumber any partnership, stock, membership, beneficial or other ownership interests or grant any options, warrants, purchase rights or other similar agreements or understandings with respect thereto. Borrower will not establish any Subsidiaries. Borrower will not make any Investments in any other Person.

**7.5 Restriction on Leases.** Except for the Guarantor Lease and as set forth below, Borrower shall not hereafter enter into any Lease or other rental or occupancy arrangement or concession agreement with respect to the Mortgaged Property or any portion thereof or otherwise permit any occupancy of the Mortgaged Property other than by Guarantor. Borrower shall not modify, amend or terminate any Lease, give any consents, waive any obligations under any leases or release any tenant of any Lease, without, in each instance, Lender's consent, such consent not to be unreasonably withheld, conditioned or delayed. Borrower shall perform and comply, in all material respects, with all of the landlord's obligations under each Lease and shall not suffer or permit any material breach or default on the part of the landlord to occur thereunder, in addition to the Guarantor Lease, Guarantor shall have the right to enter into subleases with third parties for occupancy of the Improvements without Lender's consent, provided that (i) any such sublease shall be subject and subordinate to the Liens in favor of Lender under this Agreement

and (ii) all subleases, in the aggregate, shall be for less than 25% of the aggregate leaseable improved space for the Mortgaged Property. Borrower shall provide Lender with written notice of any such permitted sublease prior to Guarantor entering into any such sublease. In no event will Borrower enter into any Capital Leases. Additionally, Guarantor shall have the right to assign the Guarantor Lease to a Person which is a wholly-owned and controlled subsidiary of Guarantor so long as Borrower and Guarantor provide not less than ten (10) Business Days notice of such proposed assignment together with evidence to establish the foregoing. No such sublease or assignment shall release Guarantor from its obligations under the Guaranty.

**7.6 Transactions with Affiliates.** Except for the Guarantor Lease and/or permitted by Section 7.5 above, Borrower shall not directly or indirectly enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any director, officer, employee or Affiliate of Borrower or Guarantor, except transactions in the ordinary course of and pursuant to the reasonable requirements of the business of Borrower and upon fair and reasonable terms which are fully disclosed to Lender and are no less favorable to Borrower than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, director, officer or employee of Borrower. Each such agreement with any Affiliate, director, officer or employee of Borrower shall provide that the same may be terminated by Lender at its option if an Event of Default exists. Other than pursuant to the Management Agreement approved by Lender, Borrower shall not pay any management, consulting, director or similar fees to any director, officer, employee or Affiliate of Borrower or Guarantor.

**7.7 Management Fees and Compensation; Contracts.** Borrower will not enter into or become obligated under any management (property and asset), brokerage or other such similar agreement, whether with an Affiliate or any other Person, with respect to the Mortgaged Property, without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and unless the same may be terminated, without cause and without payment of a penalty or fee, on not more than thirty (30) days' prior written notice. In no event will Borrower pay a management fee in excess of the then prevailing market rates.

**7.8 Conduct of Business.** From and after the Closing Date, Borrower will not engage in any business other than the ownership and operation of the Mortgaged Property. Borrower shall not use the Mortgaged Property or any part thereof, or allow the same to be used or occupied, for any purpose other than for the purposes of a biopharmaceutical manufacturing facility with office and laboratory amenities or other facility for similar use and related amenities, or for any unlawful purpose, or in violation of any Legal Requirement. Borrower will not suffer any act to be done or any condition to exist on the Mortgaged Property or any part thereof or any article to be brought thereon, which may be dangerous (unless safeguarded as required by Legal Requirement) or which may constitute a nuisance, public or private, or which may void or make voidable any insurance then in force with respect thereto. No tract map, parcel map, condominium plan, condominium declaration, or plat of subdivision (or analogous document) will be recorded with respect to the Mortgaged Property without Lender's consent, which consent shall not be unreasonably withheld, conditioned or delayed. The Mortgaged Property shall not be converted to the condominium or "cooperative" form of ownership. Borrower will not initiate or consent to any change in the zoning of the Mortgaged Property. Borrower shall at all times maintain good and indefeasible fee title to the Mortgaged Property free and clear of any

encumbrances other than the Liens in favor of Lender under the Loan Documents and the Permitted Encumbrances. Borrower shall not change its fiscal year without giving advance notice thereof to Lender.

**7.9 Use of Lender's Name.** Borrower shall not use the names of Lender or any of Lender's Subsidiaries or Affiliates in connection with the development, marketing, leasing, use and operation of the Mortgaged Property. Borrower shall not disclose or permit any Subsidiary of Guarantor or Borrower, or any officer, director, partner, manager, member or employee of Borrower to disclose any of the terms and conditions of the Loan to any Person except (a) to the extent disclosed in the Mortgage and the Financing Statements, (b) to the extent such disclosure is required pursuant to the Loan Documents or applicable legal process, (c) to the extent, and only to the extent, such disclosure is required pursuant to Guarantor's reporting requirements under the Exchange Act, (d) to the extent the content of such disclosure is already generally available to the public, or (e) to the extent Lender consents to such disclosure.

**7.10 Compliance with ERISA.** Borrower shall not adopt, modify or terminate any Employee Benefit Plans except as described in Schedule 4.10. Borrower shall not fail to maintain and operate each existing Employee Benefit Plan in compliance in all material respects with the provisions of ERISA, the Code and all other applicable laws and the regulations and interpretations thereof. Borrower shall not engage in any transaction which would cause the Obligations or any action taken or to be taken under this Agreement or the other Loan Documents or otherwise (or the exercise by Lender of any of its rights under the Loan Documents) to be a non-exempt prohibited transaction under ERISA. Borrower shall not become an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower shall not permit its assets to be plan assets.

**7.11 Due on Sale or Encumbrance.** Without Lender's consent, which consent may be given or withheld in the sole discretion of Lender, neither Borrower nor any other Person directly or indirectly holding any direct or indirect legal, beneficial, equitable or other interest in Borrower (at each and every tier or level of ownership) shall, or permit other Persons to, Transfer (whether or not for consideration or of record) all or any portion of the Mortgaged Property or any direct or indirect legal, equitable, beneficial or other interest (1) in all or any portion of the Mortgaged Property; (2) in Borrower; or (3) at each and every tier or level of ownership, in Borrower's direct or indirect partners, members, shareholders, beneficial or constituent owners including Guarantor (or the direct or indirect owners of any direct or indirect interests in any such constituent owners), including (a) an installment sales agreement for a price to be paid in installments; (b) except as otherwise permitted pursuant to Section 7.5, any Leases or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) any direct or indirect voluntary or involuntary sale of any ownership interest in Borrower or other Person directly or indirectly owning any direct or indirect interest in Borrower; (d) the creation, issuance or redemption of direct or indirect ownership interests by Borrower or any Person owning a direct or indirect interest in Borrower (at each every tier or level of ownership); (e) any merger, consolidation, dissolution or liquidation; and (f) without limitation of any of the foregoing, any direct or indirect voluntary or involuntary Transfer by any Person which indirectly controls Borrower (by operation of law or otherwise) of its direct or indirect controlling interests in Borrower. Notwithstanding the foregoing, the following shall not be deemed to be prohibited under this Section 7.11: (i) a

Transfer of an indirect ownership interest in Borrower, by the current owner thereof to a wholly-owned subsidiary of Guarantor and (ii) Transfers of ownership interests in a Person whose stock is publicly traded, so long as (x) no such transfers described in parts (i) and (ii) of this sentence result in any Person or Group acquiring, directly or indirectly, more than a forty-nine percent (49%) direct or indirect interest in Borrower (if such Person or Group did not prior to the Transfer, own at least forty-nine percent (49%) of the direct or indirect ownership interests in Borrower), unless such Person or Group acquiring, directly or indirectly, more than a forty-nine percent (49%) direct or indirect interest in Borrower has a Credit Rating of "Baa2" or higher from Moody's or "BBB" or higher from S&P, or, as applicable, an equivalent rating from another Rating Agency, or, if such Person or Group is not rated by a Rating Agency, has (A) a Net Worth of \$2,000,000,000 or more, (B) an EBITDA Interest Coverage of 6.0 or greater and (C) a Total Debt/Capitalization no greater than 30%, and (y) no Change in Control occurs by virtue of such Transfers (other than pursuant to clause (ii) of the definition of "Change of Control"). Notwithstanding the foregoing, Borrower may sell Inventory in the ordinary course of business and transfer or dispose of tangible personal property to Persons that are not Borrower's Affiliates, which tangible personal property is immediately replaced by an article of equivalent suitability and value or which is no longer necessary in connection with the operation of the Mortgaged Property provided that such transfer or disposal will (i) not have a Material Adverse Effect; (ii) not materially impair the utility of the Mortgaged Property, and (iii) not result in a reduction or abatement of, or right of offset against, the Gross Revenues payable under any Lease or otherwise, and provided that any tangible personal property acquired by Borrower (and not so disposed of) shall be subject to the Lien of the Mortgage. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and Guarantor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan and will continue to rely on such ownership of the Mortgaged Property and Borrower and Guarantor as a means of maintaining the value of the Mortgaged Property as security for repayment of the Loan and the performance of the other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Borrower default in the repayment of the Loan or the performance of the other Obligations, Lender can recover the Loan by a sale of the Mortgaged Property. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Loan immediately due and payable upon any Default under this Section 7.11.

**7.12 Payments; Distributions.** Except for payments of management fees otherwise permitted to be paid to Manager under this Agreement pursuant to a Management Agreement approved by Lender at a time when no Event of Default exists, Borrower shall not pay any distributions, dividends or other payments or return any capital to any of its respective partners, members, owners or shareholders or any other Affiliate or make any distribution of assets, rights, options, obligations or securities to any of its respective partners, members, shareholders or owners or any other Affiliate (individually, or collectively, a "**Distribution**") unless (a) on the date of the proposed Distribution, and after giving effect to the subsequent Distribution, no Event of Default exists; (b) funds are not then required to be deposited into any Reserves; (c) Borrower is not "insolvent" (as defined in the Bankruptcy Code) and will not be rendered insolvent by virtue of such Distribution; (d) Borrower shall deliver, at least ten (10) days in advance of the proposed Distribution, to Lender, an Officer's Certificate executed by the chief financial officer or similar officer of Borrower, stating that the foregoing conditions (a), (b) and (c) have been satisfied.

**7.13 Single Purpose Bankruptcy Remote Entities.** Borrower hereby represents, warrants, agrees and covenants that Borrower has, at all times, from its formation, been, and, at all times will be, a Special Purpose Bankruptcy Remote Entity. Borrower will not, directly or indirectly, make any change, amendment or modification to its Organizational Documents or otherwise take any action which could result in Borrower not being a Special Purpose Bankruptcy Remote Entity.

**7.14 Alterations.** Borrower shall not alter, remove or demolish or permit the alteration, removal or demolition of, any Improvement except as the same may be necessary in connection with (i) a Restoration in connection with a taking or casualty in accordance with the terms and conditions of the Agreement, and (ii) other Alterations permitted in accordance with the terms and conditions of this Section 7.14. If no Event of Default exists, Borrower may undertake any alteration, improvement, demolition or removal of Improvements or any portion thereof (any such alteration, improvement, demolition or removal, an “**Alteration**”) so long as (1) Borrower provides Lender with at least thirty (30) days’ prior notice of any such Alteration, (2) such Alteration is undertaken in accordance with the applicable provisions of this Agreement, is not prohibited by, and is in full compliance with, and does not violate, any Material Contracts or Legal Requirements and does not, during Construction and upon completion, have a Material Adverse Effect, (3) such Alteration is (x) in the nature of a Restoration required or permitted under the Agreement or (y) if not in the nature of the Alterations contemplated by (x), if the cost of such Alteration, as estimated by Lender, exceeds \$100,000, then such Alteration has been consented to by Lender, such consent will not be unreasonably withheld, conditioned or delayed (and in the case of Alterations the cost of which, as estimated by Lender, does not exceed \$100,000, no such consent shall be required), (4) Borrower has delivered to Lender copies of all plans and specifications detailing the Alteration and (5) prior to commencement and from time to time upon request from Lender, Borrower delivers an Officer’s Certificate certifying that conditions (1)–(3), inclusive, have been satisfied. Any Alteration shall, unless Lender otherwise approves or the Agreement otherwise provides, be conducted under the supervision of an independent architect approved by Lender (an “**Independent Architect**”). No Alteration (the cost of which is in excess of \$100,000) shall be undertaken until Lender has approved plans and specifications prepared by such Independent Architect or another Person approved by Lender, such approvals not to be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained in this Section 7.14 to the contrary, Borrower shall have the right to make non-structural Alterations to the Improvements, the cost of which does not exceed \$100,000 per Alteration, without Lender’s consent and without complying with clause (3) set forth above; provided, however, that Borrower shall provide Lender with prior written notice at least ten (10) days prior to commencing such Alteration and prior to commencing any permitted Alteration, Borrower shall have delivered to Lender a copy of the proposed plans and specifications for such Alteration.

**SECTION 8**  
**CASUALTY AND CONDEMNATION**

**8.1 Restoration Following Casualty or Condemnation.** After the happening of any casualty or condemnation to the Mortgaged Property or any part thereof, Borrower shall give prompt notice thereof to Lender.

(a) In the event of any damage or destruction of all or any part of the Mortgaged Property, all Proceeds shall be payable to Lender. Borrower hereby authorizes and directs any affected insurance company or condemning Governmental Authority or other Persons to make payment of such proceeds directly to Lender. Borrower shall obtain Lender's approval prior to any settlement, adjustment or compromise of any claims for loss, damage or destruction under any policy or policies of insurance or with respect to any condemnation, and Lender shall have the right to participate with Borrower in negotiation of any such settlement, adjustment or compromise provided, however, Borrower shall be permitted, so long as no Event of Default exists, to settle insurance claims of \$250,000 or less without Lender's approval (but with reasonable advance notice to Lender) and utilize any such funds for Restoration. Lender shall also have the right to appear with Borrower in any action against an insurer based on a claim for loss, damage or destruction under any policy or policies of insurance.

(b) All compensation, proceeds, damages, claims, insurance recoveries, rights of action and payments which Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property or any part thereof as a result of any casualty or condemnation, except as set forth below in this Section 8.1 (the "**Proceeds**"), shall be paid over to Lender and shall be held in an escrow account with an Acceptable Financial Institution. The Proceeds shall be applied first toward reimbursement of all costs and expenses of Lender in connection with recovery of the same, and then, except as set forth below in this Section 8.1, shall be applied in the sole and absolute discretion of Lender, without regard to the adequacy of Lender's security hereunder, to the payment or prepayment of the Obligations in such order as Lender may determine, and any amounts so applied shall reduce the Obligations *pro tanto* (without any Prepayment Premium due in connection therewith). Any application of the Proceeds or any portion thereof to the Obligations shall not be construed to cure or waive any Event of Default or invalidate any act done pursuant to any such Event of Default.

(c) Subject to the other provisions of this Section 8.1, and provided that (i) all Proceeds have been deposited with an Acceptable Financial Institution; (ii) no Event of Default shall exist; (iii) a Total Loss with respect to the Property shall not have occurred; (iv) the Restoration is capable, as reasonably determined by Lender, of being completed before the earlier (the "**Required Restoration Date**") to occur of (x) the date which is six (6) months prior to the Maturity Date, (y) the date on which the insurance carried by Borrower pursuant to Section 5.4(a)(ii), with respect to the Mortgaged Property shall expire and (z) twenty-four (24) months after the occurrence of the casualty or condemnation in question; (v) Lender shall have been furnished with an estimate of the cost of restoration accompanied by an architect's certificate as to such costs and

appropriate final plans and specifications for reconstruction of the Improvements, all of which shall be approved by Lender, which approval shall not be unreasonably withheld, conditioned or delayed; (vi) the Improvements so restored or rebuilt shall be of at least equal value and substantially the same character as prior to the damage or destruction and appropriate for the purposes for which they were originally erected (and, if requested by Lender, Borrower will furnish, at its expense, an appraisal confirming such valuation); (vii) Borrower shall have furnished Lender with evidence reasonably satisfactory to Lender that all Improvements so restored and/or reconstructed and their use fully comply with all applicable zoning, building laws, ordinances and regulations and other Legal Requirements and that all required licenses and approvals required for use, operation and occupancy of the Improvements can be obtained, to the extent available; (viii) if the estimated cost of restoration exceeds the Proceeds available, Borrower shall have deposited with Lender such sums or other security as may be necessary, in Lender's reasonable judgment, to pay such excess costs and (ix) Lender shall have received notice within thirty (30) days of the fire or other hazard or of the condemnation proceedings specifying the date of such fire or other hazard or the date the notice of condemnation proceedings was received and the request to Lender to make said Proceeds available to Borrower; then the Proceeds, less the actual costs, fees and expenses, if any, incurred in connection with adjustment of loss and Lender's reasonable administrative expenses relating to such loss and the disbursement of the Proceeds shall be made available by Lender to the payment of all the costs of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs or for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacement, rebuilding or alterations are hereinafter collectively referred to as the "**Restoration**"), and shall be paid out from time to time as such Restoration progresses upon the request of Borrower if the work for which payment is requested has been done in a good and workmanlike manner, in compliance with applicable Legal Requirements and substantially in accordance with the plans and specifications therefor. Each request by Borrower for disbursement of Proceeds shall (unless Lender otherwise elects, in its sole discretion, with respect to a Restoration estimated by Lender to cost \$100,000 or less to complete, to waive any of the following requirements) be accompanied by the required Lien Waivers, a Request for Release, and, to the extent not subsumed within a Request for Release, the following:

(1) A certificate signed by Borrower, dated not more than thirty (30) days prior to such request, setting forth the following: (A) That the sum then requested either has been paid, or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the restoration therein specified or have paid for the same, the names and addresses of such persons, a brief description of such services and materials, the several amounts so paid or due to each of said persons in respect thereof (together with supporting statements and invoices for the same), that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of Proceeds or has been made out of any of the Proceeds received by Borrower, and that the sum then requested does not exceed the value of the services and materials described in the certificate; and (B)

That the costs, as estimated by the persons signing such certificate, of the Restoration required to be done subsequent to the date of such certificate in order to complete and pay for the same, do not exceed the Proceeds, plus any amount or security approved by Lender and deposited with such Acceptable Financial Institution by Borrower to defray such costs and remaining in the hands of Lender after payment of the sum requested in such certificate.

(2) A title insurance report or other evidence satisfactory to Lender to the effect that there has not been filed with respect to the Mortgaged Property, or any part thereof, any vendor's, contractor's, mechanics', laborer's, materialmen's or other Lien which has not been discharged of record or bonded or insured over, except such as will be disbursed by payment of the amount then requested.

(3) A certificate signed by the Independent Architect and/or engineer in charge of the Restoration, who shall be selected by Borrower and approved in writing by Lender, certifying that the Restoration is proceeding in accordance with the plans and specifications approved by Lender and in accordance with all zoning, subdivision and other Legal Requirements. Upon compliance with the foregoing provisions, Lender shall, out of Proceeds (and the amount of security approved by Lender, if any, deposited by Borrower to defray the costs of the Restoration), pay or cause to be paid to Borrower or the Persons named (pursuant to clause (1)(A) above) in such certificate the respective amounts stated therein to have been paid by Borrower or to be due to them, as the case may be.

(d) If the Proceeds at the time held by the Acceptable Financial Institution, less the actual costs, fees and expenses, if any, incurred in connection with the adjustment of the loss and Lender's administrative expenses relating to such loss and the disbursement of the Proceeds, shall be, in Lender's reasonable judgment, insufficient to pay the entire cost of the Restoration, Borrower shall deposit with such Acceptable Financial Institution any such deficiency prior to disbursement of any additional portion of the Proceeds. Lender shall at all times have a perfected security interest on all Proceeds and other amounts held by such Acceptable Financial Institution pursuant to this Section 8. No payment made prior to the final completion of the Restoration shall exceed ninety-five percent (95%) of the value of the work performed from time to time (provided that, notwithstanding the foregoing, subcontractors who have completed their work may be paid in full), and at all times the undisbursed balance of said Proceeds remaining in the hands of Lender shall be at least sufficient to pay for the cost of completion of the Restoration free and clear of liens. In addition to the requirements and conditions set forth in Section 5.19, final payment shall be upon an architect's certificate of completion in accordance with the final plans and specifications and compliance with all applicable zoning, building, subdivision and other governmental laws, ordinances, rules, and regulations, the filing of a notice of completion and delivery to Lender of a certified copy of a final unconditional permanent certificate of occupancy regarding the Restoration, provided, that if only a temporary certificate of occupancy is available, it shall be accepted for so long as it is operative until Borrower obtains the final certificate. To the extent available, Lender may, at its option, require an endorsement to the Title Policy insuring the continued priority of the lien of the Mortgage as to all sums advanced



hereunder, such endorsement to be paid for by Borrower. Upon completion of the Restoration in a good and workmanlike manner in accordance herewith, and provided that Lender has received satisfactory evidence that the Restoration has been paid for in full and the Mortgaged Property is free and clear of all Liens, other than the Liens created in favor of Lender by the Loan Documents and the Permitted Encumbrances (including signed lien waivers from all contractors and subcontractors conditioned only on payment of amounts specified therein), any balance of the Proceeds at the time held by Lender (after reimbursement to Lender of all costs and expenses of Lender, including administrative expenses, in connection with recovery of the same and disbursement of such Proceeds for the Restoration), if any, shall be applied as follows: (i) to the extent that such balance of the Proceeds is equal to or less than the amount, if any, by which the value of the Mortgaged Property prior to such damage or destruction exceeds the value of the Mortgaged Property after such Restoration (for these purposes, the value of the Mortgaged Property shall be determined by Lender in its discretion), then the portion of the balance of the Proceeds equal to such excess amount shall be applied to the payment or prepayment of the principal balance of the Obligations in such order as Lender may determine, and any amounts so applied shall reduce the Obligations *pro tanto* (without any Prepayment Premium due in connection therewith); and (ii) to the extent that the balance of the Proceeds exceeds such excess amount, such portion of the balance of the Proceeds shall be paid to Borrower.

(e) Nothing herein contained shall be deemed to excuse Borrower from repairing or maintaining the Mortgaged Property as provided in the Agreement hereof or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such Proceeds are sufficient in amount, and the application or release by Lender of any Proceeds shall not cure or waive any Default or Event of Default or invalidate any other act done by Lender to exercise its remedies under this Agreement or the other Loan Documents; provided, however, if, prior to the last two (2) years of the term of the Loan, Lender elects not to make such Proceeds available to Borrower for restoration, then Borrower may prepay the Loan without payment of the Prepayment Premium, so long as an Event of Default is not then in existence.

## **SECTION 9**

### **DEFAULT, RIGHTS AND REMEDIES**

**9.1 Event of Default.** “Event of Default” means the occurrence or existence of any one or more of the following:

(A) **Payment.** Failure of Borrower to pay (i) on the Maturity Date, the outstanding principal of, accrued interest in, and other Indebtedness owing pursuant to the Agreement, the Note and the other Loan Documents, (ii) within five (5) days after the due date, any installment of principal or interest due under the Note; provided, however, the aforesaid five (5) day grace period may be utilized by Borrower no more than once in any consecutive twelve (12) Loan Month period, or (iii) within five (5) days after the respective due date, any other amount due under the other Loan Documents, provided, however, the aforesaid five (5)-day grace period may be utilized by Borrower no more than once in any consecutive twelve (12) Loan Month period.

**(B) Breach of Certain Provisions.**

(i) Failure of Borrower to perform or comply with any term, agreement, covenant, representation, warranty or condition contained in Sections 5.1(E), 5.1(F), 5.1(G), 5.1(H), 5.13, 6.2, 7.2, 7.5, 7.9, 7.12, 7.13, 7.14, 8.1(a), 8.1(b) or 10 and such failure is not remedied or waived within five (5) Business Days after receipt by Borrower of notice from Lender of such failure.

(ii) Failure of Borrower to perform or comply with any term, agreement, covenant, representation, warranty or condition contained in Sections 5.4 (except any such failure which does not result in any insurance coverage required by Section 5.4 not in fact being in place), 7.1, 7.3, 7.4, 7.10 or 7.11.

**(C) Breach of Representation and Warranty.** Any representation, warranty, certification or other statement made by Borrower or Guarantor in any Loan Document or in any statement or certificate at any time given in writing pursuant or in connection with any Loan Document (other than occurrences described in other provisions of this Section 9.1 for which a different grace or cure period is specified or which constitute immediate Events of Default) is false in any material respect on the date made which remains uncured for five (5) Business Days after notice, but no grace or curative period will apply if the representation, warranty, certification or other statement was known by Borrower or Guarantor to be false when made or deemed made.

**(D) Other Defaults Under Loan Documents.** A default by Borrower shall occur in the performance of or compliance with any term contained in this Agreement or the other Loan Documents and such default is not remedied or waived within thirty (30) days after receipt by Borrower of notice from Lender of such default (other than occurrences described in other provisions of this Section 9.1 for which a different grace or cure period is specified or which constitute immediate Events of Default); provided, however, that (i) if such default cannot be remedied with reasonably diligent effort within a period of thirty (30) days, but is susceptible to cure within a period of one hundred twenty (120) days and (ii) the continued default in performance will not have a Material Adverse Effect, such longer period, not to exceed ninety (90) additional days, as Borrower may need to remedy such default, if Borrower is proceeding with diligent effort to remedy such default throughout said one hundred twenty (120)-day period; provided, further, however, that (A) if Borrower has been, and will continue to be, diligent in its efforts to cure such default, and (B) the continued default has not, and will not, have a Material Adverse Effect, Borrower shall have such longer period, not to exceed an additional sixty (60) days (for a total of one hundred eighty (180) days), as Borrower may need to remedy such default. The rights to notice and cure periods granted herein shall not be cumulative with any other rights to notice or a cure period in any other Loan Document and the giving of notice or a cure period pursuant to this section shall satisfy any and all obligations of Lender to grant any such notice or cure period pursuant to any of the Loan Documents.

**(E) Involuntary Bankruptcy; Appointment of Receiver, etc.** (1) A court enters a decree or order for relief with respect to Borrower or Guarantor in an involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, which decree or order is not stayed or other similar relief is not granted under any

applicable federal or state law; or (2) the continuance of any of the following events for ninety (90) days unless dismissed, bonded or discharged: (a) an involuntary case is commenced against any Borrower or Guarantor under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or (b) a decree or order of a court for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower or Guarantor or over all or a substantial part of its property, is entered; or (c) an interim receiver, trustee or other custodian is appointed without the consent of Borrower or Guarantor for all or a substantial part of the property of Borrower or Guarantor.

(F) **Voluntary Bankruptcy; Appointment of Receiver, etc.** (1) An order for relief is entered with respect to Borrower or Guarantor or Borrower or Guarantor commences a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law or consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (2) Borrower or Guarantor makes any assignment for the benefit of creditors; or (3) partners, shareholders, or members in Borrower or Guarantor adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this Section 9.1(F).

(G) **Governmental Liens.** Any lien, levy or assessment is filed or recorded with respect to or otherwise imposed upon all or any part of the Mortgaged Property by the United States or any department or instrumentality thereof or by any state, county, municipality or other governmental agency (other than Permitted Encumbrances) and such lien, levy or assessment is not stayed, vacated, paid, discharged or insured or bonded over within thirty (30) days.

(H) **Judgment and Attachments.** Any money judgment, writ or warrant of attachment, or similar process (other than those described in Section 9.1(G)) involving (1) an amount in any individual case in excess of \$100,000 or (2) an amount in the aggregate at any time in excess of \$250,000 (in either case not adequately covered by insurance as to which the insurance company has acknowledged coverage) is entered or filed against Borrower or Guarantor and remains undischarged, unvacated, unbonded, uninsured or unstayed for a period of thirty (30) days or in any event later than five (5) days prior to the date of any proposed sale thereunder.

(I) **Dissolution.** Any order, judgment or decree is entered against Borrower or Guarantor decreeing the dissolution or split up of Borrower or Guarantor and such order remains undischarged or unstayed for a period in excess of twenty (20) days.

(J) **Injunction.** Either (i) Borrower or any Guarantor is enjoined, restrained or in any way prevented by the order of any court or any administrative or regulatory agency from conducting all or any material part of its business relating to the any Mortgaged Property and such order continues for more than thirty (30) days; or (ii) any order or decree is entered by any court of competent jurisdiction directly or indirectly enjoining or prohibiting Lender, Borrower or Guarantor from performing any of their obligations under this Agreement or any of the other Loan Documents.

(K) **Invalidity of Loan Documents.** Any of the Loan Documents for any reason, other than a partial or full release in accordance with the terms of the Loan Documents, ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction, or either of Borrower or Guarantor denies that it has any further liability under any Loan Documents to which it is party, or gives notice to such effect.

(L) **Event of Default.** The occurrence of an Event of Default specified elsewhere in this Agreement or in any of the other Loan Documents or the occurrence of an Event of Default by Guarantor under the Guaranty.

(M) **Cross-Default.** The occurrence of any of the following with respect to Guarantor: (i) the acceleration of any Indebtedness in the aggregate amount of \$10,000,000 or more; (ii) the occurrence of a default under any Indebtedness in the aggregate amount of \$10,000,000 or more not cured within the grace or curative period applicable to such Indebtedness, (iii) the occurrence of a default or breach under any Material Contracts not cured within any applicable grace period or notice and cure period, which, in Lender's reasonable judgment, could have a Material Adverse Effect, or (iv) the loss or termination of any Proprietary Rights which, in Lender's reasonable judgment, could have a Material Adverse Effect.

(N) **Death, etc.** Dissolution, cessation of existence or felony or other criminal conviction or indictment of Borrower and/or Guarantor, a punishment for which could result in forfeiture of any assets of the Borrower, Guarantor or any direct or indirect equity interest to Borrower or loss of eligibility for any material Proprietary Rights, which in Lender's reasonable judgment could have a Material Adverse Effect.

(O) **Zoning.** The Land and Improvements or any portion thereof are zoned either voluntarily or involuntarily, such that the zoning or other applicable land use restriction prohibits the Borrower from operating the Land and Improvements or any portion thereof as a pharmaceutical manufacturing, office, laboratory or other facility for similar use pursuant to a determination that is final and non-appealable.

(P) **Tenant Impairment Event.** The occurrence of a Tenant Impairment Event.

(Q) **Change in Control.** The occurrence of any direct or indirect Change in Control with respect to Borrower or Guarantor, except as permitted pursuant to Section 7.11.

(R) **Drug Approval.** Failure to obtain Drug Approval on or before December 31, 2007; provided, however, it shall not be an Event of Default hereunder if Borrower delivers to Lender either an Acceptable Letter of Credit or a cash deposit in the amount of \$13,000,000, which letter or credit or cash deposit shall be held by Lender as additional collateral until such time as Borrower either (i) obtains Drug Approval or (ii) the Loan is repaid in full on the Maturity Date.

(S) **Construction Work.** The occurrence of a Default under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 or 5.16.

(T) **Cessation of Construction.** Cessation of all or any material portion of the Initial Construction Work for ten (10) or more consecutive Business Days or thirty (30) or more calendar days in the aggregate and such default is not waived or cured within a period of thirty (30) calendar days following Landlord's notice of such default (and to the extent Borrower commences such Initial Construction Work within such thirty (30) day period following Landlord's notice, such ten (10) and thirty (30) day periods shall be deemed extended until such commencement, but in no event beyond thirty (30) days of Lender's notice.

**9.2 Acceleration and Remedies.** Upon the occurrence of any Event of Default specified in Sections 9.1(E) and 9.1(F), payment of all Obligations shall be accelerated without notice, presentment, demand, protest or notice of protest and shall be immediately due and payable and, in addition, Lender may in addition to any other rights and remedies available to Lender at law or in equity or under any other Loan Documents, exercise one of more of the following rights and remedies as it, in its sole discretion, deems necessary or advisable. Upon the occurrence of any Event of Default (other than Events of Default specified in Sections 9.1(E) and 9.1(F)), Lender, in addition to any other rights or remedies available to Lender at law or in equity, or under any of the other Loan Documents, may exercise any one or more of the following rights and remedies as it, in its sole discretion, deems necessary or desirable:

(a) **Acceleration.** Declare immediately due and payable, without further notice, protest, presentment, notice of protest or demand, all Obligations including all monies advanced under this Agreement, the Note, the Mortgage and/or any of the Loan Documents which are then unpaid, together with all interest then accrued thereon and all other amounts then owing (including any Default Interest, or prepayment premium owed as a result of such acceleration). If payment of the Obligations is accelerated, Lender may, in its sole discretion, exercise all rights and remedies hereunder and under the Note, the Mortgage and/or any of the other Loan Documents at law, in equity or otherwise.

(b) **Possession.** Enter upon and take possession of the Mortgaged Property and proceed in the name of Lender or Borrower as the attorney-in-fact of Borrower (which authority, to the extent permitted by law, is hereby granted by Borrower, is coupled with an interest, and is irrevocable), as Lender shall elect. If Lender elects to so enter upon and take possession of the Mortgaged Property, Lender (i) may enforce or cancel all contracts entered into by Borrower or make other contracts which are in Lender's sole opinion advisable, and (iii) shall be reimbursed by Borrower upon demand any reasonable amount or amounts expended by Lender for such performance together with any reasonable costs, charges, or expenses incident thereto or otherwise incurred or expended by Lender or its representatives (including an appraisal) on behalf of Borrower in connection with the Mortgaged Property, and the amounts so expended shall be considered part of the Loan evidenced by the Note and secured by the Loan Documents and shall bear interest at the Default Rate.

(c) **Injunctive Relief.** Institute appropriate proceedings for injunctive relief (including specific performance of the obligations of Borrower).

(d) **Accounts.** Release all funds contained in the Reserve Accounts to be applied to Borrower's Obligations.

(e) **Construction Work.** Enter upon and take possession of the Mortgaged Property and all material, equipment and supplies thereon and do anything necessary or desirable to complete the Initial Construction Work and to fulfill the obligations of Borrower hereunder and to sell, manage, maintain, repair and protect the Mortgaged Property. Without limiting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution to (i) use any funds of Borrower, including any Loan balance which might not have been disbursed for the purpose of causing the Completion of Initial Construction Work, (ii) make such changes to the Project Plans and Specifications for the Initial Construction Work as Lender may deem desirable to cause the Completion of Initial Construction Work, (iii) execute all applications and certificates in the name of Borrower which may be required to carry out the intent and purpose hereof and (iv) employ such contractors, subcontractors, architects and others as Lender may deem appropriate.

(f) **Cessation of Loan Funding.** Cease disbursement of Loan Proceeds.

**9.3 Remedies Cumulative; Waivers; Reasonable Charges.** All of the remedies given to Lender in the Loan Documents or otherwise available at law or in equity to Lender shall be cumulative and may be exercised separately, successively or concurrently. Failure to exercise any one of the remedies herein provided shall not constitute a waiver thereof by Lender, nor shall the use of any such remedies prevent the subsequent or concurrent resort to any other remedy or remedies vested in Lender by the Loan Documents or at law or in equity. To be effective, any waiver by Lender must be in writing and such waiver shall be limited in its effect to the condition or default specified therein, and no such waiver shall extend to any subsequent condition or default. It is agreed that (i) the actual costs and damages that Lender would suffer by reason of an Event of Default (exclusive of the attorneys' fees and other costs incurred in connection with enforcement of Lender's rights under the Loan Documents) or a prepayment would be difficult and needlessly expensive to calculate and establish, and (ii) the amounts of the Default Rate, the Late Charge, and the Prepayment Premium are reasonable, taking into consideration the circumstances known to the parties at this time, and (iii) the Default Rate, the Late Charges and Lender's reasonable attorneys' fees and other costs and expenses incurred in connection with enforcement of Lender's rights under the Loan Documents shall be due and payable as provided herein, and (iv) the Default Rate, Late Charges, Prepayment Premium, and the obligation to pay Lender's reasonable attorneys' fees and other enforcement costs do not, individually or collectively, constitute a penalty.

## **SECTION 10**

### **SECONDARY MARKET TRANSACTION**

**10.1 Secondary Market Transaction.** Borrower agrees that Lender has the absolute right to securitize, syndicate, grant participations in, or otherwise Transfer all or any portion of the Loan (each such transaction, a "**Securitization**"). Lender may determine to Transfer some or all of the Loan or retain title to some or all of the Loan as part of a Securitization. Borrower further agrees that Lender may delegate any or all of Lender's rights, powers and privileges to a servicer ("**Servicer**") and Borrower shall, upon notice from Lender, recognize the Servicer as the agent of Lender. In the event this Loan becomes or is designated by Lender to become an asset of a Securitization, upon Lender's request, Borrower shall meet, from time to time, with

representatives of the Rating Agencies in connection with such a Securitization to discuss the business and operations of the Mortgaged Property and, in that regard, agrees to cooperate with the reasonable requests of the Rating Agencies including delivering any existing environmental information relating to the Mortgaged Property in Borrower's possession. Lender may retain the Rating Agencies to provide rating surveillance services on any certificates issued in a Securitization. In no event shall Borrower be required to pay any servicer fees, Securitization trustee fees or other Securitization administrative expenses except as may be expressly provided in this Agreement. Borrower shall, upon request from Lender, from time to time, cooperate, and Borrower shall, cause Guarantor to cooperate, in all reasonable respects in connection with a Securitization. Such cooperation may, in Lender's discretion, include documentation changes, changes in organizational documents, changes in Accounts, Reserves, Payment Dates, Interest Periods, insurance endorsement changes, tenant payment direction changes, site inspections, updated appraisals, preparation and delivery of financial information or other diligence requested by Lender and/or any Rating Agency; provided, however, any third party costs incurred by Borrower related to such changes shall be reimbursed by Lender and such changes shall not materially and adversely diminish Borrower's rights under the Loan Documents nor increase Borrower's burdens and obligations under the Loan Documents. Such cooperation may include, in Lender's discretion, execution of one or more promissory notes and the creation of Liens securing such notes of differing priority and/or the creation of mezzanine debt secured by pledges of all of the membership interests in the Borrower so long as the principal amount, interest rate, payment terms and other monetary terms of the Loan do not, in the aggregate change. Borrower will not be required to incur more than de minimis expenses or costs pursuant to this Section 10.1, except to the extent Borrower is otherwise obligated under the Loan Documents to pay such costs and expenses. Borrower will, upon request from Lender, in connection with a Securitization, enter into such acknowledgments and confirmations of the applicable assignments as Lender may request. Borrower shall, subject to the terms and provisions of this Section 10.1, use reasonable efforts to satisfy the market standards which Lender determines are reasonably required in the marketplace or by the Rating Agencies in connection with a Securitization. Borrower will not, pursuant to any of the provisions of this Section 10.1, incur, suffer or accept (except to a de minimis extent) (i) any lesser rights or greater obligations as are currently set forth in the Loan Documents or Borrower's Organizational Documents (unless Borrower is made whole by the holder of the Note) or (ii) subject to Section 11.13 hereof, any personal liability other than as set forth in the Loan Documents. Borrower will also, if requested by Lender, cause independent counsel to render opinions customary in securitization transactions with respect to the Mortgaged Property and Borrower and its Affiliates (but not a true sale, 10b-5 or nonconsolidation opinion), which counsel and opinions shall be reasonably satisfactory to Lender and the Rating Agencies and which shall be addressed to such Persons as shall be reasonably designated by the holder of the Note. Borrower's failure to deliver the opinions required hereby within fifteen (15) Business Days after written request therefor shall constitute an Event of Default hereunder. If requested by Lender, Borrower's cooperation will also include (but subject to Section 11.13) certifications and agreements pursuant to which Borrower will certify that it has examined the portion of applicable preliminary and final private placement memorandum or preliminary, final and supplement or prospectus specified by Lender as pertaining to Borrower, the Loan, Guarantor, Borrower's Affiliates, the Mortgaged Property and the Manager, and that each such designated portion, as it relates to Borrower, Guarantor, Borrower's Affiliates, the Mortgaged Property, Manager and all

other aspects of the Loan, does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Such agreement may, if requested by Lender, require Borrower to indemnify, defend, protect and hold harmless Lender and other Persons designated by Lender from and against any losses, claims, damages, liabilities, costs and expenses that arise out of or are based upon any untrue statement of any material fact contained in the reviewed documents or other information or documents prepared by Borrower, Guarantor or their Affiliates and provided to Lender or in any representation or warranty of Borrower or Guarantor contained in the Loan Documents or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information not materially misleading.

**SECTION 11**  
**MISCELLANEOUS**

**11.1 Expenses and Attorneys' Fees.** Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to promptly pay all fees, costs and expenses (including reasonable attorneys' fees, court costs, cost of appeal and the reasonable fees, costs and expenses of other professionals retained by Lender) incurred by Lender in connection with the following, and all such fees, costs and expenses shall be part of the Obligations, payable on ten (10) Business Days written notice: (A) the examination, review, due diligence investigation, documentation and closing of the financing arrangements evidenced by the Loan Documents; (B) the giving or withholding of any consents, approvals, or permissions, administration of the Loan, disbursements of the Loan and disbursements from the Accounts and in connection with any amendments, modifications and waivers relating to the Loan Documents requested by Borrower; (C) the review, documentation, negotiation and closing of any subordination or intercreditor agreements, Lease reviews, and subordination, nondisturbance and attornment agreements; (D) Lender's Representatives including Lender's Construction Consultant; and (E) enforcement of this Agreement or the other Loan Documents, the collection of any payments due from Borrower or Guarantor under the Loan Documents or any refinancing or restructuring of the credit arrangements provided under the Loan Document, whether in the nature of a "workout" or in connection with any insolvency or bankruptcy proceedings or otherwise.

**11.2 Certain Lender Matters.** Lender may, in accordance with Lender's customary practices, destroy or otherwise dispose of all documents, schedules, invoices or other papers, delivered by Borrower to Lender unless Borrower requests, at the time of delivery, in writing that same be returned. Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Mortgaged Property other than that of mortgagee, beneficiary or lender. No provision in this Agreement or in any of the other Loan Documents and no course of dealing between the parties shall be deemed to create any fiduciary duty by Lender to Borrower or any other Person. All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Lender shall have the right to act exclusively in the interest of Lender and shall have no duty of loyalty, duty of care or any other duty to Borrower or any of Borrower's partners, shareholders, members, managers,



Affiliates or any other Person. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect hereto or thereto by Lender. Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any Parent, subsidiary or Affiliate of Lender or their respective attorneys, advisors, accountants, officers, representatives, directors, employees, partners, shareholders, trustees, members or managers. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any Parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action, in either case, on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates. LENDER SHALL HAVE NO LIABILITY HEREUNDER FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or Guarantor, or their respective creditors or property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire secured Obligations at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower after such date. Lender shall have the right from time to time to designate, appoint and replace one or more servicers and to allow servicer to exercise any and all rights of Lender under the Loan Documents. All documents and other matters required by any of the provisions of this Agreement to be submitted or provided to Lender shall be in form and substance satisfactory to Lender. Borrower shall not be entitled to (and does hereby waive any and all rights to receive) any notices of any nature whatsoever from Lender except with respect to matters for which the Loan Documents expressly provide for the giving of notice by Lender to Borrower. In any action or proceeding brought by Borrower against Lender claiming or based upon an allegation that Lender unreasonably withheld its consent to or approval of a proposed act by Borrower which requires Lender's consent hereunder, Borrower's sole and exclusive remedy in said action or proceeding shall be injunctive relief or specific performance requiring Lender to grant such consent or approval.

**11.3 Indemnity.** In addition to the payment of expenses pursuant to Section 11.1 and the indemnification obligations set forth in other portions of this Agreement, the Environmental Indemnification Agreement or the other Loan Documents, whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to indemnify, pay, defend and hold Lender, its officers, directors, members, partners, shareholders, participants, beneficiaries, trustees, employees, agents, successors and assigns, any subsequent holder of the Note, any trustee, fiscal agent, servicer, underwriter and placement agent, (collectively, the "**Indemnitees**") harmless from and against any and all actual costs and expenses incurred by Indemnitees in connection with any and all liabilities, obligations, losses, damages, penalties, actions,

judgments, causes of action, suits, claims, tax liabilities, broker's or finders fees, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnitee, based upon any third party claims against such Indemnitees in any manner related to or arising out of (A) any breach by Borrower or Guarantor of any representation, warranty, covenant, or other agreement contained in any of the Loan Documents, (B) the actual or threatened presence, release, disposal, spill, escape, leakage, transportation, migration, seepage, discharge, removal, or cleanup of any Hazardous Material located on, about, within, under, affecting, from or onto the Mortgaged Property or any violation of any applicable Environmental Law by Borrower or the Mortgaged Property, or (C) the use or intended use of the proceeds of any of the Loan (the foregoing liabilities herein collectively referred to as the "**Indemnified Liabilities**"); provided that Borrower shall have no obligation to an Indemnitee hereunder with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of that Indemnitee as determined in a final order by a court of competent jurisdiction. Borrower shall be relieved of its obligation under clause (B) of this Section 11.3 with respect to Hazardous Materials first introduced to the Land and Improvements after either (1) the foreclosure of the Mortgage or (2) the delivery by Borrower to, and acceptance by, Lender or its designee of a deed-in-lieu of foreclosure with respect to the Mortgaged Property. To the extent that the undertaking to indemnify, pay, defend and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnitee shall, following notice to and consultation with Borrower, have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnitee and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnitee for damage or loss resulting from such Indemnitee's gross negligence or willful misconduct. In no event shall the indemnification contained herein include consequential or punitive damages resulting from any claims brought directly by Lender, however, to the extent the indemnification relates to environmental issues and to third party claims, such environmental related indemnification shall include consequential and punitive damages.

**11.4 Amendments and Waivers.** Except as otherwise provided herein, no amendment, modification, termination or waiver of any provision of this Agreement, the Note or any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by Lender (and, with respect to any amendment or modification, unless also signed by Borrower). Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it

was given. No notice to or demand on Borrower in any case shall entitle Borrower, or any other Person to any other or further notice or demand in similar or other circumstances. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners or members and others with interests in Borrower, and of the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgage, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Mortgaged Property for the collection of the obligations without any prior or different resort for collection or of the right of Lender to the payment of the obligations owing Lender on account of the Loan Documents out of the net proceeds of the Mortgaged Property in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of the Mortgage, any equitable right otherwise available to Borrower which would require the separate sale of any of any portion of the Mortgaged Property or require Lender to exhaust its remedies against any portion of the Mortgaged Property or any combination of the Mortgaged Property before proceeding against any other portion; and further in the event of such foreclosure, Borrower expressly consents to and authorizes, at the option of Lender, the foreclosure and sale either separately of all or any portion of the Mortgaged Property. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim or defense of performance, in any action or proceeding brought against it by Lender or its agents. No failure or delay on the part of Lender or any holder of any Note in the exercise of any power, right or privilege hereunder or under the Note or any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing under this Agreement, the Note and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. Lender shall not be under any obligation to marshal any assets in favor of any Person or against or in payment of any or all of the Obligations. To the extent that any Person makes a payment or payments to Lender, or Lender enforces its remedies or exercise its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, if any, rights and remedies therefore, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Borrower agrees (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive Borrower from paying all or any portion of the principal of, premium, if any, or interest on Loan contemplated herein or in any of the other Loan Documents or which may affect the covenants or the performance of this Agreement; and Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the

execution of any power herein granted to the holders, but will suffer and permit the execution of every such power as though no such law had been enacted.

**11.5 Notices.** Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied (with request for confirmation) or sent by overnight courier service or United States registered mail return receipt requested, postage prepaid. Any notice so given shall be deemed effective upon delivery or on refusal or failure of delivery during normal business hours. Notices shall be addressed to the parties at the addresses specified on Schedule 11.5 or to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 11.5.

**11.6 Survival of Warranties and Certain Agreements.** All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement, the making of the Loan hereunder and the execution and delivery of the Notes. Notwithstanding anything in this Agreement or implied by law to the contrary, the provisions of Sections 2.6, 5.8, 11.1, 11.2, 11.3, 11.12, 11.13 and 11.15 shall survive the payment of the Loan and the termination of this Agreement. Subject to this Section 11.6, all other representations, warranties and agreements of Borrower and Lender set forth in this Agreement shall terminate upon indefeasible payment in full of the Loan and the termination of this Agreement.

**11.7 Miscellaneous.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. All covenants and agreements hereunder shall be given in any jurisdiction independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of an Event of Default if such action is taken or condition exists. The invalidity, illegality or unenforceability in any jurisdiction of any provision in or obligation under this Agreement, the Note or other Loan Documents shall not affect or impair the validity, legality or enforceability of the remaining provisions or obligations under this Agreement, the Note or other Loan Documents or of such provision or obligation in any other jurisdiction. This Agreement is made for the sole benefit of Borrower and Lender, and no other Person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder. This Agreement, the Note, and the other Loan Documents referred to herein embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. Borrower and Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by Borrower and Lender. If any term, condition or provision of this Agreement shall be inconsistent with any term, condition or provision of any other Loan Document, this Agreement shall control. This Agreement and any amendments, waivers, consents, or supplements may be executed in any

number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

**11.8 APPLICABLE LAW.** THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LOAN AND LOAN DOCUMENTS HAVE A SUBSTANTIAL NEXUS TO THE STATE OF NEW YORK AND AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

**11.9 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that Borrower may not assign its rights or obligations hereunder or under any of the other Loan Documents without the written consent of Lender. Any assignee of Lender's interest in the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to the Loan Documents which Borrower may otherwise have against any assignor of the Loan Documents.

**11.10 CONSENT TO JURISDICTION AND SERVICE OF PROCESS.** BORROWER AND LENDER HEREBY CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREE THAT, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. BORROWER AND LENDER ACCEPT FOR ITSELF, RESPECTIVELY, AND IN CONNECTION WITH THE MORTGAGED PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF *FORUM NON CONVENIENT*, AND IRREVOCABLY AGREE TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT, THE NOTE, SUCH OTHER LOAN DOCUMENTS OR SUCH OBLIGATION. BORROWER DESIGNATES AND APPOINTS CORPORATION SERVICE COMPANY AND SUCH OTHER PERSONS AS MAY HEREAFTER BE SELECTED BY BORROWER WITH LENDER'S APPROVAL WHICH IRREVOCABLY AGREE IN WRITING TO SO SERVE AS ITS AGENT TO RECEIVE ON ITS BEHALF SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDINGS IN ANY SUCH COURT, SUCH SERVICE BEING HEREBY ACKNOWLEDGED BY BORROWER TO BE EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT. A COPY OF ANY SUCH PROCESS SO SERVED SHALL BE MADE IN ACCORDANCE WITH THE LAWS GOVERNING AT THE TIME OF SERVICE TO THE ADDRESS PROVIDED IN SUBSECTION 11.5 EXCEPT THAT UNLESS OTHERWISE PROVIDED BY APPLICABLE LAW, ANY FAILURE TO MAIL SUCH COPY SHALL NOT AFFECT THE VALIDITY OF SERVICE OF PROCESS. IF ANY AGENT APPOINTED BY BORROWER AS ITS AGENT FOR SERVICE OF PROCESS REFUSES TO ACCEPT SERVICE OF PROCESS, BORROWER HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT SERVICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF LENDER TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER JURISDICTION.

**11.11 WAIVER OF JURY TRIAL.** BORROWER AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION AND LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. BORROWER AND LENDER ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF BORROWER OR LENDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER AND LENDER FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, THE LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**11.12 Publicity.** Lender (and Lender's Affiliates) may, subject to the applicable limitations on distribution of Confidential Information set forth in this Section 11.12 and subject to the approval of Guarantor, such approval not to be unreasonably withheld, and Borrower does hereby authorize Lender (and its Affiliates) to, refer, in its sole discretion, to the Loan in tombstone advertisements, offering memoranda in connection with Securitizations and reports to investors, which references, may include use of photographs, drawings and other depictions, images of the Land and Improvements (provided that such photographs, drawings and other depictions, and/or images shall not include floor plans of the area behind the barrier or other trade secrets), a description of the Loan, use of Borrower's name, the address of the Mortgaged Property and the logo of Borrower and/or Guarantor. Borrower shall cause the owner of such "logo" rights to consent to such use upon request from Lender at the Closing. Lender hereby agrees that (i) any written information, data, documents, etc. delivered in connection with the making of the Loan which has been expressly designated as such by notice to Lender from Borrower, (ii) any information contained in the books and records of Borrower or Guarantor which is either confidential, proprietary, or otherwise not generally available to the public (but excluding information Lender has obtained independently from third-party sources without Lender's knowledge that the source has violated any fiduciary or other duty not to disclose such information) and which has been expressly designated as such by notice to Lender from Borrower, (iii) any financial statements of Borrower provided pursuant to this Agreement which are not publicly available and which has been expressly designated as confidential by notice to

Lender from Borrower, and (iv) any other information, data, documents, etc. which are delivered to or received by Lender and which are conspicuously stamped or marked "CONFIDENTIAL", or, if delivered or received pursuant to an oral communication, such communication is subsequently referred to in a writing memorializing such communication delivered to Lender within thirty (30) days of such communication and marked as "CONFIDENTIAL" (collectively, the "Confidential Information"), will be kept confidential by Lender, using the same standard of care in safeguarding the Confidential Information as Lender employs in protecting its own proprietary information which Lender desires not to disseminate or publish. Notwithstanding the foregoing, Confidential Information may be disseminated (a) pursuant to the requirements of applicable law, (b) pursuant to judicial process, administrative agency process or order of Governmental Authority, (c) in connection with litigation, arbitration proceedings or administrative proceedings before or by any Governmental Authority or stock exchange, (d) to Lender's attorneys, accountants, advisors and actual or prospective financing sources who will be instructed to comply with this Section 11.12, (e) to the Rating Agencies, (f) to actual or prospective trustees, assignees, pledgees, participants, agents, servicers, or securities holders in a Securitization, and (g) pursuant to the requirements or rules of a stock exchange or stock trading system on which the Securities of Lender or its Affiliates may be listed or traded. In addition, notwithstanding any other provision, any party (and its employee, representative or other agent) may disclose to any and all persons, without limitation of any kind, any information with respect to the tax treatment and tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure, if required by applicable law. For purposes of this Section 11.12, Confidential Information will not be deemed to include the Loan amount and the other terms, conditions and provisions of the Loan Documents, the street address and common name, if any, of the Land and Improvements and the name of Borrower and Guarantor, the logo of Borrower and/or Guarantor and photographs or other depictions of the Mortgaged Property (provided that such photographs or other depictions shall not include floor plans of the area behind the barrier or other trade secrets). Notwithstanding the foregoing, in the event Borrower or Guarantor conspicuously marks specific information, data, documents, etc. or with respect to an oral communication, in a subsequent writing memorializing such communication delivered to Lender within thirty (30) days of such communication marked as, "CONFIDENTIAL: FOR LENDER'S INTERNAL USE ONLY; NOT FOR DISTRIBUTION," then Lender may only disseminate such information, data, documents, etc. pursuant to the requirements of applicable law (including pursuant to an order of a Governmental Authority) or pursuant to the written consent of Borrower or Guarantor.

**11.13 Recourse Loan.** Borrower shall have full personal recourse liability for the Obligations incurred under this Agreement, this Note or any of the other Loan Documents. Such liability shall not be imputed to any member, officer, director, employee of Borrower solely by virtue of such relationship to Borrower; provided, however, that such qualification shall not affect Guarantor's liability under the Guaranty and shall not impute liability to any member, officer, director, employee of Guarantor.

**11.14 Performance by Lender/Attorney-in-Fact.** In the event that Borrower shall at any time fail to duly and punctually pay, perform, observe or comply with any of its covenants and agreements hereunder or under the other Loan Documents or if any Event of Default hereunder shall exist, then Lender may (but shall in no event be required to) make any such payment or

perform any such term, provision, condition, covenant or agreement or cure any such Event of Default. Lender shall not take action under this Section 11.14 prior to the occurrence of an Event of Default unless in Lender's good faith judgment reasonably exercised, such action is necessary or appropriate in order to preserve the value of the Collateral, to protect Persons or property, or Borrower has abandoned the Mortgaged Property or any portion thereof. Lender shall not be obligated to continue any such action having commenced the same and may cease the same without notice to Borrower. Any amounts expended by Lender in connection with such action shall constitute additional advances hereunder, the payment of which is additional Indebtedness, secured by the Loan Documents and shall become due and payable within ten (10) days of demand by Lender, with interest at the Default Rate from the date of disbursement thereof until fully paid. No further direction or authorization from Borrower shall be necessary for such disbursements. The execution of this Agreement by Borrower shall and hereby does constitute an irrevocable direction and authorization to Lender to so disburse such funds. Borrower hereby irrevocably appoints Lender, as its attorney-in-fact, coupled with an interest, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise (A) during the existence of an Event of Default in the discretion of Lender, to take any action and to execute any instrument which Lender may deem necessary to accomplish the purpose of this Agreement or any other Loan Document, including the following: (i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for monies due and to become due under or in respect of the Accounts and/or any of the Reserve and Other Accounts Collateral; (ii) to receive, endorse, and collect (x) any Gross Revenues, (y) any instruments made payable to any Borrower representing any dividend, payment of principal, interest, redemption price, purchase price or other distribution or payment in respect of any Reserve and Other Accounts Collateral, or (z) any other instruments, documents and chattel paper received in connection with this Agreement or any other Loan Document; and (iii) to file any claims, or take any action or institute any proceedings which Lender shall deem necessary or desirable for the collection of any Gross Revenues in the event Borrower shall fail to do so, or to otherwise enforce the rights of Lender with respect to this Agreement; (B) to execute and/or file, without the signature of Borrower any Uniform Commercial Code financing statements, continuation statements, or other filing, and any amendment thereof, relating to the Reserve and Other Accounts Collateral; (C) to give notice to any third parties which may be required to perfect Lender's security interest in the Reserve and Other Accounts Collateral; and (D) during the existence of an Event of Default, to register, purchase, sell, assign, transfer, pledge or take any other action with respect to any Reserve and Other Accounts Collateral in accordance with this Agreement or any Loan Document. Lender shall notify Borrower of Lender's taking of any action as attorney-in-fact, or otherwise in Borrower's name, pursuant to the provisions of this Section.

**11.15 Brokerage Claims.** Borrower shall protect, defend, indemnify and hold Lender harmless from and against all loss, cost, liability and expense incurred as a result of any claim for a broker's or finder's fee against Lender or any Person, in connection with the transaction herein contemplated, provided such claim is made by or arises through or under Borrower or is based in whole or in part upon alleged acts or omissions of Borrower. Lender shall protect, defend, indemnify and hold Borrower harmless from and against all loss, cost, liability and expense incurred as a result of any claim for a broker's or finder's fee against Borrower or any other Person in connection with the transaction herein contemplated, provided such claim is made by



or arises through or under Lender or is based in whole or in part upon alleged acts or omissions of Lender.

**11.16 Agreement.** THE RIGHTS AND OBLIGATIONS OF BORROWER AND LENDER SHALL BE DETERMINED SOLELY FROM THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND ANY PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN LENDER AND BORROWER CONCERNING THE SUBJECT MATTER HEREOF AND OF THE OTHER LOAN DOCUMENTS ARE SUPERSEDED BY AND MERGED INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY NOT BE VARIED BY ANY ORAL AGREEMENTS OR DISCUSSIONS THAT OCCUR BEFORE, CONTEMPORANEOUSLY WITH, OR SUBSEQUENT TO THE EXECUTION OF THIS LOAN AGREEMENT OR THE LOAN DOCUMENTS. THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENTS BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Witness the due execution hereof by the undersigned as of the date first written above.

**BORROWER:**

ALEXION MANUFACTURING LLC,  
a Delaware limited liability company

By: ALEXION PHARMACEUTICALS, INC.,  
a Delaware corporation, its sole member

By: /s/ David Keiser

Name: David Keiser

Title: President/COO

**LENDER:**

iSTAR FINANCIAL INC., a Maryland corporation

By: Illegible

Name: Illegible

Title: Exec. V. P.

**COMPLETION, PAYMENT AND PERFORMANCE GUARANTY**

THIS COMPLETION, PAYMENT AND PERFORMANCE GUARANTY (this "**Guaranty**"), dated as of July 11, 2006, is made and entered into by ALEXION PHARMACEUTICALS, INC., a Delaware corporation ("**Guarantor**"), in favor of iSTAR FINANCIAL INC., a Maryland corporation (collectively, with its successors and/or assigns, "**Lender**"), with an address for notice hereunder of 1114 Avenue of the Americas, 27<sup>th</sup> Floor, New York, New York 10036.

**Background**

**A.** ALEXION MANUFACTURING LLC, a Delaware limited liability company (the "**Borrower**") and Lender have entered into that certain Loan Agreement (as amended, modified, supplemented or restated from time to time, the "**Loan Agreement**"), dated of even date herewith, wherein, among other things, Lender has agreed to make, and Borrower has agreed to accept, a loan in an original maximum principal amount up to TWENTY SIX MILLION AND 00/100 DOLLARS (\$26,000,000.00) (the "**Loan**") upon the terms and conditions set forth in the Loan Agreement. Any capitalized term used but not defined in this Guaranty shall have the meaning ascribed to such term in the Loan Agreement.

**B.** The Loan is evidenced by a Promissory Note, dated of even date herewith, in the original principal amount of up to \$26,000,000.00 (together with any notes given in substitution or exchange from time to time, as such Promissory Note and substitute or exchange notes may, from time to time, be amended, modified, supplemented or restated, the "**Note**"). The Note is secured by, among other things, a Construction Mortgage Deed, Assignment of Leases and Rents, Security Agreement, and Fixture Filing of even date herewith (as amended, modified, supplemented or restated from time to time, the "**Mortgage**").

**C.** Guarantor is the sole member of Borrower.

**D.** It is a condition to the making of the Loan that Guarantor execute and deliver this Guaranty.

**NOW, THEREFORE**, in consideration of the Loan, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, Guarantor and its successors and assigns, hereby covenants and agrees with Lender for the benefit of Lender, its endorsees, participants, successors and assigns, as follows:

1. Guaranty.

(a) Scope of Guaranty. Guarantor as a primary obligor and not merely as a surety, hereby absolutely, unconditionally and irrevocably guarantees to Lender the prompt and complete payment (and performance, in the case of non-pecuniary obligations) of all of the Guaranteed Obligations (as defined below) in full, when and as the same shall become due, whether on any due date or performance date or at stated maturity thereof, or by declaration, acceleration or required payment, or upon demand or otherwise (including amounts and

performance that would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, Title 11, United States Code, as amended (the “**Bankruptcy Code**”).

Guarantor hereby agrees, in furtherance of the foregoing and not in limitation of any other right that the Lender may have at law or in equity against Guarantor by virtue hereof, that upon the failure of Borrower to pay or perform any of the Guaranteed Obligations when and as the same shall become due (or, as provided below, would have become due), whether at stated maturity or due date or performance date, as the case may be, by required payment or prepayment, declaration, acceleration, demand or otherwise (including without limitation amounts that would have become due, or could have been accelerated, but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, whether or not any Creditor has taken any action to enforce or exercise any right or remedy in respect of the Guaranteed Obligations, and interest and fees which, but for the filing of a petition in bankruptcy with respect to Borrower, would have accrued and become due on, or constituting, such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such amounts in any such bankruptcy proceeding), Guarantor will forthwith pay and perform, or cause to be paid and performed, all Guaranteed Obligations then due (or that would have accrued and/or become due but for the filing of a petition in bankruptcy with respect to Borrower) as aforesaid, and all other Guaranteed Obligations then owed to the Lender as aforesaid.

(b) Obligations Guaranteed. As used in this Guaranty, “**Guaranteed Obligations**” means, collectively: (1) the prompt and complete payment of the all principal and interest payments and all other amounts, when due, in accordance with the Loan Agreement, including, without limitation, the Loan, whether at stated maturity or otherwise, (2) the payment and performance of all Obligations as defined in the Loan Agreement, as and when due, and (3) all of the obligations, duties and agreements of Borrower under the Loan Agreement and the other Loan Documents relating to the construction, renovation, redevelopment, equipping and furnishing of the Mortgaged Property and the Completion of the Initial Construction Work in accordance with the Project Plans and Specifications, all applicable Legal Requirements and all provisions of the Loan Documents. Without limiting the generality of the foregoing, Guarantor absolutely, irrevocably and unconditionally guarantees to Lender that:

(i) Borrower shall timely construct, renovate, redevelop, equip, furnish and substantially complete and achieve Substantial Completion of Initial Construction Work on or before Required Completion Date in compliance with the Project Plans and Specifications, applicable Legal Requirements and the Loan Documents;

(ii) The Borrower shall keep the Loan “in balance” (as more particularly described in Section 3.2(d) of the Loan Agreement);

(iii) The Borrower shall fully and punctually deposit amounts required to be paid pursuant to the loan balancing provisions of Section 3.2(d) of the Loan Agreement;

(iv) Borrower shall fully and punctually pay and discharge any and all costs and expenses and liabilities incurred for or in connection with the construction, renovation, redevelopment, equipping, furnishing and Completion of Initial Construction Work, when and as the same may become due and payable, and also pay and discharge any and all claims and demands for labor and materials used and services rendered for or in connection with the construction, renovation, redevelopment and Completion Initial Construction Work and/or installation of all items of fixtures, furnishings and equipment and other personalty in connection therewith; and

(v) The Mortgaged Property shall be and remain free and clear of any and all Liens, claims, and demands from any and all Persons furnishing materials, labor or services for or in connection with the construction, equipping, furnishing or completion of the Initial Construction Work and/or the installation of all items of fixtures, furnishings and equipment and other personalty in connection therewith.

(c) Indemnity, Reimbursement and Performance. In the event that Borrower does not fully perform the Guaranteed Obligations, then:

(i) Guarantor shall, within ten (10) days of demand by Lender, perform the Guaranteed Obligations;

(ii) In the event that Guarantor fails to commence performance under the immediately preceding Section 1(c)(i), (i) within ten (10) Business Days after Lender's written demand and to diligently prosecute such performance to completion thereof, and if Lender shall (a) cause any construction, renovation, redevelopment, equipping and furnishing of the Initial Construction Work and the Project Improvements, or takes any action whatsoever toward Completion of the Project, (b) pay any costs in connection with the construction, renovation, redevelopment, equipping and furnishing of the Initial Construction Work or the completion of the Project Improvements, or (c) cause any lien, claim or demand to be released or paid, then Guarantor shall promptly reimburse Lender within ten (10) Business Days after written demand, for all sums paid and all costs and expenses incurred by Lender in connection therewith; and

(iii) Guarantor will fully indemnify, defend and save Lender harmless from all actual out of pocket third party costs and damages (including reasonable attorney's fees, including any diminution in value) that Lender may suffer by reason of Guarantor's failure to promptly and fully perform under the immediately preceding Section 1(c) (i) and (ii) above. In no event shall the indemnification contained herein include consequential or punitive damages.

(d) Balancing. If, at any time and for any reason, Borrower shall fail to deposit amounts required to be deposited by Section 3.2 of the Loan Agreement within the ten (10) Business Day period provided therein for such payment, then Guarantor shall, within five (5) Business Days after a written request by Lender, deposit with Lender cash in an amount sufficient to cover the deficiency not paid by Borrower. Lender shall hold and apply such deposited cash as provided in the Loan Agreement.

(e) Enforcement Costs. In addition to the foregoing payment obligations, Guarantor further agrees to pay any and all actual out of pocket third party costs and other expenses (the “**Enforcement Costs**”) that may be paid or incurred directly or indirectly by each of the Lender in, or allocable to, collecting any or all of the Guaranteed Obligations and/or preserving and/or enforcing any rights and remedies under this Guaranty and/or in respect of the Guaranteed Obligations (including, without limitation, all reasonable fees and expenses incurred by the Lender and its respective agents and representatives in connection with any default or event of default, beyond any applicable notice and cure period, relating to, or other breach or violation of, this Guaranty and/or Guaranteed Obligation and, to the extent the Lender from time to time deem it necessary to employ counsel and/or consultants for any purpose relating to this Guaranty and/or any Guaranteed Obligation, the reasonable fees and expenses of such counsel and/or consultants). For purposes of this paragraph, the term “counsel” includes attorneys who are employees of Lender acting as counsel for Lender, and the terms “costs and expenses” and “fees and expenses” shall include, without limitation, the fees charged by Lender for its in-house counsel provided such fees are within the range of fees charged by attorneys of similar experience at medium to large sized law firms located in the City of Chicago, Illinois.

(f) Maximum Amount of Guaranty. Guarantor shall be liable under this Guaranty for the maximum amount of such liability that can be hereby incurred without rendering this Guaranty, as it relates to Guarantor, voidable under applicable Legal Requirements relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount.

(g) Continuing Guaranty. This is an irrevocable, absolute, continuing guaranty of payment and performance. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to the Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after Guarantor’s dissolution (in which event this Guaranty shall be binding upon Guarantor’s successors and assigns). It is the intent of Guarantor that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully, finally and indefeasibly satisfied, such obligations and liabilities shall not be discharged or released in whole or in part, by any act or occurrence which might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of Guarantor. Each and every default, beyond any applicable notice and cure period, in payment of any amounts due or performance of any obligation required under this Guaranty shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises, or, in the discretion of Lender, may be brought as a consolidated suit or suits.

## 2. Waivers.

(a) Guarantor hereby assents to all terms and agreements heretofore or hereafter made by Borrower with the Lender, and, to the fullest extent permitted by applicable law, waives notice of:

(i) Any loans or advances made by the Lender to Borrower under the Loan Documents;

(ii) The present existence or future incurring of any of the indebtedness pursuant to the Note or any future modifications thereof or any terms or amounts thereof or any Guaranteed Obligations or any terms or amounts thereof;

(iii) The obtaining or release of any guaranty or surety agreement (in addition to this Guaranty), pledge, assignment, or other security for any of the indebtedness evidenced by the Note, or any Guaranteed Obligations; and

(iv) Notice of protest, default, notice of intent to accelerate and notice of acceleration in relation to any instrument relating to the indebtedness evidenced by the Note or any Guaranteed Obligations.

(b) Guarantor hereby waives, to the fullest extent permitted by applicable law, any rights and defenses which such Guarantor might have as a result of any representation, warranty or statement made by the Lender or its agents to such Guarantor in order to induce Guarantor to execute this Guaranty.

(c) Regardless of whether Guarantor may have made any payments to the Lender, until the Loan is indefeasibly paid in full and except as set forth in Section 10 hereof, Guarantor hereby waives, to the fullest extent permitted by applicable law: (i) all rights of subrogation, indemnification, contribution and any other rights to collect reimbursement from Borrower or any other party for any sums paid to the Lender, whether contractual or arising by operation of law (including the United States Bankruptcy Code or any successor or similar statute) or otherwise, (ii) all rights to enforce any remedy that the Lender may have against Borrower, and (iii) all rights to participate in any security now or later to be held by the Lender for the Loan.

(d) Guarantor further waives, to the fullest extent permitted by applicable law, any defense to the recovery by the Lender against Guarantor of any deficiency or otherwise to the enforcement of this Guaranty or any security for this Guaranty based upon Creditor's election of any remedy against Guarantor or Borrower, including the defense to enforcement of this Guaranty by virtue of any "anti-deficiency" statutes and their application following a non-judicial foreclosure sale.

3. Events and Circumstances Not Reducing or Discharging Guarantor's Obligations. Guarantor hereby consents and agrees to each of the following, and agrees that Guarantor's obligations under this Guaranty shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives, to the fullest extent permitted by applicable law, any rights and defenses (excluding the rights to notice, if any, as herein provided or as required by law) which Guarantor might have otherwise as a result of or in connection with any of the following:

(a) any and all extensions, modifications, adjustments, indulgences, forbearances or compromises that might be granted or given by the Lender to Borrower, including, without limitation, any and all amendments, modifications, supplements, extensions or restatements of any of the Loan Documents;

(b) the insolvency, bankruptcy, rearrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower or any other party at any time liable for the payment of all or part of the indebtedness evidenced by the Note or any Guaranteed Obligations; or any dissolution, consolidation or merger of Borrower or Guarantor, or any sale, lease or transfer of any or all of the assets of Borrower or Guarantor, or any changes in the ownership, partners or members of Borrower or Guarantor;

(c) the invalidity, illegality or unenforceability of all or any part of the indebtedness evidenced by the Note or any Guaranteed Obligations, or any document or agreement executed in connection with the indebtedness evidenced by the Note or any Guaranteed Obligations, for any reason whatsoever, including, without limitation, the fact that the indebtedness evidenced by the Note, or any part thereof exceeds the amount permitted by law, the act of creating the indebtedness evidenced by the Note or any Guaranteed Obligations or any part thereof is ultra vires, the representatives executing the Note or the other Loan Documents or otherwise creating the indebtedness evidenced by the Note or any Guaranteed Obligations acted in excess of their authority, the indebtedness evidenced by the Note violates applicable usury laws, Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the indebtedness evidenced by the Note or any Guaranteed Obligations wholly or partially uncollectible from Borrower, the creation, performance or repayment of the indebtedness evidenced by the Note or any Guaranteed Obligations is illegal, uncollectible, legally impossible or unenforceable, or any of the other Loan Documents pertaining to the indebtedness evidenced by the Note or any Guaranteed Obligations are irregular or not genuine or authentic; provided, however, the foregoing shall not prohibit Guarantor from (i) asserting a defense of performance, (ii) asserting a compulsory counterclaim on an action brought under this Guaranty, or (iii) subject to the remaining terms of the Loan Documents, bringing a separate action against Lender for breaches of Lender's obligations under the Loan Documents;

(d) the taking or accepting of any other security, collateral or guaranty, or other assurance of the payment, for all or any of the indebtedness evidenced by the Note or any Guaranteed Obligations;

(e) any release, surrender or exchange of any collateral, property or security, at any time existing in connection with, or assuring or securing payment of, all or any part of the indebtedness evidenced by the Note or the Guaranteed Obligations;

(f) the failure of the Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security;

(g) the fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the indebtedness evidenced by the Note or Guaranteed Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by Guarantor that Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of



any of the collateral for the indebtedness evidenced by the Note or the Guaranteed Obligations; or

(h) any payment by Borrower to the Lender is held to constitute a preference under the Bankruptcy Code, or for any reason the Lender is required to refund such payment or pay such amounts to such Borrower, or any other Person.

It is the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay and perform the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, except for the full and final payment and satisfaction of all Guaranteed Obligations.

4. Payment by Guarantor. If the Guaranteed Obligations, or any part thereof, are not punctually paid or performed (following the expiration of any applicable notice and cure periods), as the case may be, Guarantor shall, immediately within ten (10) days of demand and without protest or notice of protest, pay the amount due thereon to the Lender, at its address set forth above or as otherwise designated by the Lender. Such demand(s) may be made at any time coincident with or after the time for payment or performance of all or part of the Guaranteed Obligations. Such demand shall be deemed made if given in accordance with Section 18 hereof. It shall not be necessary for the Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or exhaust its remedies against Borrower, or others liable to pay or perform such Guaranteed Obligations, or to enforce its rights against any security which shall ever have been given to secure the Guaranteed Obligations. The Lender shall not be required to mitigate damages or take any other action to reduce, collect or enforce the indebtedness evidenced by the Note or Guaranteed Obligations.

5. Indebtedness or Other Obligations of Guarantor. If Guarantor is or becomes liable for any indebtedness owed by Borrower to the Lender by endorsement or otherwise than under this Guaranty, such liability shall not be in any manner impaired or affected by this Guaranty, and the rights of the Lender hereunder shall be cumulative of any and all other rights that Lender may ever have against Guarantor. The exercise by the Lender of any right or remedy hereunder or under any other instrument or at law or in equity shall not preclude the concurrent or subsequent exercise of any other instrument or remedy at law or in equity and shall not preclude the concurrent or subsequent exercise of any other right or remedy. Further, without in any way diminishing or limiting the generality of the foregoing, it is specifically understood and agreed that this Guaranty is given by Guarantor as an additional guaranty to any and all guarantees hereafter executed and delivered to the Lender by Guarantor in favor of the Lender relating to the indebtedness and obligations of Borrower to the Lender, and nothing herein shall ever be deemed to replace or be in lieu of any other of such previous or subsequent guarantees.

6. Application of Payments. If, at any time, there is any indebtedness or obligations (or any portion thereof) of Borrower to the Lender which is not guaranteed by Guarantor, the Lender, without in any manner impairing its rights hereunder, may, at its option, apply all amounts realized by the Lender from collateral or security held by the Lender first to the payment of such unguaranteed indebtedness or obligations, with the remaining amounts, if any, to then be applied to the payment of the indebtedness or obligations guaranteed by Guarantor.

7. Suits, Releases of Settlements with Others. Guarantor agrees that the Lender, in its sole discretion, may bring suit against any other guarantor without impairing the rights of the Lender or its successors and assigns against Guarantor or any other guarantor of the Guaranteed Obligations; and the Lender may settle or compromise with such other guarantor for such sum or sums as the Lender may see fit and release such other guarantor from all further liability to the Lender, all without impairing its rights against Guarantor.

8. Warranties, Representations and Covenants.

(a) Guarantor warrants and represents, as follows:

(i) Guarantor has received, or will receive, direct or indirect benefit from the making of this Guaranty, the making of the Loan and the entering into and execution of the Loan Agreement and the Loan Documents in connection therewith;

(ii) Guarantor is familiar with, and has independently reviewed the financial condition of the Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment and performance of the indebtedness evidenced by the Note and the Guaranteed Obligations, and Guarantor assumes full responsibility for keeping fully informed as to such matters in the future; however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty; and

(iii) All financial statements concerning Guarantor which have been or will hereafter be furnished by Guarantor or Borrower to the Lender pursuant to the Loan Documents, have been or will be prepared in accordance with GAAP consistently applied (except as disclosed therein, to the extent the Lender approves such disclosure; provided that the Lender's approval shall not be required so long as (a) Guarantor is a reporting company under the Exchange Act, and (b) Guarantor's financial statements are audited by a so-called "Big-4" accounting firm) and, in all material respects, present fairly the financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

(iv) No ERISA Affiliate of Guarantor maintains or contributes to, or has any obligation under, any Employee Benefit Plans. Guarantor is not an "employee benefit plan" (within the meaning of section 3(3) of ERISA) to which ERISA applies and Guarantor's assets do not constitute plan assets. No actions, suits or claims under any laws and regulations promulgated pursuant to ERISA are pending or, to Guarantor's knowledge, threatened against Guarantor. Guarantor has no knowledge of any material liability incurred by Guarantor which remains unsatisfied for any taxes or penalties with respect to any employee benefit plan or any Multiemployer Plan, or of any lien which has been imposed on Guarantor's assets pursuant to section 412 of the Code or sections 302 or 4068 of ERISA. The Loan, the execution, delivery and performance of the Loan Documents and the transactions contemplated by this Guaranty do not constitute a non-exempt prohibited transaction under ERISA or the Code. Guarantor is an "operating company" as defined in ERISA.

(v) As of the date hereof, and after giving effect to this Guaranty and the contingent obligations evidenced hereby, Guarantor is and expects to be solvent at all times, and has and expects to have assets at all times which, fairly valued, exceed his or its obligations, liabilities and debts, and has and expects to have property and assets at all times sufficient to satisfy and repay its obligations and liabilities.

(b) Guarantor covenants and agrees that, for so long as this Guaranty remains in effect, Guarantor shall not liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution).

9. Subordination. If, for any reason Borrower is now or hereafter becomes indebted to Guarantor (such indebtedness and all interest thereon being referred to as the **"Affiliated Debt"**), such Affiliated Debt shall, at all times, be subordinate in all respects to the full payment and performance of the obligations evidenced by the Note, and Guarantor shall not be entitled to enforce or receive payment thereof until all of the obligations evidenced by the Note have been fully paid. Guarantor agrees that any liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Affiliated Debt shall be and remain subordinate and inferior to any liens, security interests, judgment liens, charge or other encumbrances upon Borrower's assets securing the payment of the obligations evidenced by the Note and Guaranteed Obligations, and without the prior written consent of the Lender, Guarantor shall not exercise or enforce any creditor's rights of any nature against Borrower to collect the Affiliated Debt (other than demand payment therefor). In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving Borrower as a debtor, to the fullest extent permitted by law, the Lender shall have the right and authority, either in its own name or as attorney-in-fact for Guarantor, to file such proof of debt claim, petition or other documents and to take such other steps as are necessary to prove its rights hereunder.

10. Waiver of Subrogation. Notwithstanding any other provision of this Guaranty to the contrary, until the Loan is indefeasibly paid in full, Guarantor hereby waives any claim or other rights which Guarantor may now have or hereafter acquire against Borrower or any other guarantor of all or any of the obligations that arise from the existence or performance of Guarantor's obligations under this Guaranty (all such claims and rights are referred to as **"Guarantor's Conditional Rights"**), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of the Lender against Borrower or any security or collateral which the Lender now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute (including the Bankruptcy Code or any successor or similar statute) or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from Borrower, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights. If, notwithstanding the foregoing provisions, any amount shall be paid to Guarantor on account of Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when the Guaranteed Obligations shall not have been paid or performed in full, or (ii) regardless of when such amount is paid to Guarantor, any payment made by Borrower to the Lender is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by the Lender or paid over to a trustee, receiver or any other entity, whether under any

bankruptcy act or otherwise (such payment, a “**Preferential Payment**”), then such amount paid to Guarantor shall be held in trust for the benefit of the Lender and shall forthwith be paid to the Lender to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as the Lender, in its sole and absolute discretion, shall determine. The foregoing waivers shall be effective until the Guaranteed Obligations have been paid and performed in full.

11. Impairment of Subrogation Rights; Waivers of Rights Under the Anti-Deficiency Rules.

(a) Guarantor agrees that upon the occurrence and during the continuance of an Event of Default under the Loan Documents, the Lender in its sole discretion, without prior notice to or consent of Guarantor, may elect to (i) foreclose either nonjudicially or judicially against any real or personal property security (including, without limitation, the Mortgaged Property) it holds for the obligations evidenced by the Note or any Guaranteed Obligations, or any part thereof, (ii) accept any transfer or assignment of any such security in lieu of foreclosure, (iii) compromise or adjust any part of such obligations, or (iv) make any other accommodation with Borrower or Guarantor, or exercise any other remedy against Borrower or any collateral or security. No such action by the Lender will release or limit the liability of Guarantor to the Lender, who shall remain liable under this Guaranty after the action, even if the effect of that action is to deprive Guarantor of the right to collect reimbursement from Borrower or any other person for any sums paid to the Lender or Guarantor’s rights of subrogation, contribution, or indemnity against Borrower or any other person. Without limiting the foregoing, it is understood and agreed that on any foreclosure or assignment in lieu of foreclosure of any collateral or security held by the Lender, such security will no longer exist and that any right that Guarantor might otherwise have, on full payment of the Guaranteed Obligations by Guarantor to the Lender, to participate in any such security or to be subrogated to any rights of the Lender with respect to any such security will be nonexistent; nor shall Guarantor be deemed to have any right, title, interest or claim under any circumstances in or to any real or personal property held by the Lender or any third party following any foreclosure or assignment in lieu of foreclosure of any such security.

(b) Guarantor understands and acknowledges that if the Lender forecloses judicially or nonjudicially against any real property security for Borrower’s obligations, such foreclosure could impair or destroy any right or ability that Guarantor may have to seek reimbursement, contribution, or indemnification for any amounts paid by Guarantor under this Guaranty.

(c) Without limiting the foregoing, Guarantor waives, to the fullest extent permitted by applicable law, all rights and defenses arising out of an election of remedies by the Lender, even though that election of remedies, such as nonjudicial foreclosure with respect to security for a guaranteed obligation, may adversely affect Guarantor’s rights of subrogation and reimbursement against Borrower.

(d) Guarantor intentionally, freely, irrevocably and unconditionally waives and relinquishes, to the fullest extent permitted by applicable law, all rights which may be available to it under any provision of applicable law to limit the amount of any deficiency

judgment or other judgment which may be obtained against Guarantor under this Guaranty to not more than the amount by which the unpaid Guaranteed Obligations plus all other indebtedness due from Borrower under the Loan Documents exceeds the fair market value or fair value of any real or personal property securing said obligations and any other indebtedness due from Borrower under the Loan Documents, including, without limitation, all rights to an appraisal of, judicial or other hearing on, or other determination of the value of said property. Guarantor acknowledges and agrees that, as a result of the foregoing waiver, the Lender may be entitled to recover from Guarantor an amount which, when combined with the value of any real or personal property foreclosed upon by the Lender (or the proceeds of the sale of which have been received by the Lender) and any sums collected by the Lender from Borrower or other Persons, might exceed the amount of the Guaranteed Obligations plus all other indebtedness due from Borrower under the Loan Documents.

(e) Guarantor understands and agrees that the Lender may have the ability to pursue Guarantor for a judgment on the Guaranteed Obligations without having first foreclosed on the real property security for such Guaranteed Obligations, that the Lender may have the ability to sue Guarantor for a deficiency judgment on the Guaranteed Obligations after a non-judicial foreclosure sale or, regardless of any election of remedies by the Lender, if the Guaranteed Obligations or any of the other indebtedness of Borrower to the Lender under the Loan Documents is considered to have been provided by a vendor to a buyer and to evidence part of the purchase price for the real property security, and that the Lender may be able to recover from Borrower an amount which, when combined with the fair market value of the property acquired by the Lender in a foreclosure sale or the proceeds of the foreclosure sale received by the Lender, might exceed the amount of the Guaranteed Obligations due and owing by Guarantor and the amounts payable under the Loan Documents.

(f) Without limiting any of the other waivers and provisions set forth in this Guaranty, Guarantor waives all rights and defenses that Guarantor may have because Borrower's debt is secured by real property; this means, among other things: (a) the Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; (b) the amount of the Guaranteed Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; (c) the Lender may collect from Guarantor even if the Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the indebtedness evidenced by the Note is secured by real property.

Notwithstanding the foregoing or any provisions of Section 11(a) hereof, nothing contained in this Guaranty shall in any way be deemed to imply that any other state's law other than the law of the State of New York shall govern this Guaranty or any of the Loan Documents in any respect, except as expressly set forth therein, including with respect to the exercise of the Lender's remedies under the Loan Documents.

Notwithstanding any other provision herein to the contrary, upon the indefeasible payment in full of the Note, Guarantor shall have all rights of subrogation available at law or in equity.

12. Benefit. This Guaranty is for the benefit of the Lender, its successors and assigns, and in the event of an assignment by the Lender, its successors and assigns, of the obligations evidenced by the Note, or any part or parts thereof, the rights and benefits hereunder, to the extent applicable to the obligations so assigned, shall be transferred with such obligations.

13. No Release if Preference, Refund, Etc. In the event any payment by Borrower to the Lender is determined to be a preferential payment under any applicable bankruptcy or insolvency laws, or if for any reason the Lender is required to refund part or all of any payment or pay the amount thereof to any other party, such repayment by the Lender to Borrower shall not constitute a release of Guarantor from any liability hereunder, and Guarantor agrees to pay such amount to the Lender upon demand to the extent such amount constitutes a Guaranteed Obligation.

14. Right of Set-Off. In addition to any other rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon Guarantor's failure to pay the Guaranteed Obligations, within ten (10) days of demand by the Lender, the Lender is hereby authorized at any time and from time to time, without notice to Guarantor or to any other person, to set off and to appropriate and to apply any and all deposits (general or special) and any other indebtedness at any time held or owing by the Lender to or for the credit or the account of Guarantor against or on account of the obligations evidenced by the Note.

15. Consent to Use of Logo. Guarantor hereby consents to the use by the Lender of Guarantor's logo, solely for the purpose specified, and in accordance with the terms and conditions set forth, in Section 11.12 of the Loan Agreement.

16. GOVERNING LAW. PURSUANT TO SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, GUARANTOR AND LENDER AGREE THAT THIS GUARANTY AND ALL RIGHTS, OBLIGATIONS AND LIABILITIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

17. Notices. Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied (with request for confirmation) or sent by overnight courier service or United States registered mail return receipt requested, postage prepaid. Any notice so given shall be deemed effective upon delivery or on refusal or failure of delivery during normal business hours. Notices shall be addressed to the parties at the following addresses or to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 17.

If to Guarantor: Alexion Pharmaceuticals, Inc.  
352 Knotter Drive  
Cheshire, Connecticut 06410  
Attn: Vikas Sinha  
Telephone: (203) 271-8309  
Facsimile: (203) 271-8198  
E-mail: [sinhav@alxn.com](mailto:sinhav@alxn.com)

With a copy to: Eiseman Levine Lehrhaupt & Kakoyiaraiis, P.C.  
805 Third Avenue, 10th Floor  
New York, New York 10022  
Attn: Jonathan Eiseman, Esq.  
Telephone: (212) 752-1000  
Facsimile: (212) 355-4608

If to Lender: iStar Financial Inc.  
1114 Avenue of the Americas, 27<sup>th</sup> Floor  
New York, New York 10036  
Attn: Chief Operating Officer  
Telephone: 212-930-9400  
Facsimile: 212-930-9494

With a copy to: iStar Financial Inc.  
1114 Avenue of the Americas, 27<sup>th</sup> Floor  
New York, New York 10036  
Attn: Nina B. Matis, Esq./General Counsel  
Telephone: 212-930-9406  
Facsimile: 212-930-9492

With a copy to: iStar Asset Services Inc.  
180 Glastonbury Boulevard, Suite 201  
Glastonbury, Connecticut 06033  
Attn: President  
Telephone: 860-815-5900  
Facsimile: 860-815-5901

With a copy to: Katten Muchin Rosenman  
525 West Monroe Street  
Chicago, Illinois 60661-3693  
Attn: Gregory P.L. Pierce, Esq.  
208972-00540  
Telephone: 312-902-5541  
Facsimile: 312-902-1061

18. Consent of Jurisdiction/Service of Process. IN ACCORDANCE WITH SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, GUARANTOR AND LENDER HEREBY CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. GUARANTOR AND LENDER ACCEPT FOR ITSELF, RESPECTIVELY, AND IN CONNECTION WITH

THIS GUARANTY AND THE OTHER LOAN DOCUMENTS, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVE ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREE TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS GUARANTY, THE NOTE, SUCH OTHER LOAN DOCUMENTS OR SUCH OBLIGATION. GUARANTOR ACKNOWLEDGES AND AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION, SUIT OR PROCEEDING WILL BE DEEMED EFFECTIVE. SERVICE OF PROCESS ON GUARANTOR SHALL BE MADE IN ACCORDANCE WITH THE LAWS GOVERNING AT THE TIME OF SERVICE TO THE ADDRESS IN SECTION 17 ABOVE OR AT SUCH OTHER ADDRESS AS SUCH GUARANTOR MAY HAVE FURNISHED AS TO ITSELF TO THE SERVING PARTY BY LIKE NOTICE, OR TO THE LAST KNOWN ADDRESS OF SUCH GUARANTOR PROVIDED THEREUNDER.

19. WAIVER OF JURY TRIAL. GUARANTOR AND THE LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY, ANY OF THE LOAN DOCUMENTS, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION AND THE RELATIONSHIP THAT IS BEING ESTABLISHED. GUARANTOR AND THE LENDER ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF GUARANTOR OR THE LENDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. GUARANTOR AND THE LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR AND THE LENDER FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS GUARANTY, THE LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

20. Expenses. Guarantor agrees to fully and punctually pay all actual out of pocket third party costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and costs of appeal, which Lender may incur in enforcing and collecting the Guaranteed Obligations.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows]*



IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the day and year first above written.

**GUARANTOR:**

**ALEXION PHARMACEUTICALS, INC.,**  
a Delaware corporation

By: /s/ David Kaiser

Name: David Kaiser

Title: President & COO

**OPEN-END MORTGAGE TO SECURE PRESENT AND FUTURE LOANS  
UNDER CHAPTER 25 OF TITLE 34**

**CONSTRUCTION MORTGAGE DEED, ASSIGNMENT OF LEASES AND  
RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

ALEXION MANUFACTURING LLC, as Mortgagor

in favor of

iSTAR FINANCIAL INC., as Mortgagee

Dated: July 11, 2006

Location: Town of  
Smithfield, Rhode Island

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PREPARED BY AND  
WHEN RECORDED RETURN TO:

**Katten Muchin Rosenman LLP**  
525 West Monroe Street  
Chicago, Illinois 60661-3693  
Attn: Victoria Shusterman, Esq.

**OPEN-END MORTGAGE TO SECURE PRESENT AND FUTURE LOANS  
UNDER CHAPTER 25 OF TITLE 34**

**CONSTRUCTION MORTGAGE DEED, ASSIGNMENT OF LEASES  
AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING**

**THIS CONSTRUCTION MORTGAGE DEED, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Mortgage**") dated as of 11 day of July, 2006, by ALEXION MANUFACTURING LLC, a Delaware limited liability company, having an address at c/o Alexion Pharmaceuticals, Inc., 352 Knotter Drive, Cheshire, Connecticut 06410, as Mortgagor, in favor of iSTAR FINANCIAL INC., a Maryland corporation, having an address at 1114 Avenue of the Americas, 27th Floor, New York, New York 10036, as Mortgagee.

**WITNESSETH:**

**WHEREAS**, Mortgagee has agreed to make a loan (the "**Loan**") to Mortgagor pursuant to that certain Loan and Security Agreement, dated as of even date herewith, by and between Mortgagee and Mortgagor, (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**");

**WHEREAS**, the Loan is evidenced by the Promissory Note dated as of even date herewith in the principal amount of up to TWENTY-SIX MILLION AND 00/100 DOLLARS (\$26,000,000.00) (together with any Substitute Note, as such promissory note and Substitute Notes may be amended, restated, supplemented or otherwise modified from time to time, the "**Note**"). Pursuant to the "**Loan Documents**" (as defined in the Loan Agreement), the Loan (a) bears interest at a variable rate of interest and (b) is scheduled to mature on the Maturity Date, which Maturity Date is August 10, 2016 or, such earlier date as the Loan is prepaid in full or accelerated.

**NOW, THEREFORE**, in consideration of the making of the Loan by Mortgagee, Mortgagor agrees, represents, warrants and covenants as follows:

**ARTICLE 1  
DEFINITIONS**

As used herein, the following terms shall have the following meanings, provided that capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement:

Accounts means Mortgagor's present and future rights to payment of money, accounts and accounts receivable including (a) rights to payment of money, accounts and accounts receivable arising from or relating to the construction, use, leasing, occupancy or operation of the Mortgaged Property, the rental of, or payment for, space, goods sold or leased or services rendered, whether or not yet earned by performance, and all other "**accounts**" (as defined in the UCC), (b) rights to payment, accounts, and accounts receivable arising from any consumer

credit, charge, entertainment or travel card or service organization or entity, (c) all reserves, deferred payments, refunds, cost savings payments and deposits no matter how evidenced and whether now or later to be received from third parties (including all earnest money sales deposits) or deposited with, or by, Mortgagor by, or with, third parties (including all utility deposits), (d) all chattel paper, instruments, documents, notes, drafts and letters of credit (other than any letters of credit in favor of Mortgagee), (e) the Loan Accounts, any tenant security deposit account, and any and all other accounts held by or on behalf of Mortgagee and/or Mortgagor pursuant to this Agreement, (f) all **“deposit accounts”** (as defined in the UCC), (g) all **“securities accounts”** (as defined in the UCC), and (h) all contracts and agreements which relate to any of the foregoing.

Assignment means the assignment contained in Article 4 of this Mortgage, from Mortgagor to Mortgagee, of all Mortgagor’s right, title and interest in and to the Leases and the Rents.

Contracts means any and all contracts, instruments and other agreements, whether now existing or hereafter arising, in connection with the acquisition, ownership, operation, construction, development, use, leasing, sale or occupancy of the Land and Improvements defined as the Mortgaged Property, as amended from time to time.

Fixtures and Personalty means all fixtures, machinery, furnishings, equipment, furniture and other tangible personal property now or hereafter affixed or attached to, installed in, located on, under, above or within the Land or in the Improvements or used in connection with the use, occupancy, operation and maintenance of all or any part of the Land, Improvements or any other part of the Mortgaged Property, whether or not permanently affixed thereto, together with all accessions, replacements and substitutions thereto or therefore and the proceeds thereof, including all **“equipment”** (as defined in the UCC), Inventory, **“farm products”** (as defined in the UCC), **“fixtures”** (as defined in the UCC), **“manufactured homes”** (as defined in the UCC), oil, gas and other minerals (whether before or after extraction), and other **“goods”** (as defined in the UCC) and any and all of the following: machinery; signs; artwork; office furnishings and equipment; partitions and screens; generators, boilers, compressors and engines; fuel; water and other pumps and tanks; irrigation lines and sprinklers; refrigeration equipment; pipes and plumbing; elevators and escalators; sprinkler systems and other fire extinguishing machinery, and equipment; heating, incinerating, ventilating, air conditioning and air cooling ducts, machinery, equipment and systems; gas and electric machinery and equipment; facilities used to provide utility services; laundry, drying, dishwashing and garbage disposal machinery or equipment; communication apparatus, including television, radio, music, and cable antennae and systems; floor coverings, rugs, carpets, window coverings, blinds, awnings, shades, curtains, drapes and rods; screens, storm doors and windows; stoves, refrigerators, dishwashers and other installed appliances; attached cabinets; trees, plants and other items of landscaping; motorized, manual, mechanical or other buses, boats, aircrafts and vehicles of any nature whatsoever; visual and electronic surveillance systems and other security systems; elevators; escalators; telecommunications equipment including telephones, switchboards, exchanges, wires and phone jacks; maintenance equipment, golf carts, pro shop merchandise, tables, chairs, mirrors, desks, wall coverings, clocks, lamps; kitchen, restaurant, bar, lounge, public room, public area, and other operating or specialized equipment, including menus, dishes, flatware, dishware, glassware, cooking utensils, tables, refrigerating units, microwave equipment, ovens, timers;

food and beverages; liquor; cleaning materials other similar items; swimming pool heaters and equipment; recreational equipment and maintenance supplies; clubhouse equipment, furnishings and supplies, including lockers and sporting equipment; and health and recreational facilities; and linens. Fixtures and Personality does not include fixtures, equipment and personalty owned by tenants under Leases of the Mortgaged Property or any part thereof.

General Intangibles means all causes in action, causes of action and all other intangible personal property of Mortgagor of every kind and nature (other than the Accounts), wherever located, including all Proprietary Rights, all **“general intangibles”** (as defined in the UCC), all **“payment intangibles”** (as defined in the UCC), all **“software”** (as defined in the UCC), corporate or other business records relating to Mortgagor, and/or the Mortgaged Property (including computer-readable memory and any computer hardware or software necessary to retrieve such memory), insurance policies (including claims under, and interests in, insurance policies), condemnation awards, good will, inventions, designs, software, patents, trademarks and applications therefor, computer programs, trade names, trade styles, trade secrets, copyrights, registrations and other intellectual property, licenses, franchises, customer lists, tax refund claims, claims for wages, salaries or other compensation of an employee, landlord’s liens, liens given by statute or other rule of law for services or materials, agricultural liens, judgments and rights represented by judgments and rights of recoupment or set-off. The General Intangibles also include any rate cap agreements(s) and all Contracts.

Gross Revenues means, all income, rents, revenues, issues, profits, deposits (other than security deposits except to the extent applied by Mortgagor in accordance with applicable Leases), proceeds of business interruption insurance, lease termination or similar payments and all other payments actually received by or for the benefit of Mortgagor in cash or current funds or other consideration from any source whatsoever from or with respect to the Mortgaged Property; provided, however, that Gross Revenues shall exclude Proceeds (other than insurance proceeds in respect of business interruption insurance).

Improvements means all buildings, improvements, alterations or appurtenances now, or at any time hereafter, located upon, in, under or above the Land or any part thereof. The term “Improvements” also includes all buildings, improvements, alterations or appurtenances not located on, in, under or above the Land to the extent of Mortgagor’s right, title and interest therein.

Inventory means **“inventory”** (as defined in the UCC), including any and all goods, merchandise and other personal property, whether tangible or intangible, now owned or hereafter acquired by Mortgagor which is held for sale, lease or license to customers, furnished to customers under any contract or service or held as raw materials, work in process, or supplies or materials used or consumed in Mortgagor’s business.

Land means the real estate described in **Schedule A** attached hereto.

Leases means any and all leases, subleases, occupancy agreements or grants of other possessory interests, whereby Mortgagor acts as the lessor, sublessor, licensor, grantor or in another similar capacity, now or hereafter in force, oral or written, covering or affecting the Land or Improvements, or any part thereof, together with all rights, powers, privileges, options and

other benefits of Mortgagor thereunder and any and all guaranties of the obligations of the lessees, sublessees, occupants, and grantees thereunder, as such leases, subleases, occupancy agreements or grants may be extended, renewed, modified or replaced from time to time (exclusive of any ground lease having Mortgagor as ground lessee).

Mortgage means this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing by and between Mortgagor and Mortgagee.

Mortgaged Property means the Land, the Improvements, the Inventory, the Accounts, the General Intangibles, the Fixtures and Personalty, the Leases, the Rents and other Gross Revenues, the Other Property, the Proceeds, the Plans and Specifications, and all other property of every kind and description used or useful in connection with the ownership, occupancy, operation and maintenance of the other components of the Mortgaged Property and all substitutions therefor, replacements and accessions thereto, and proceeds [including "**proceeds**" (as defined in the UCC)] derived therefrom, including, without limitation, the following:

(a) all buildings, improvements, tenements, easements, hereditaments, and appurtenances now and/or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on the Land, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of said real estate, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and all heretofore or hereafter acquired roads, alleys, streets, passages and other publicways abutting said real estate, whether before or after vacation thereof;

(b) all of the rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anyway belonging, relating, pertaining or inuring to the benefit of the Land and/or the Improvements, including, without limitation, all Contracts, including, without limitation, all air rights, development rights, light, water rights, water stock, development rights and credits, use entitlements, permits, licenses and approvals of governmental entities (including, without limitation, any permits and/or approvals, relating to excavation, mining, extraction or removal of fill, soil and/or rock in, on or from the Mortgaged Property), belonging or in anyway appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof or otherwise benefitting the same;

(c) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land (including, without limitation, water, mineral and sewer rights), the Improvements, the Accounts, the Fixtures and Personalty, the Inventory, the Leases, the Proceeds, the Other Property, the Plans and Specifications, the Rents and other Gross Revenues, the General Intangibles, the Contracts and the other components of the Mortgaged Property;

(d) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to condemnation awards or payments with respect to casualties and property and all right, title and interest of Mortgagor in any insurance policies or

binders now or hereafter relating to the Land, the Improvements or any other components of the Mortgaged Property, including, without limitation, unearned premiums and proceeds of insurance; and

(e) all other or greater rights and interests of every nature in the Land or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Mortgagor.

Mortgagee: iStar Financial Inc., a Maryland corporation, its successors and assigns.

Mortgagee's Address: iStar Financial Inc., 1114 Avenue of the Americas, Twenty-Seventh Floor, New York, New York 10036, Attention: Chief Operating Officer.

Mortgagor: The entity named as such in the first paragraph of this Mortgage, and its heirs, administrators, executors, successors and assigns and its successors in interest in and to the Mortgaged Property.

Mortgagor's Address: c/o Alexion Pharmaceuticals, Inc., 352 Knotter Drive, Cheshire, CT 06410.

Obligations means all obligations, liabilities and indebtedness of every nature of Mortgagor from time to time owed to Mortgagee under the Loan Agreement, the Note and the other Loan Documents, including the principal amount of all debts, claims and Indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable to Mortgagee under the Loan Documents whether before or after the filing of a proceeding under the Bankruptcy Code by or against Mortgagor. The term "Obligations" also includes (i) payment of any and all other indebtedness now or hereafter owing by Mortgagor to Mortgagee evidenced by a note or notes and/or an agreement or agreements signed by Mortgagor whose indebtedness is secured by this Mortgage and (ii) any judgment against Mortgagor or the Mortgaged Property with respect to such obligations, liabilities and Indebtedness of Mortgagor.

Other Property means all of Mortgagor's now and/or hereafter existing and/or arising right, title and interest in and to all "**securities entitlements**" (as defined in the UCC), "**chattel paper**" (as defined in the UCC), "**commercial tort claims**" (as defined in the UCC) and all other tort claims, "**documents**" (as defined in the UCC), "**instruments**" (as defined in the UCC), "**letter-of-credit rights**" (as defined in the UCC), "**money**" (as defined in the UCC), "**letters of credit**" (as defined in the UCC), Investments, and all "**investment property**" (as defined in the UCC). Other Property includes all Security Deposit Letters of Credit.

Proceeds means compensation, proceeds, damages, claims, insurance recoveries, rights of action and payments which Mortgagor may receive or to which Mortgagor may be entitled with respect to the Mortgaged Property as a result of any casualty or condemnation.

Rents means all rents, income, receipts, royalties, profits, issues, service reimbursements, fees, termination payments, receivables, accounts receivable and payments or related to the Land and/or Improvements from time to time accruing under the Leases and/or the operating of the Land and/or Improvements.

Security Agreement means the security agreement contained in Section 3 of this Mortgage, wherein and whereby Mortgagor grants a security interest in the Accounts, the Inventory, the Proceeds, the Rents and other Gross Revenues, the Fixtures and Personalty, the Other Property, the General Intangibles and the other components of the Mortgaged Property to Mortgagee.

Security Deposit Letters of Credit means all tenant security deposits which are in the form of a letter of credit.

State means the state where the Land is located.

UCC means the Uniform Commercial Code as the same may be amended, modified or recodified from time to time in the State of Rhode Island and such other jurisdictions where UCCs shall be filed from time to time to indicate Mortgagee's security interest in all or any portion of the UCC Collateral.

UCC Collateral means the Accounts, the Fixtures and Personalty, the General Intangibles, the Other Property, the Proceeds, the Plans and Specifications, and all "**proceeds**" (as defined in the UCC) thereof together with any other component of the Mortgaged Property to which Article 9 of the UCC is applicable.

## **ARTICLE 2**

### **GRANT**

2.1 Grant. To secure the payment, performance and discharge of the Obligations, Mortgagor by these presents hereby grants, assigns, mortgages, transfers and conveys unto Mortgagee, WITH MORTGAGE COVENANTS, for the use and benefit of Mortgagee, with right of entry and possession (to the extent permitted by applicable law) and grants a security interest in, the Mortgaged Property, to have and to hold the Mortgaged Property unto Mortgagee, its successors, substitutes and assigns forever. Mortgagor hereby binds itself, and Mortgagor's successors, substitutes and assigns, to warrant and forever defend unto Mortgagee, its successors and assigns, the title to the Mortgaged Property, together with all other rights of Mortgagor in and to the Mortgaged Property, subject to the Permitted Encumbrances.

2.2 Condition of Grant. Provided always, that if Mortgagor shall irrevocably, unconditionally and indefeasibly pay or cause to be paid the entire Obligations as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then the Loan Documents and the estate and rights granted by Mortgagor shall cease, terminate and become void, and shall be promptly released or reconveyed by Mortgagee in proper form for recording, at the sole cost and expense of Mortgagor.

2.3 Maximum Amount of Indebtedness. Notwithstanding anything to the contrary in this Mortgage, the maximum aggregate principal amount of indebtedness that is, or under any contingency may be, secured by this Mortgage (including Mortgagor's obligation to reimburse advances made by Mortgagee), either at execution or at any time thereafter, including future advances which will be advanced from time to time from and after the date hereof and may include readvances of amounts repaid (the "**Secured Loan Amount**"), shall not exceed in the aggregate at any one time the outstanding amount of **[\$52,000,000.00]**, plus amounts that



Mortgagee expends after occurrence of an Event of Default to the extent that any such amounts shall constitute payment of (a) taxes, charges or assessments that may be imposed by law upon the Mortgaged Property; (b) premiums on insurance policies covering the Mortgaged Property; (c) expenses incurred in upholding the lien of this Mortgage, including the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; or (d) any amount, cost or charge to which Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; then in such event, such amounts or costs, together with interest thereon, shall be added to the indebtedness secured hereby and shall be secured by this Mortgage.

All persons and entities with any interest in the Mortgaged Property or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or other document or instrument evidencing, securing or otherwise affecting the indebtedness, including, without limitation, any and all amounts expended by Mortgagee upon an Event of Default to operate, manage or maintain the Mortgaged Property or to otherwise protect the Mortgaged Property or the lien of this Mortgage.

### **ARTICLE 3** **SECURITY AGREEMENT AND FIXTURE FILING**

3.1 Security Agreement. With respect to all Accounts, Fixtures and Personalty, General Intangibles, Inventory, the Other Property and other UCC Collateral, this Mortgage shall constitute a "security agreement" within the meaning of, and shall create a security interest under, the UCC, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of further securing payment and performance of the Obligations, Mortgagor hereby grants to Mortgagee a security interest and Lien in all rights, titles, and interests now owned or hereafter acquired by Mortgagor in all UCC Collateral. Mortgagor represents and warrants that, except for the Permitted Encumbrances and any financing statement filed by Mortgagee, no presently effective financing statement covering the Mortgaged Property or any part thereof has been filed with any filing officer, and no other presently effective security interest has attached or has been perfected in the Mortgaged Property or any part thereof. Mortgagor shall from time to time within fifteen (15) days after request by Mortgagee, execute, acknowledge and deliver any financing statement, renewal, affidavit, certificate, continuation statement or other document as Mortgagee may reasonably request in order to evidence, perfect, preserve, continue, extend or maintain this security agreement and the security interest created hereby as a first Lien on the Mortgaged Property and Inventory, subject only to the Permitted Encumbrances. Mortgagor hereby authorizes Mortgagee to file or cause to be filed any financing or continuation statements as Mortgagee may determine are necessary or desirable in order to evidence, perfect, preserve, continue, extend or maintain the security interest created hereby as a first Lien on the UCC Collateral, subject only to the Permitted Encumbrances.

3.2 Fixture Filing. This Mortgage constitutes a fixture filing under the UCC with respect to all fixtures included within the Land and is to be filed for record in the Land Evidence Records of the Town of Smithfield in the State of Rhode Island. Mortgagee shall have all rights with respect to the fixtures afforded to it by the UCC, in addition to, but not in limitation of, the other rights afforded Mortgagee by the Loan Documents. A carbon, photographic or other

reproduction of this Mortgage shall be sufficient as a financing statement. Mortgagee shall have the right at any time to file a manually executed counterpart or a carbon, photographic or other reproduction of this Mortgage as a financing statement in either the central or local UCC records of any jurisdiction wherein the Mortgaged Property is located, but the failure of Mortgagee to do so shall not impair (a) the effectiveness of this Mortgage as a fixture filing as permitted by the applicable UCC, or (b) the validity and enforceability of this Mortgage in any respect whatsoever. The following information is included for purposes of meeting the requirements of a financing statement.

(a) The name of the debtor is ALEXION MANUFACTURING LLC, a Delaware limited liability company.

(b) The name of the secured party is **iStar Financial Inc., a Maryland corporation.**

(c) The address of the secured party is iStar Financial Inc., 1114 Avenue of the Americas, New York, New York 10036, Attention: Chief Operating Officer.

(d) The mailing address of the debtor is c/o Alexion Pharmaceuticals, Inc., 352 Knotter Drive, Cheshire, CT 06410.

(e) This financing statement covers all of the debtor's fixtures (whether now owned or hereafter acquired). The fixtures include (a) goods which are or are to become fixtures on the Land described in **Schedule A**, (b) minerals or the like (including, without limitation, fill, rock, soil, oil and gas) located on the Land described in **Schedule A**, and (c) all proceeds and products of the fixtures.

(f) The record owner of the Mortgaged Property is Mortgagor.

#### ARTICLE 4

##### ASSIGNMENT OF RENTS AND LEASES AND CONTRACTS

4.1 Assignment of Rents and Leases. All of Mortgagor's right, title and interest in and to the Rents and Leases are hereby absolutely and irrevocably assigned to Mortgagee to be applied against the Obligations. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact, with the right, at Mortgagee's option at any time, to demand, receive and enforce payment of, to give receipts, releases and satisfactions for, and to sue, either in Mortgagor's or Mortgagee's name for, all Rents during the continuance of an Event of Default. Notwithstanding the foregoing Assignment of Rents, so long as no Event of Default has occurred and is then continuing, Mortgagor may collect, receive, take, use and enjoy such Rents, as they become due and payable but not more than one month in advance thereof and Mortgagor may exercise all other rights set forth in the Leases (subject to any express restrictions set forth herein, in the Loan Agreement or in the other Loan Documents). The foregoing assignment shall be fully operative without any further action on the part of either party; and specifically Mortgagee shall be entitled at its option, upon the occurrence of an Event of Default hereunder and for so long as such Event of Default is continuing, to collect all Rents from the Mortgaged Property whether or not Mortgagee takes possession of the Mortgaged Property. Upon the occurrence and during the continuance of an Event of Default hereunder, the permission hereby given to Mortgagor to

collect the Rents and exercise all other rights under the Leases from the Mortgaged Property shall terminate. To the extent permitted by applicable law, this Assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession nor obligate Mortgagee to take any action or to incur expense or perform or discharge any obligation, duty or liability. Exercise of any rights under this Section 4.1 and the application of the Rents to the Obligations shall not cure or waive any Event of Default but shall be cumulative of all other rights and remedies of Mortgagee.

4.2 Assignment of Contracts. All of Mortgagor's right, title and interest in and to the Contracts, to the extent assignable under applicable law, are hereby absolutely and irrevocably assigned to Mortgagee to be applied against the Obligations. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact with the right, at Mortgagee's option at any time, to demand, receive and enforce performance and payment of, to give receipts, releases and satisfactions for, and to sue, either in Mortgagor's or Mortgagee's name, for all amounts due under and performance required by the Contracts during the continuance of an Event of Default. Notwithstanding the foregoing Assignment of Contracts, so long as no Event of Default has occurred and is then continuing, Mortgagor may collect, receive, take, use and enjoy all rights under the Contracts, as they become due and payable but no more than one month in advance thereof and Mortgagor may exercise all other rights set forth in the Contracts (subject to any express restrictions set forth herein or in the other Loan Documents). The foregoing assignment shall be fully operative without any further action on the part of either party. Mortgagor shall from time-to-time within fifteen (15) days after request by Mortgagee, execute, acknowledge and deliver any additional instruments Mortgagee may reasonably request to further evidence the assignment and transfer to Mortgagee of Mortgagor's interest in any Contracts.

4.3 Effect of Assignments. This instrument constitutes an absolute and present assignment of the Rents; subject, however, to the conditional permission given to Mortgagor to collect, receive, take, use and enjoy the same as provided above; provided, further, that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment by Mortgagor, in whole or in part, and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

4.4 No Merger of Leasehold Estates. If both the lessor's and lessee's estate under any Lease, or any portion thereof, becomes vested at any time in one owner, this Mortgage and the Lien created hereby shall not be adversely affected by the application of the doctrine of merger unless Mortgagee so elects in writing by recording a written declaration so stating. Unless and until Mortgagee so elects, Mortgagee and any lessor and lessee shall continue to have and enjoy all of the rights and privileges to the separate estates. In addition, upon the foreclosure of the Lien created by this Mortgage on the Mortgaged Property, any Leases then existing and affecting all or any portion of the Mortgaged Property shall not be destroyed or terminated by merger or by the foreclosure unless, subject to the terms of the Leases and subordination, non-disturbance and attornment agreements to which Mortgagee is a party, Mortgagee or any purchaser at the sale so elects. No act by or on behalf of Mortgagee or such purchaser shall constitute a termination of any Lease unless Mortgagee gives written notice thereof to the tenant or subtenant affected.

**ARTICLE 5**  
**COVENANTS AND REPRESENTATIONS AND WARRANTIES**

5.1 Covenants. Until the entire Obligations shall have been indefeasibly paid in full, Mortgagor hereby covenants, represents, warrants and agrees as follows:

(a) Payment of Obligations. Mortgagor shall promptly pay and perform the Obligations or cause the Obligations to be paid and performed, as and when same shall be due and payable under the this Mortgage and the other Loan Documents.

(b) Insurance. Mortgagor shall maintain the insurance required pursuant to the Loan Agreement.

(c) Restoration Following Casualty or Condemnation. Upon the occurrence of any casualty or condemnation to the Mortgaged Property, Mortgagor shall provide prompt written notice thereof to Mortgagee, and shall restore or cause the Mortgaged Property to be restored in accordance with Section 8.1 of the Loan Agreement.

(d) Inspection. Mortgagor shall permit, and shall cause Manager to permit, Mortgagee, to inspect the Mortgaged Property in accordance with the terms and provisions of the Loan Agreement.

(e) Hold Harmless. Mortgagor shall indemnify Mortgagee in accordance with the terms and provisions of Section 11.3 of the Loan Agreement.

(f) Title to Mortgaged Property. Mortgagor shall at all times maintain good and indefeasible title in fee simple to the Land and good and indefeasible title to the Improvements, the Accounts, the Fixtures and Personalty, the General Intangibles, the Other Property and the Inventory free and clear of any encumbrances other than the Liens created by the Mortgage and the other Loan Documents and the Permitted Encumbrances.

(g) Due on Sale of Encumbrance. Mortgagor acknowledges that, in making the Loan, Mortgagee has relied to a material extent upon the particular business reputation, expertise, creditworthiness, and individual net worth of Mortgagor and of the persons, partnerships, trusts, corporations or other entities who have a direct or indirect interest in Mortgagor and upon the continuing interest which such persons, partnerships, trusts, corporations or other entities, as owners of direct or indirect interests in Mortgagor, shall have in the Mortgaged Property. Accordingly, Mortgagor covenants and agrees that Mortgagor shall at all times comply with the provisions of Section 7.11 of the Loan Agreement

**ARTICLE 6**  
**EVENTS OF DEFAULT**

The term "Event(s) of Default" shall mean the occurrence or happening beyond any applicable notice and cure period, from time to time, of any one or more of the events set forth in Section 9.1 of the Loan Agreement.

**ARTICLE 7**  
**FORECLOSURE AND REMEDIES**

7.1 Remedies. If an Event of Default shall occur which continues beyond any applicable grace or cure period, Mortgagee may, at its option, exercise one or more or all of the following remedies, all to the fullest extent permitted by applicable law:

(a) Acceleration. Declare the unpaid portion of the Obligations to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable. Upon the occurrence of the Events of Default specified in Sections 9.1(E) and 9.1(F) of the Loan Agreement, the unpaid portion of the Obligations shall be immediately due and payable without notice or demand (each of which is hereby expressly waived by Mortgagor).

(b) Entry Upon Mortgaged Property. Enter upon the Mortgaged Property and take possession thereof and of all books, records and accounts relating thereto.

(c) Operation of Mortgaged Property. Hold, lease, operate or otherwise use or permit the use of the Mortgaged Property, or any portion thereof, in such manner, for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits or other amounts payable in connection therewith.

(d) Judicial Proceedings. (1) foreclose this Mortgage judicially or nonjudicially; (2) exercise its power of sale; (3) exercise its STATUTORY POWER OF SALE; or (4) sue on the Loan Documents according to law.

(e) Mortgagee's Sale of Mortgaged Property. The procedure for exercise of the Mortgagee's power of sale shall be as follows:

(1) Mortgagee shall give notice of its election to cause the Mortgaged Property to be sold to satisfy the Obligations in accordance with applicable law.

(2) Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after the giving of any such required notice, Mortgagee, without demand on Mortgagor, shall sell the Mortgaged Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Mortgagor agrees that such a sale (or sheriff's sale pursuant to judicial foreclosure) of all the Mortgaged Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all of any part of the Mortgaged Property which may be personal property, Mortgagee shall have and exercise, at Mortgagee's sole election, all the rights and remedies of a secured party under the UCC. Whenever notice is permitted or required hereunder or under the UCC, ten (10) days prior notice shall constitute commercially reasonable notice. Mortgagee may postpone the sale of all or any portion of the Mortgaged Property, and from time to time thereafter may postpone such sale, as provided by statute. Mortgagee shall deliver to the purchaser its deed and bill of sale conveying

the Mortgaged Property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Mortgagor or Mortgagee, may purchase at such sale.

(3) After deducting all costs, fees and expenses of Mortgagee, and of this trust, including the cost of evidence of title search and reasonable counsel fees in connection with sale, Mortgagee shall apply the proceeds of sale in accordance with Section 7.7 hereof.

(f) Receiver. To the extent permitted by law, Mortgagee shall be entitled, as a matter of strict right, without notice, and without regard to the value or occupancy of the security, or the solvency of the Mortgagor, or the adequacy of the Mortgaged Property as security for the Obligations, to itself enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct, or, at its option, Mortgagee may have a receiver appointed to do the same, such receiver to have all the rights and powers permitted under the laws of the jurisdiction in which the Mortgaged Property is located, along with the powers of Mortgagor under Section 7.1(c) above and Section 7.1(1) below. Mortgagor hereby waives any requirements on the receiver or Mortgagee to post any surety or other bond. Mortgagee or the receiver may also take possession of, and for these purposes use, any and all Fixtures and Personalty which is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof, or any part thereof. The expense, (including reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits received by it on the Obligations in the order set forth in Section 7.7 hereof. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Rents, issues and profits actually received by Mortgagee.

(g) Additional Rights and Remedies. With or without notice, and without releasing Mortgagor from the Obligations, and without becoming a mortgagee in possession, Mortgagee shall have the right to cure any breach or default of Mortgagor and, in connection therewith, to enter upon the Mortgaged Property and to do such acts and things as Mortgagee reasonably deems necessary or desirable to protect the security hereof including, but without limitation, to appear in and defend any action or proceedings purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, Lien or claim of Lien which, in the reasonable judgment of Mortgagee, is prior or superior hereto, the reasonable judgment of Mortgagee being conclusive as between the parties hereto to obtain insurance; to pay any premiums or charges with respect to insurance required to be carried hereunder, and to employ counsel, accountants, contractors and other appropriate persons to assist them.

(h) Mortgagee as Purchaser. Mortgagee shall have the right to become the purchaser at any sale held by the Mortgagee or by any court, receiver or public officer, and Mortgagee shall have the right to credit upon the amount of the bid made therefor, the amount of indebtedness payable to it out of the net proceeds of such sale. Mortgagee upon any such

purchase, shall acquire good title to the Mortgaged Property so purchased, free from the Lien of this Mortgage and free of all rights of redemption, if any, in Mortgagor. Recitals contained in any conveyance made to any purchaser at any sale made hereunder shall presumptively establish the truth and accuracy of the matters therein stated, including, without limiting the generality of the foregoing, nonpayment of the unpaid principal sum of, and the interest accrued on, the Note after the same have become due and payable and advertisement and conduct of such sale in the manner provided herein; and Mortgagor does hereby ratify and confirm any and all acts that said Mortgagee or its successors may lawfully do in the premises by virtue of the terms and conditions of this instrument.

(i) Receipt to Purchaser. Upon any sale, whether made under the power of sale herein granted and conferred or by virtue of judicial proceedings, the receipt of the Mortgagee, or of the officer making sale under judicial proceedings shall be sufficient discharge to the purchaser or purchasers at any sale for his or their purchase money, and such purchaser or purchasers, his or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Mortgagee or of such officer therefor, be obliged to see to the application of such purchase money, or be in anywise answerable for any loss, misapplication or nonapplication thereof.

(j) Effect of Sale. Any sale or sales of the Mortgaged Property, whether under the STATUTORY POWER OF SALE or the power of sale herein granted and conferred or by virtue of judicial proceedings conducted in accordance with applicable law, shall operate to divest all right, title, interest, claim, and demand whatsoever either at law or in equity, of Mortgagor of in, and to the premises and the Mortgaged Property sold, and shall be a perpetual bar, both at law and in equity, against Mortgagor, Mortgagor's successors, and against any and all persons claiming or who shall thereafter claim all or any of the Mortgaged Property sold from, through or under Mortgagor, or Mortgagor's successors or assigns; nevertheless, Mortgagor, if requested by the Mortgagee so to do, shall join in the execution and delivery of all proper conveyances, assignments and transfers of the properties so sold.

(k) Remedies Under UCC. Upon the occurrence and during the continuance of an Event of Default, Mortgagee may exercise its rights of enforcement, without a breach of the peace, with respect to the UCC Collateral under the applicable provisions of the UCC and/or under other applicable law, and in conjunction with, in addition to or in substitution for those rights and remedies:

(1) Mortgagee may enter upon Mortgagor's premises to take possession of, assemble and collect the UCC Collateral and any and all books and records related to the Mortgaged Property; and

(2) Mortgagee may require Mortgagor to assemble the UCC Collateral and make same available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the UCC Collateral; and

(3) Written notice mailed to Mortgagor as provided herein at least ten (10) days prior to the date of public sale of the UCC Collateral or prior to the date after which private sale of the UCC Collateral shall be made shall constitute reasonable notice; and

(4) Any sale made pursuant to the provisions of this Subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Mortgaged Property under power of sale as provided in Section 7.1(e) of this Mortgage; and

(5) In the event of a foreclosure sale, whether made by the Mortgagee under the terms hereof, or under judgment of a court, the Mortgaged Property may, at the option of Mortgagee, be sold as a whole; and

(6) It shall not be necessary that Mortgagee take possession of the UCC Collateral prior to the time that any sale pursuant to the provisions of this section is conducted and it shall not be necessary that the UCC Collateral be present at the location of such sale; and

(7) Prior to application of proceeds of disposition of the UCC Collateral to the Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee; and

(8) Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Obligations or as to the occurrence of any Event of Default, or to Mortgagee have declared all of such Obligations to be due and payable, or as to notice of time, place and terms of sale and of the Mortgaged Property to be sold having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(9) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale but in the name and on behalf of Mortgagee.

(1) Entry on and Operation of Property by Mortgagee. Upon the occurrence and during the continuance of an Event of Default and in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee) shall have the right and power, but shall not be obligated to enter upon and take possession of any of the Mortgaged Property, and of all books, records, and accounts relating thereto and to exclude Mortgagor, and Mortgagor's agents or servants, wholly therefrom, and to hold, lease, operate, use, administer, manage, and operate the same to the extent that Mortgagor shall be at the time entitled and in his place and stead for such time, and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions, and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits, or other amounts payable in connection therewith. The Mortgagee, or any person, firm or corporation designated by the Mortgagee may operate the same without any liability to Mortgagor in connection with such operations, except to use ordinary care in the operation of said properties, and the Mortgagee or any person, firm or corporation designated by them, shall have the right to collect, receive and receipt for all Rents from the Mortgaged Property, to make repairs, purchase machinery and equipment, and to exercise every power, right and privilege of Mortgagor with respect to the Mortgaged Property.



All costs, expenses and liabilities of every character incurred by the Mortgagee in managing, operating, maintaining, protecting or preserving the Mortgaged Property, respectively, shall constitute a demand obligation owing by Mortgagor to Mortgagee and shall bear interest from date of expenditure until paid at the same rate as is provided in the Note for interest on past due principal, all of which shall constitute a portion of the Obligations and shall be secured by this Mortgage and by any other instrument securing the Obligations. If necessary to obtain the possession provided for above, the Mortgagee, as the case may be, may invoke any and all remedies to dispossess Mortgagor including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution. When and if the expenses of such operation have been paid and the Obligations paid, the Mortgaged Property shall, if there has been no sale or foreclosure, be returned to Mortgagor.

(m) Change in Laws. If any statute now applicable in any state in which any of the Mortgaged Property is now located provides, or shall hereafter be amended to provide, a different procedure for the sale of real property under a power of sale in a deed of trust or mortgage, Mortgagee may, in its sole discretion, if same be permitted by applicable law, follow the sale procedure set forth in this Article 7 or that prescribed in such statute, as amended.

(n) Sale. Cause the Mortgaged Property and all estate, right, title and interest, claim and demand therein, or any part thereof to be sold as follows:

(1) Mortgagee may proceed as if all of the Mortgaged Property were real property, in accordance with Section 7.1(e) above, or Mortgagee may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the premises without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subparagraph (3) below, separate and apart from the sale of real property, with the remainder of the Mortgaged Property being treated as real property at the sale.

(2) Mortgagee may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or required by law) or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Should Mortgagee desire that more than one sale or other disposition be conducted, Mortgagee may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interest.

(3) Should Mortgagee elect to cause any of the Mortgaged Property to be disposed of as personal property, it may dispose of any part thereof in any manner now or hereafter permitted by Article 9 of the UCC or in accordance with any other remedy provided by law. Both Mortgagor and Mortgagee shall be eligible to purchase any part of all of such property at any such disposition. Any such disposition may be either public or private as Mortgagee may so elect, subject to the provisions of the UCC, Mortgagee shall give Mortgagor at least ten (10) days prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Mortgagor it shall constitute reasonable notice to Mortgagor.

(o) Other. Exercise any other remedy specifically granted under the Loan Documents, or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including the rights described below.

7.2 Separate Sales. Any real estate or any interest or estate therein sold pursuant to any writ of execution issued on a judgment obtained by virtue of this Mortgage or the other Loan Documents, or pursuant to any other judicial proceedings under this Mortgage, or pursuant to the power of sale granted herein, may be sold in one parcel, as an entirety or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect.

7.3 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in this Mortgage and in the other Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

7.4 No Cure or Waiver. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Obligations, nor the exercise of any other right or remedy by Mortgagee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Obligations which are then due have been paid and performed and Mortgagor has cured all other defaults), or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the Lien of this Mortgage.

7.5 Payment of Costs, Expenses and Attorneys' Fees. Mortgagor agrees to pay to Mortgagee immediately and without demand all reasonable costs and expenses incurred by Mortgagee in accordance with Section 11.1 of the Loan Agreement.

7.6 Waiver of Redemption, Notice, Marshaling, Etc. To the extent permitted by applicable law, Mortgagor hereby waives and releases: (a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any redemption or extension of time for payment; (b) unless specifically required herein or in the other Loan Documents, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise, of any option or remedy under the Loan Documents; (c) any right to have the Liens against the Mortgaged Property or any other collateral in which Mortgagee holds an interest as security for the Obligations marshaled; and (d) the right to plead or assert any statute of limitations as a defense or bar to the enforcement of the Loan Documents.

7.7 Application of Proceeds. The proceeds of any sale of all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in the following order:

(a) first, to the payment of late charges, if any, owing under the Loan Documents;

(b) second, to the payment of the actual out of pocket costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same (including without limitation payment of any impositions or other taxes);

(c) third, to the extent allowed by law, to the payment of reasonable attorneys' fees and other legal expenses, including expenses and fees incurred on appeals, and legal expenses and fees of a receiver;

(d) fourth, to the payment of accrued and unpaid interest on the Obligations; and

(e) fifth, to the payment of the balance of the Obligations. The balance, if any, shall be paid to the parties entitled to receive it under applicable law.

7.8 Strict Performance. Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of the Loan Documents shall not be deemed to be a waiver of any of the terms or provisions of the Loan Documents and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them.

7.9 No Conditions Precedent to Exercise of Remedies. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Obligations shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of the Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Loan Documents without first having obtained the consent of Mortgagor or such other person, and in the latter event Mortgagor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

7.10 Release of Collateral. Mortgagee may release, regardless of consideration, any part of the security held for the Obligations without, as to the remainder of the security, in any way impairing or affecting the Liens of the Loan Documents or their priority over any subordinate Lien. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any Obligations secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after maturity of said Note, and without notice or consent: (a) release any person liable for payment of all or any part of, or for performance of, any Obligations; (b) make any

agreement extending the time or otherwise altering terms of payment of all or any part of, or modifying or waiving any of, the Obligations, or subordinating, modifying or otherwise dealing with the Lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; or (e) release or otherwise deal with any property, real or personal, securing the Obligations, including all or any part of the Mortgaged Property.

7.11 Other Collateral. For payment of the Obligations, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

7.12 Discontinuance of Proceedings. In the event Mortgagee shall have proceeded to enforce any right under the Loan Documents and such proceedings shall have been discontinued or abandoned for any reason, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been taken.

7.13 Release of Liability. Without affecting the liability of any person (other than any person released pursuant to the provisions of this Section) for payment of any of the Obligations secured hereby, and without affecting or impairing in any way the priority or extent of the Liens of the Loan Documents upon any property not specifically released pursuant hereto, Mortgagee may at any time and from time to time (a) release any person liable for payment of any of the Obligations secured hereby, (b) extend the time or agree to alter the terms of payment of any of the Obligations, (c) accept additional security of any kind, (d) release any property securing the Obligations, or (e) consent to the creation of any easement on or over the Mortgaged Property or any covenants restricting the use or occupancy thereof.

7.14 Retention of Copies of Books and Records. Without limiting any of Mortgagee's rights and remedies at law or in equity, including under this Mortgage, in the event Mortgagee elects to foreclose or otherwise realize upon its security interest in the General Intangibles, nothing herein shall be deemed to prohibit Mortgagor from retaining copies of its books and records (including computer-readable copies thereof), provided that the originals thereof are delivered to Mortgagee or the purchaser of such General Intangibles at a foreclosure sale, as applicable.

## **ARTICLE 8** **MISCELLANEOUS**

8.1 Further Assurances. Mortgagor, upon the reasonable written request of Mortgagee, shall execute, acknowledge and deliver, at no liability or out-of-pocket cost to Mortgagor, or, with respect to persons or entities within Mortgagor's control, arrange for the execution, acknowledgment and delivery of, such further reasonable instruments (including, without limitation, financing statements, estoppel certificates and declarations of no set-off, attornment agreements and acknowledgments) and do such further acts, as may be reasonably necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents, to facilitate (at no cost or expense to Mortgagor) the assignment or transfer of the Note and the Loan Documents and to subject to the Liens of the Loan Documents any property intended by the terms thereof to be covered thereby, and any renewals, additions, substitutions, replacements or

betterments thereto. Mortgagor shall execute and deliver such instruments, certificates and other documents on or before ten (10) Business Days after receipt of written request therefor. Mortgagor irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do any of the foregoing, provided, however, Mortgagee will not exercise such right unless (a) Mortgagee shall have given Mortgagor at least ten (10) Business Days notice and Mortgagor shall have failed to satisfy such request or (b) an Event of Default has occurred and is then continuing.

8.2 Recording and Filing. Mortgagor, at its expense, shall cause this Mortgage and any other Loan Documents designated from time to time by Mortgagee, all supplements thereto and any financing statements at all times to be recorded and filed in such manner and in such places as Mortgagee shall reasonably request, and shall pay all such recording, filing, re-recording and re-filing taxes, fees and other charges in connection with such recording and filing.

8.3 Notice. All notices, demands, requests and other communications required under the Loan Documents shall be in writing and shall be delivered in accordance with Section 11.5 of the Loan Agreement.

8.4 Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail to make any payment or perform any act required by the Loan Documents beyond any applicable notice or cure periods, then Mortgagee may make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose in accordance with Section 11.14 of the Loan Agreement. All sums so paid by Mortgagee, and all costs, and expenses, including, without limitation, reasonable attorneys' fees and expenses so incurred together with, interest thereon at the Default Rate, from the date of payment or incurring, constitute additions to the Obligations secured by the Loan Documents, and shall be paid by Mortgagor to Mortgagee, within ten (10) days of demand. If Mortgagee shall elect to so pay any Imposition, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate public office, without inquiring into the accuracy thereof or into the validity of such Imposition. Mortgagor shall indemnify Mortgagee for all losses and expenses, including reasonable attorneys' fees, incurred by reason of any acts performed by Mortgagee pursuant to the provisions of this Section 8.4 or by reason of the Loan Documents, and any funds expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such expenditures, shall constitute additions to the Obligations and shall be secured by the Loan Documents and shall be paid by Mortgagor to Mortgagee upon demand. Mortgagor shall have no obligation to indemnify Mortgagee under the foregoing indemnity for any such loss or expense resulting from Mortgagee's gross negligence or willful misconduct. In no event shall the indemnification contained herein include consequential or punitive damages.

8.5 Covenants Running with the Land. All covenants, conditions, warranties, representations and other obligations contained in this Mortgage and the other Loan Documents are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Mortgage has been fully released by Mortgagee.

8.6 Severability. In case any one or more of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of this Mortgage and the other Loan Documents, and remaining Obligations shall be in no way affected, prejudiced or disturbed thereby.

8.7 Modification. The Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.8 Non-Assumable. This Mortgage may not be assumed by any subsequent holder of an interest in the Mortgaged Property without Mortgagee's prior written consent except for any transferee of the Mortgaged Property permitted under the Loan Agreement.

8.9 Tax on Obligations or Mortgage. In the event of the passage, after the date of this Mortgage, of any law deducting from the value of land for the purposes of taxation, any Lien thereon, or imposing upon Mortgagee the obligation to pay the whole, or any part, of the taxes or assessments or charges or Liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust, mortgages or debts as to affect this Mortgage or the Obligations, Mortgagor shall pay Mortgagee any such additional amounts necessary to compensate Mortgagee, on an after-tax basis, for such additional costs in accordance with the terms and provisions of Section 2.6 of the Loan Agreement.

8.10 Maximum Rate of Interest. All agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid to Mortgagee for the use, forbearance, or detention of the money to be loaned under the Note or otherwise or for the payment or performance of any covenant or obligation contained herein or in the Note, exceed the Maximum Rate. The term "Maximum Rate" as used herein shall mean the higher of the maximum interest rate allowed by applicable United States, the state of New York or the State law as amended from time to time, in effect on the date for which a determination of interest accrued hereunder is made. If from any circumstances whatsoever fulfillment of any provision hereof or of any such other documents, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by applicable usury law, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance, Mortgagee shall have ever received interest or anything which might be deemed interest under applicable law which would exceed the Maximum Rate, such amount which would be excessive interest shall be applied to the reduction of the principal amount owing on account of the Note or the amounts owing on other obligations of Mortgagor to Mortgagee hereunder (all without payment of any prepayment premium) and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of the principal of the Note and the amounts owing on other obligations of Mortgagor to Mortgagee hereunder as the case may be such excess shall be refunded to Mortgagor. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the Obligations of Mortgagor to Mortgagee shall, to the extent permitted by applicable law, (i) be amortized, prorated, allocated and spread throughout the full term of such Obligations until payment in full so that the actual rate of interest on account of such Obligations does not exceed the Maximum Rate throughout the term thereof, (ii) be characterized as a fee, expense or other charge other than interest, and/or (iii) exclude any voluntary prepayments and the effects thereof.

8.11 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in the Loan Documents shall survive the making of the Loan, and shall continue in full force and effect until the Obligations shall have been paid in full, except the obligations specified in the Environmental Indemnity Agreement which shall survive any such payment in full.

8.12 APPLICABLE LAW. THIS MORTGAGE SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES, PROVIDED, HOWEVER, THAT TO THE EXTENT THE MANDATORY PROVISIONS OF THE LAWS OF THE STATE OF RHODE ISLAND RELATING TO (i) THE PERFECTION OR THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTERESTS IN ANY OF THE PROPERTY, (ii) THE LIEN, ENCUMBRANCE OR OTHER INTEREST IN THE PROPERTY GRANTED OR CONVEYED BY THIS MORTGAGE, OR (iii) THE AVAILABILITY OF AND PROCEDURES RELATING TO ANY REMEDY HEREUNDER OR RELATED TO THIS MORTGAGE ARE REQUIRED TO BE GOVERNED BY THE LAWS OF THE STATE OF RHODE ISLAND, SUCH RHODE ISLAND LAWS SHALL BE DEEMED TO GOVERN AND CONTROL. THE INVALIDITY, ILLEGALITY OR UNENFORCEABILITY OF ANY PROVISION OF THIS MORTGAGE OR THE LOAN DOCUMENTS SHALL NOT AFFECT OR IMPAIR THE VALIDITY, LEGALITY OR ENFORCEABILITY OF THE REMAINDER OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS, AND TO THIS END, THE PROVISIONS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS ARE DECLARED TO BE SEVERABLE.

8.13 Successors and Assigns Bound; Joint and Several Liability; Agents; Captions. The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor, subject to the provisions of Section 7.11 of the Loan Agreement. All covenants and agreements of Mortgagor shall be joint and several. In exercising any rights under the Loan Documents or taking any actions provided for therein, Mortgagee may act through its employees, agents, or independent contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

8.14 No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee, pursuant to the Loan Documents, including (but not limited to) any officer's certificate, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

8.15 Release. Upon written request of Mortgagor stating that all sums secured hereby have been paid following indefeasible payment in full of all Obligations, Mortgagee shall pay the

sole cost and expenses of Mortgagor, release the lien of this Mortgage, in proper form for recording, and the other Loan Documents. The recitals in any such release of any matters or facts shall be conclusive proof of the matters set forth therein.

8.16 Headings. The article headings and the section and subsection captions are inserted for convenience of reference only and shall in no way alter or modify the text of such articles, sections and subsections.

8.17 Extension of Prior Liens. If any or all of the proceeds of the Note have been used to pay any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, and to the extent permitted by applicable law, Mortgagee shall be subrogated to all of the rights, claims, Liens, titles and interests heretofore existing against the Mortgaged Property to secure the indebtedness so paid and the former rights, claims, Liens, titles and interests, if any, are not waived but rather shall continue in full force and effect in favor of Mortgagee as cumulative security for the repayment and satisfaction of the Obligations regardless of whether said Liens or debts are acquired by Mortgagee by assignment or are released by the holder thereof upon payment.

8.18 Relationship Between Parties. Nothing contained in the Note, this Mortgage or the other Loan Documents shall be construed as creating a joint venture or partnership between Mortgagee and Mortgagor, and Mortgagee shall have no right of control or supervision over Mortgagor except as Mortgagee may exercise its rights and remedies under this Mortgage and the other Loan Documents. Mortgagor further disclaims any fiduciary or quasi fiduciary relationship between it or any of its partners and Mortgagee.

8.19 Waivers Pertaining to Note. Mortgagor in its capacity as Mortgagor under this Mortgage and not as maker of the Note waives presentation, demand, protest and notice of nonpayment of the Note (except for notices required hereunder or under the other Loan Documents), and consents to delays, changes in time of payment and the amount of payments due under the Note.

8.20 Third Parties. Nothing in this Agreement is intended to confer any rights or remedies on any persons other than Mortgagor and Mortgagee and their respective successors and assigns.

8.21 WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION AND LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. MORTGAGOR AND MORTGAGEE ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF MORTGAGOR OR MORTGAGEE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND



STATUTORY CLAIMS. MORTGAGOR AND MORTGAGEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH SHALL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. MORTGAGOR AND MORTGAGEE FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, THE LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

8.22 Jurisdiction. In accordance with Section 5-1402 of the General Obligations Law of the State of New York, Mortgagor and Mortgagee agree that any action or proceeding arising out of or relating to the Note, the Guaranty, this Mortgage or the other Loan Documents may be commenced in any court located in the State of New York. Mortgagor and Mortgagee hereby irrevocably submits to the jurisdiction of United States District Court for the Southern District of New York over any action or proceeding arising out of or relating to the Note, the Guaranty, this Mortgage or the other Loan Documents, and does hereby irrevocably waive, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.

8.23 Multiple Notes. In the event this Mortgage secures more than one promissory note, such promissory notes are equally secured by this Mortgage without the priority or preference of one over the other by reason of negotiation, maturity or otherwise.

**ARTICLE 9**  
**LOCAL LAW PROVISIONS**

9.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article 9 and the other provisions of this Mortgage, the terms and conditions of this Article 9 shall control and be binding.

9.2 Rhode Island Open-End Mortgage Provisions. This Mortgage permits and secures any and all current and future advances to the Mortgagor evidenced by (or pursuant to) any one or more of the following: the Note, the Loan Documents or other documents evidencing the Obligations or the Indebtedness, such other note or notes as may be signed by Mortgagor payable to Mortgagee and such other agreement(s) as may be entered into by Mortgagor with the Mortgagee, and signed by Mortgagor. The unpaid principal balance of indebtedness outstanding under this Mortgage shall at no time exceed \$52,000,000. Mortgagee will accept notices pursuant to Sections 34-25-10(b) and 34-25-11 of the General Laws of the State of Rhode Island, 1956, Reenactment of 1995, as amended, at the address specified on page 1 of this Mortgage.

9.3 Remedies. This Mortgage is upon the STATUTORY CONDITION, and upon the further condition that all covenants of Mortgagor contained in this Mortgage, the Loan Agreement or in the Loan Documents and/or any other documents evidencing the Obligations or the Indebtedness, shall be kept and performed, and for any breach of said STATUTORY CONDITION or further condition, Mortgagee shall have the STATUTORY POWER OF SALE.

Said STATUTORY CONDITION and STATUTORY POWER OF SALE, as well as the MORTGAGE COVENANTS contained in the granting clause of this Mortgage, are those contained in the General Laws of the State of Rhode Island, 1956, Reenactment of 1995, as amended.

Provided further however, to the extent permitted by law, publication, pursuant to said STATUTORY POWER OF SALE, of notice of the time and place of sale may, in the sole discretion of Mortgagee, be made by publishing the same at least once each week for three (3) successive weeks in a public newspaper published daily in the City of Providence, Rhode Island, and not as otherwise provided in said STATUTORY POWER OF SALE.

9.4 Exercise of Power of Sale – Multiple Sales. It is expressly understood and agreed to by Mortgagor and Mortgagee that the power of sale contained in this Mortgage shall, in the event that the Mortgaged Property is comprised of separate lots or parcels of land, survive the foreclosure of any portion of the Mortgaged Property and may be exercised on different occasions to separately foreclose each and every lot or parcel of land comprising the Mortgaged Property until all of the Mortgaged Property has been foreclosed in accordance with applicable law and the terms of this Mortgage.

9.5 Construction Mortgage under the UCC. This Mortgage is intended to take effect as a construction mortgage pursuant to Section 6A-9-334(h) of the General Laws of Rhode Island, 1956, Reenactment of 1995, as amended.

9.6 Compliance with Rhode Island Law. To the extent that the provisions of this Mortgage as to the creation, perfection, priority, enforcement and foreclosure of the liens and security interests created in this Mortgage are inconsistent with Rhode Island law (including, without limitation, R.I.G.L. §6A-9-101 et seq., §34-11-20, §34-11-21, §34-11-22, and §34-27-2), Rhode Island law shall take precedence over the provisions of this Mortgage but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with Rhode Island law.

[Signature page follows.]

**IN WITNESS WHEREOF**, Mortgagor has executed this Mortgage effective as of the date first above written.

**MORTGAGOR:**

ALEXION MANUFACTURING LLC, a Delaware limited liability company

By: ALEXION PHARMACEUTICALS, INC., a Delaware corporation, its sole member

By: /s/ David Keiser

Name: DAVID KEISER

Title: PRES & COO



**SCHEDULE A**  
**LEGAL DESCRIPTION**

**PARCEL ONE**

Address: 100 Technology Way  
City/Town: Smithfield  
County: Providence  
State: RI  
Lot No.: 219  
Plat No.: 49

THAT CERTAIN TRACT OR PARCEL OF LAND WITH ALL BUILDINGS AND IMPROVEMENTS THEREON WHICH IS SHOWN AS LOT 4 ON THAT CERTAIN PLAT ENTITLED "SUBDIVISION PLAN ISLAND WOODS COMMERCE PARK DOUGLAS PIKE - ROUTE 7 SMITHFIELD, R.I. MAGUIRE GROUP INC. PROVIDENCE, RI SCALE: 1" = 150' 150' DATE 2/18/93" RECORDED FEBRUARY 17, 1993 IN THE LAND EVIDENCE RECORDS FOR THE TOWN OF SMITHFIELD, SAID PARCEL BEING BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE WESTERLY PROPERTY LINE OF LAND N/F OF MAURICE BISSONNETTE, SAID POINT BEING LOCATED 443.45' SOUTHERLY OF THE SOUTHEASTERLY CORNER OF LAND N/F OF BENJAMIN GODON AS MEASURED ALONG THE BOUNDARY LINE OF SAID BISSONNETTE LAND AND LAND N/F OF THE RHODE ISLAND PORT AUTHORITY AND ECONOMIC DEVELOPMENT CORPORATION. SAID POINT BEING THE SOUTHEASTERLY CORNER OF THE SAID PORT AUTHORITY LAND AND THE NORTHEASTERLY CORNER OF THE PARCEL HEREIN DESCRIBED;

THENCE PROCEEDING N 88° 07' 44" W A DISTANCE OF 313.54' TO AN ANGLE POINT;

THENCE PROCEEDING S 71° 51' 16" W A DISTANCE OF 60.63' TO AN ANGLE POINT;

THENCE PROCEEDING S 51° 51' 16" W A DISTANCE OF 289.09' TO AN ANGLE POINT;

THENCE PROCEEDING S 31° 51' 16" W A DISTANCE OF 125.99' TO A RHODE ISLAND HIGHWAY BOUND (RIHB) FOUND AT THE POINT OF CURVATURE AT THE NORTHWESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED AT THE EASTERLY STREET LINE OF A PROPOSED STREET, THE LAST FOUR HEREIN DESCRIBED COURSES ARE BOUNDED NORTHERLY BY SAID PORT AUTHORITY LAND;

THENCE PROCEEDING S 37° 49' 11" E ALONG THE SAID STREET LINE A DISTANCE OF 134.06' TO A FOUND RIHB AT A POINT OF CURVATURE;

THENCE PROCEEDING SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF A CURVE TANGENT TO THE PREVIOUS COURSE, DEFLECTING TO THE RIGHT, HAVING A RADIUS OF 225.00' AND A CENTRAL ANGLE OF 41° 49' 28" A DISTANCE OF 164.24' TO A FOUND RIHB AT A POINT OF TANGENCY;

THENCE PROCEEDING S 04° 00' 17" W TANGENT TO THE PREVIOUS COURSE ALONG THE SAID STREET LINE A DISTANCE OF 376.77' TO A FOUND BROKEN RIHB AT THE SOUTHWESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED AT OTHER LAND N/F OF THE RHODE ISLAND PORT AUTHORITY AND ECONOMIC DEVELOPMENT CORPORATION;

THENCE PROCEEDING N 81° 43' 02" E BOUNDED SOUTHERLY BY SAID PORT AUTHORITY LAND A DISTANCE OF 628.45' TO A FOUND RIHB FOR A CORNER;

THENCE PROCEEDING N 07° 34' 14" W BOUNDED EASTERLY BY SAID PORT AUTHORITY LAND A DISTANCE OF 200.02' TO A FOUND RIHB FOR A CORNER;

THENCE PROCEEDING N 81° 43' 02" E BOUNDED SOUTHERLY TO SAID PORT AUTHORITY LAND A DISTANCE OF 170.44' TO A FOUND BROKEN RIHB FOR CORNER AT SAID BISSONNETTE LAND;

THENCE PROCEEDING N 18° 08' 44" W BOUNDED EASTERLY BY SAID BISSONNETTE LAND A DISTANCE OF 648.55' TO THE POINT AND PLACE OF BEGINNING.

**PARCEL TWO**

Address: 30 Hanton City Road  
City/Town: Smithfield  
County: Providence  
State: RI  
Lot No.: 78  
Plat No.: 49

That certain parcel of land in Smithfield, Rhode Island located on the northwesterly line of Hanton City Road about 630 feet northerly of the intersection of Hanton City Road and Lydia Ann Road shown as New Lot 78 on that plan entitled "Lydia Ann Road Essex Road & Hanton City Road Smithfield, Rhode Island Administrative Subdivision Plan Assessor's Plat 49 Lots 74, 78, 79 & 218" issued for recording, prepared by Vanasse Hangen Brustlin, Inc. 530 Broadway Providence, Rhode Island.

Beginning at the southeasterly corner of the herein described parcel at the northeasterly corner of land now or formerly of Joseph F.L. Mello Jr. & Carol Mello as shown on the Town of Smithfield Tax Assessor's Plat 49 as Lot 77;

Thence: bounded southerly by said Mello land S 81° 32' 43" W a distance of one hundred fifty four and 1/10 (154.1) (one hundred fifty four and 05/100 (154.05) as measured) feet to a point;

Thence: bounded westerly by land now or formerly of the Rhode Island Economic Development Corporation N 23° 38' 40" W a distance of three hundred eighty five (385) (three hundred eighty four and 98/100 (384.98) as measured) feet more or less to a point;

Thence: bounded westerly by land now or formerly of the Rhode Island Economic Development Corporation N 16° 46' 22" W a distance of five hundred thirty nine and 48/100 (539.48) feet to a point;

Thence: bounded westerly by land now or formerly of the Rhode Island Economic Development Corporation N 09° 09' 21" W a distance of two hundred forty six and 10/100 (246.10) feet to a point;

Thence: bounded westerly by land now or formerly of the Rhode Island Economic Development Corporation N 14° 21' 11" E a distance of seven hundred forty three and 19/100 (743.19) feet to a point;

Thence: bounded northeasterly by land now or formerly of Maurice Bissonnette S 39° 20' 08" E a distance of one hundred twenty six and 67/100 (126.67) feet to a point;

Thence: bounded northeasterly by land now or formerly of Maurice Bissonnette S 65° 57' 07" E a distance of five hundred nine and 67/100 (509.67) feet to a point marked by a found concrete bound with drill hole;

Thence: bounded northeasterly by land now or formerly of Maurice Bissonnette S 36° 51' 15" E a distance of two hundred two and 93/100 (202.93) feet to a point marked by a found concrete bound with drill hole;

Thence: bounded northeasterly by land now or formerly of Maurice Bissonnette S 41° 39' 13" E a distance of one hundred seven and 56/100 (107.56) feet to a point marked by a found concrete bound with drill hole in the northwesterly side of Hanton City Road;

Thence: bounded southeasterly by Hanton City Road S 33° 08' 38" W a distance of two hundred seventy five and 48/100 (275.48) feet to a point marked by a found concrete bound with drill hole;

Thence: bounded easterly by Hanton City Road S 10° 21' 28" W a distance of three hundred fifty two and 74/100 (352.74) feet to a point marked by a found concrete bound with drill hole;

Thence: bounded easterly by Hanton City Road S 05° 54' 38" W a distance of two hundred eight and 79/100 (208.79) feet to a point marked by a found concrete bound with drill hole;

Thence: bounded southeasterly by Hanton City Road S 34° 08' 26" W a distance of sixty seven and 71/100 (67.71) feet to a point marked by a found concrete bound with drill hole;

Thence: bounded southeasterly by Hanton City Road S 54° 18' 20" W a distance of one hundred eighty two and 05/100 (182.05) feet to a point marked by a granite bound found;

Thence: bounded southeasterly by Hanton City Road S 44° 33' 20" W a distance of forty five and 2/10 (45.2) feet to a point;

Thence: bounded southeasterly by Hanton City Road S 30 ° 03' 20" W a distance of fifty six and 8/10 (56.8) feet to a point;

Thence: bounded southeasterly by Hanton City Road S 14° 33' 20" W a distance of twenty three (23) (thirty seven and 42/100 (37.42) as measured) feet to a point;

Thence: bounded southeasterly by Hanton City Road S 19° 30' 39" E a distance of two hundred twenty (220) (two hundred seven and 83/100 (207.83) as measured) feet to the point of beginning.

Together with and subject to the rights and easements as set forth in the Private Access Road Easement Agreement dated May 1, 2002 and recorded in Book 322, Page 867; the Cross-Easement Agreement dated June 1, 1999 and recorded in Book 257, Page 498, as amended by Amendment dated May 1, 2002 and recorded in Book 322, Page 837; and the Buffer Zone Easement and Agreement dated May 1, 2002 and recorded in Book 322, Page 848 in the Smithfield Land Evidence Records.



**ENVIRONMENTAL INDEMNITY AGREEMENT**

**THIS ENVIRONMENTAL INDEMNITY AGREEMENT** (this “**Agreement**”) is made as of the 11<sup>th</sup> day of July, 2006, by **ALEXION MANUFACTURING LLC**, a Delaware limited liability company (“**Borrower**”), and **ALEXION PHARMACEUTICALS, INC.**, a Delaware corporation (the “**Guarantor**”; and Borrower and Guarantor are hereinafter referred to herein individually as an “**Indemnitor**” and collectively as the “**Indemnitors**”), in favor of **iSTAR FINANCIAL INC.**, a Maryland corporation (“**Lender**”).

**RECITALS**

A. Borrower is the owner of the Mortgaged Property. Guarantor is the owner, directly or indirectly, of all of the ownership interests in the Borrower.

B. Lender is prepared to make a loan (the “**Loan**”) to Borrower in the aggregate principal amount of up to Twenty-Six Million and No/100 Dollars (\$26,000,000.00) pursuant to that certain Loan and Security Agreement of even date herewith among Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). The Loan shall be evidenced by the Note. The Note shall be secured by, among other things, the Mortgage and the other Loan Documents. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

C. Lender is unwilling to make the Loan unless Indemnitors agree to provide the indemnifications, representations, warranties, covenants and other matters described in this Agreement for the benefit of the Indemnified Parties.

D. Indemnitors will derive financial and other benefits from the Loan.

E. Indemnitors are entering into this Agreement to induce Lender to make the Loan.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitors hereby represent, warrant, covenant and agree for the benefit of the Indemnified Parties as follows:

1. Representations And Warranties.

(a) Except as disclosed in the Environmental Reports, there are no claims, liabilities, investigations, litigation, administrative proceedings, whether pending or, to Indemnitor’s knowledge threatened in writing, or judgments or orders relating to any Hazardous Materials (collectively called “**Environmental Claims**”) asserted or threatened in writing against Borrower or to Indemnitor’s knowledge any past or present tenant, operator or owner of all or any part of the Land and the Improvements (the Land and Improvements are sometimes

collectively referred to as the “**Real Estate**”). Except as disclosed in the Environmental Reports, to Indemnitors’ knowledge, neither Indemnitors nor any other Person has caused or permitted any Release of any Hazardous Materials to be at, from, onto or on the Real Estate in a manner which could form the basis for an Environmental Claim.

(b) Except as disclosed in the Environmental Reports, to Indemnitors’ knowledge, (i) there has been no presence or Release of Hazardous Materials (other than Hazardous Materials used in the usual and customary course of constructing, operating and maintaining the Real Estate or any other real property covered by this paragraph in compliance with all applicable Environmental Laws) at, from, onto or on the Real Estate in violation of Environmental Laws or in any manner that could have a Material Adverse Effect, (ii) there has been no presence or Release of Hazardous Substances on parcels of land adjacent to the Real Estate in violation of applicable Environmental Laws or in any manner which could have a Material Adverse Effect, and (iii) no part of the Real Estate nor any part of parcels adjacent to the Real Estate, including the groundwater located thereon, is presently contaminated by Hazardous Materials in violation of applicable Environmental Laws or in any manner that could have a Material Adverse Effect. Except as disclosed in the Environmental Reports, to the knowledge of Indemnitors, no underground or above ground storage tanks or surface impoundments are, or were located, on, under or at the Real Estate.

(c) Except as disclosed in the Environmental Reports, to Indemnitors’ knowledge, Borrower and the Mortgaged Property has been and is currently in compliance with all applicable Environmental Laws, including obtaining and maintaining in effect all permits, licenses or other authorizations required by Environmental Laws.

(d) Except as disclosed in the Environmental Reports, neither the Borrower nor the Real Estate is the subject of any pending or to Indemnitor’s knowledge proposed or threatened site Remediation.

## 2. Environmental Covenants.

(a) Indemnitors shall at all times comply, and cause the Mortgaged Property to comply, with all applicable Environmental Laws. Indemnitors shall not install or permit to be installed, except in accordance with all applicable Environmental Laws, any asbestos containing material or above-ground or below-ground storage tanks at, on, above or under the Real Estate.

(b) Indemnitors shall promptly take any and all necessary remedial actions upon obtaining knowledge of the presence or Release of any Hazardous Materials on, under or about the Real Estate in violation of any Environmental Laws or in any manner that could have a Material Adverse Effect. In the event any such Person undertakes any remedial action with respect to any such Hazardous Materials, such Person shall conduct and complete such remedial action in compliance with all applicable Environmental Laws.

(c) If an Event of Default exists or Lender at any time has a reasonable basis to believe that there may be a violation of any Environmental Laws by, or any liability arising thereunder of, an Indemnitor or any other Person relating to the Real Estate, then Indemnitors shall, upon request from Lender, provide Lender with such reports, certificates, engineering

studies or other written material or data as Lender may reasonably require so as to satisfy Lender that the Borrower and the Mortgaged Property are in compliance with all applicable Environmental Laws.

(d) In the event that the Real Estate (or any portion thereof) becomes the subject of any Remediation, Indemnitors shall commence such Remediation no later than the earlier of (a) thirty (30) days after written demand by Lender for performance thereof, or (b) such shorter period of time as may be required under applicable law or direction of any Governmental Authorities and thereafter shall diligently prosecute the same to completion in accordance with all applicable Environmental Laws. All Remediation shall be performed by contractors approved in advance by Lender, which approval shall not be unreasonably withheld, conditioned or delayed, and under the supervision of a consulting engineer approved by Lender, which approval shall not be unreasonably withheld, conditioned or delayed. All costs and expenses of such Remediation shall be paid by Indemnitors, including, without limitation, Lender's reasonable attorneys' fees and actual out of pocket third party costs incurred in connection with monitoring or review of such Remediation. In the event Indemnitors shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remediation, Lender may, but shall not be required to, cause such Remediation to be performed, and all actual out of pocket third party costs and expenses thereof, or incurred in connection therewith, shall become an Obligation under the Loan.

3. Indemnified Rights/Cooperation and Access. Indemnitors shall permit Lender, any authorized representative of Lender and any consultant or other Person retained by Lender to enter upon, examine, test and inspect the Real Estate during normal business hours upon reasonable advance notice. Subject to the limitations set forth in the Loan Agreement, such entry, examination, testing and inspecting and reporting with respect to such entry, examination, testing or inspecting shall be at the expense of Indemnitors if (a) an Event of Default has occurred and is continuing or (b) Lender has reasonably determined that there may be a violation of Environmental Laws or any liability arising under Environmental Laws, which expense shall be paid by Indemnitors to Lender within ten (10) days of demand. In connection with any entry, examination, test or inspection of the Real Estate, Lender shall, and Lender shall cause any authorized representative of Lender and any consultant or other Person retained by Lender, to use their respective good faith and commercially reasonable efforts not to unreasonably disrupt the operations and/or maintenance of the Mortgaged Property or create or worsen any presence or Release of Hazardous Materials on the Real Estate.

4. Indemnification. Indemnitors shall indemnify, pay, defend, and hold harmless Lender and all other Indemnified Parties from and against any and all Environmental Liabilities which Lender or any other Indemnified Party may suffer, directly, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Real Estate; (b) the violation of any Environmental Laws in connection with the Real Estate; (c) any presence or Release of any Hazardous Materials affecting the Mortgaged Property; (d) the presence at, in, on or under, or the Release, at or from, the Real Estate of any Hazardous Materials, whether or not such condition was known or unknown to Indemnitors; and (e) any Remediation. If any such action or other proceeding shall be brought against Lender, upon written notice from Indemnitors to Lender (given reasonably promptly following Lender's notice to Indemnitors of such action or proceeding), Indemnitors shall be entitled to assume the defense thereof, at Indemnitors'

expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Indemnitors expressly retain. Notwithstanding the foregoing, Lender shall, following notice to and consultation with Indemnitor, have the right to employ separate counsel at Indemnitors' expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Parties and Indemnitors that would make such separate representation advisable. Indemnitors shall have no obligation to indemnify an Indemnified Party to the extent of damage or loss resulting from such Person's gross negligence or willful misconduct. Indemnitors' obligations under this Agreement shall not be subject to any limitations on liability provided for in any of the Loan Documents. The covenants and agreements of Indemnitors set forth in this Agreement (including without limitation the indemnity provided for herein): (a) are separate and distinct obligations from Indemnitors' obligations with respect to the Loan and under the Loan Documents and do not constitute the substantial equivalent of such obligations, (b) shall not be discharged or satisfied by foreclosure of the Mortgage or any Lien created by any of the other Loan Documents, and (c) shall continue in effect after any transfer of the Mortgaged Property, including transfers pursuant to foreclosure proceedings (whether judicial or nonjudicial), or by any deed in lieu of foreclosure. In no event shall the indemnification contained herein include consequential or punitive damages resulting from any claims brought directly by Lender, however, such indemnification shall include consequential and punitive damages arising in claims brought by third parties.

5. Duty to Defend and Attorneys and Other Fees and Expenses.

(a) Indemnitors shall immediately upon becoming aware thereof advise Lender in writing and in reasonable detail of: (1) any Release, disposal, existence or discharge of any Hazardous Materials at the Real Estate required to be reported to any Governmental Authority under all applicable Environmental Laws, (2) any and all written communications sent or received by an Indemnitor with respect to any Environmental Claims or any Release, disposal, existence or discharge of Hazardous Materials required to be reported to any Governmental Authority or otherwise, (3) any remedial action taken by an Indemnitor or any other Person in response to any Hazardous Materials on, under or about the Real Estate (or parcels adjacent to the Real Estate), the existence of which could result in an Environmental Claim; (4) the discovery by an Indemnitor of any occurrence or condition on any real property adjoining or in the vicinity of the Real Estate that could cause such real property or any part thereof to be classified as "border-zone property" or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws; (5) any request for information from any Governmental Authority that indicates such Governmental Authority is investigating whether an Indemnitor may be potentially responsible for a Release, disposal or discharge of Hazardous Materials; and (6) the Release, existence, disposal or discharge of Hazardous Materials from or onto the Real Estate which would reasonably be anticipated to have a Material Adverse Effect.

(b) Indemnitors shall, at their own expense, provide copies of such documents or information as Lender may reasonably request in relation to any matters disclosed pursuant to this Section 5.

6. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

The term “**Environmental Liabilities**” includes any damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminutions in value of the Mortgaged Property, fines, penalties, charges, costs of remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and litigation costs, attorneys’ fees, costs of appeal, engineers’ fees, environmental consultants’ fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

The term “**Indemnified Parties**” includes Lender, any Person who is or will have been involved with the servicing of the Loan, any Person in whose name the encumbrance created by the Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, Investors (defined below)), as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, members, managers, employees, agents, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other Person who holds or acquires, or will have held, a participation or other full or partial interest in the Loan or the Mortgaged Property, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender’s assets and business).

The term “**Investors**” means collectively, any purchaser, transferee, assignee, servicer, participant or investor of or in the Loan or the securities which may be issued in connection with a Securitization.

The term “**Release**” includes, but is not limited to, any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

The term “**Remediation**” means any investigation, site monitoring, containment, cleanup, removal, restoration, or other activity of any kind which are reasonably necessary under any applicable Environmental Laws.

7. **Unimpaired Liability.** The liability of Indemnitors under this Agreement shall in no way be limited or impaired by, and each Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents. In addition, the liability of Indemnitors under this Agreement shall in no way be limited or impaired by (i) any extensions of time for performance required by the Loan Documents, (ii) any sale or transfer of all or part of the Mortgaged Property, (iii) limitations on, or release of liability under, any of the other Loan Documents, (iv) the accuracy or inaccuracy of the representations and warranties made by an Indemnitor under any of the Loan Documents or herein, (v) the release of

an Indemnitor or any other Person from performance or observance of any of the agreements, covenants, terms or condition contained in any of the other Loan Documents by operation of law, Lender's voluntary act or otherwise, (vi) the release or substitution in whole or in part of any Collateral, or (vii) Lender's failure to record the Mortgage or file any UCC financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitors and with or without consideration.

8. Enforcement. Upon the occurrence and during the continuance of an Event of Default, Indemnified Parties may enforce the obligations of Indemnitors without first resorting to or exhausting any security or collateral or without first having recourse to any other Loan Documents or any of the Collateral, through foreclosure proceedings or otherwise, provided, however, that nothing herein shall inhibit or prevent Lender from suing on the Note, foreclosing, or exercising any power of sale or other rights and remedies under the Loan Documents. This Agreement is not collateral or security for the Indebtedness of an Indemnitor pursuant to the Loan, unless Lender expressly elects in writing to make this Agreement additional collateral or security for the Indebtedness of an Indemnitor pursuant to the Loan, which Lender is entitled to do in its sole and absolute discretion. Except as otherwise provided herein, it is not necessary for an Event of Default to have occurred for Indemnified Parties to exercise their rights pursuant to this Agreement. Indemnitor is fully and personally liable for the obligations pursuant to this Agreement, and such liability is not limited to the original or amortized principal balance of the Loan or the value of the Collateral.

9. Survival. The obligations and liabilities of Indemnitors under this Agreement shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Mortgage. Notwithstanding the provisions of this Agreement to the contrary, the liabilities and obligations of Indemnitors hereunder shall not apply to the extent that Indemnitors can prove that such liabilities and obligations arose solely from Hazardous Materials that: (a) were not present on or a threat to the Real Estate prior to the earlier of (1) a foreclosure under the Mortgage, (2) the delivery by Borrower to, and acceptance by, Lender or its designee of, a deed in lieu of foreclosure with respect to the Mortgaged Property, (3) Lender's (or its designee, including any receiver) taking possession and control of the Mortgaged Property after the occurrence of an Event of Default, or (b) were the proximate result of any intentional act or gross negligence of any Indemnified Party.

10. Interest. Any amounts payable to any Indemnified Parties under this Agreement shall become immediately due and payable on demand and, if not paid within ten (10) days of such demand therefor, shall bear interest at the lesser of (a) the Default Rate or (b) the maximum interest rate which Indemnitor may by law pay or Indemnified Parties may charge and collect, from the date payment was due.

11. Waivers. (a) To the fullest extent permitted by applicable law Indemnitors hereby waive and relinquish (i) any right or claim of right to cause a marshaling of Indemnitors' assets or to cause Lender or other Indemnified Parties to proceed against any of the Collateral before proceeding under this Agreement against an Indemnitor; (ii) all rights and remedies accorded by applicable law to indemnitors or guarantor, except any rights of

subrogation which Indemnitor may have, provided that the indemnity provided for hereunder shall neither be contingent upon the existence of any such rights of subrogation nor subject to any claims or defenses whatsoever which may be asserted in connection with the enforcement or attempted enforcement of such subrogation rights including, without limitation, any claim that such subrogation rights were abrogated by any acts of Lender or other Indemnified Parties; (iii) the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against or by Lender or other Indemnified Parties; (iv) notice of acceptance hereof and of any action taken or omitted in reliance hereon; (v) presentment for payment, demand of payment, protest or notice of nonpayment or failure to perform or observe, or other proof, or notice or demand; and (vi) all homestead exemption rights against the obligations hereunder and the benefits of any statutes of limitations or repose. Notwithstanding anything to the contrary contained herein, Indemnitors hereby agree to postpone the exercise of any rights of subrogation with respect to any Collateral securing the Loan until the Loan shall have been paid in full.

**12. WAIVER OF JURY TRIAL. INDEMNITORS AND, BY ACCEPTANCE HEREOF, LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION AND RELATIONSHIP THAT IS BEING ESTABLISHED. INDEMNITORS AND LENDER ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF INDEMNITORS OR LENDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. INDEMNITORS AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. INDEMNITORS AND LENDER FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, THE LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

13. Subrogation. Indemnitors shall take any and all reasonable actions, including institution of legal action against third parties, necessary or appropriate to obtain reimbursement, payment or compensation from such persons responsible for the presence of any

Hazardous Materials at, in, on, under or near the Real Estate or otherwise obligated by law to bear the cost. Indemnified Parties shall be and hereby are subrogated to all of Indemnitors' rights now or hereafter in such claims.

14. Indemnitors' Representations and Warranties. Each Indemnitor represents and warrants that:

(a) it has the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; the execution, delivery and performance of this Agreement by Indemnitor has been duly and validly authorized; and all requisite action has been taken by Indemnitor to make this Agreement valid and binding upon Indemnitor, enforceable in accordance with its terms.

(b) its execution of, and compliance with, this Agreement is in the ordinary course of business of Indemnitor and will not result in the breach of any term or provision of the charter, by-laws, partnership or trust agreement, or other governing instrument of Indemnitor or result in the breach of any term or provision of, or conflict with or constitute a default under, or result in the acceleration of any obligation under, any agreement, indenture or loan or credit agreement or other instrument to which Indemnitor or the Mortgaged Property is subject, or result in the violation of any law, rule, regulation, order, judgment or decree to which Indemnitor or the Mortgaged Property is subject;

(c) it does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant contained in this Agreement;

(d) to Indemnitor's knowledge, no approval, authorization, order, license or consent of, or registration or filing with, any governmental authority or other person, and no approval, authorization or consent of any other party is required in connection with this Agreement; and

(e) this Agreement constitutes a valid, legal and binding obligation of Indemnitor, enforceable against it in accordance with the terms hereof, subject to bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting creditor's rights generally.

15. No Waiver. No delay by any Indemnified Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of any such privilege, power or right.

16. Notice of Legal Actions. Each Indemnitor hereto shall, within five (5) Business Days of receipt thereof, give notice to the Lender of (i) any notice, advice or other communication from any Governmental Authority or any source whatsoever with respect to Hazardous Materials on, from or affecting the Real Estate relating to a material violation of an Environmental Law, and (ii) any legal action brought against such party or related to the Mortgaged Property. Such notice shall comply with the provisions of Section 19 hereof.

17. Examination of Books and Records. In addition to any other rights of Indemnified Parties under the Loan Documents, upon reasonable notice during normal business



hours, the Indemnified Parties and their attorneys, representatives and accountants shall have the right to examine the records, books, management and other papers of Indemnitors relating to the environmental condition of the Mortgaged Property. Indemnified Parties and their accountants and other representatives shall have the right to make copies and extracts from the foregoing records and other papers. Lender may disclose to any Interested Party (as such term is defined in Section 18 below) and to any Governmental Authority and all prospective Interested Parties, their counsel and advisors, any and all information Lender ever has about the environmental condition or compliance of the Mortgaged Property, as Lender determines reasonably necessary or desirable under conditions of confidentiality equal to those set forth in the Loan Agreement, but shall be under no duty to disclose any such information except as may be required by law. Lender shall be under no duty to make any environmental assessment of the Mortgaged Property, and in no event shall any such environmental assessment by Lender be or give rise to a representation that any Hazardous Materials are or are not present on the Mortgaged Property, or that there has been or shall be compliance with any Environmental Law, nor shall Indemnitors or any other person be entitled to rely on any environmental assessment made by Lender or at Lender's request. Lender owes no duty of care to protect Indemnitors or any other person against, or to inform them of, any Hazardous Materials or other adverse condition affecting the Mortgaged Property. By acceptance hereof, Lender hereby acknowledges and agrees that the terms and provisions of this Section 17 are subject to the confidentiality requirements set forth in Section 11.12 of the Loan Agreement.

18. Transfer of Loan. Lender may, at any time, sell, transfer or assign the Loan Documents, or engage in a Securitization. Lender may forward to each purchaser, transferee, assignee, servicer or participant (the foregoing entities hereinafter collectively referred to as the "**Interested Parties**") and all prospective Interested Parties, their counsel and advisors and to any Rating Agencies, all documents and information which Lender now has or may hereafter acquire relating to Indemnitors and the Mortgaged Property, whether furnished by an Indemnitor, any guarantor or otherwise, as Lender determines necessary or desirable. Indemnitors and any guarantor agree to cooperate with Lender in connection with any transfer made pursuant to this Section 18, including, without limitation, the delivery of an estoppel certificate and such other documents as may be reasonably requested by Lender. Indemnitors shall also furnish, and Indemnitors and any guarantor hereby consent to Lender furnishing to such Interested Parties or such prospective Interested Parties, any and all information concerning the financial condition of the Indemnitors and any guarantor and any and all information concerning the Mortgaged Property as may be furnished in connection with any sale, transfer or other Securitization.

19. Notices. Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied (with request for confirmation) or sent by overnight courier service or United States registered mail return receipt requested, postage prepaid. Any notice so given shall be deemed effective upon delivery or on refusal or failure of delivery during normal business hours. Notices shall be addressed to the parties at the following addresses or to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 19.

If to Indemnitors: Alexion Pharmaceuticals, Inc.  
352 Knotter Drive  
Cheshire, Connecticut 06410  
Attn: Vikas Sinha  
Telephone: (203) 271-8309  
Facsimile: (203) 271-8198  
E-mail: [sinhav@alxn.com](mailto:sinhav@alxn.com)

With a copy to: Eiseman Levine Lehrhaupt & Kakoyiannis P.C.  
805 Third Avenue, 10th Floor  
New York, New York 10022  
Attn: Jonathan Eiseman, Esq.  
Telephone: (212) 752-1000  
Facsimile: (212) 355-4608

If to Lender: iStar Financial Inc.  
1114 Avenue of the Americas, 27<sup>th</sup> Floor  
New York, New York 10036  
Attn: Chief Operating Officer  
Telephone: 212-930-9400  
Facsimile: 212-930-9494

With a copy to: iStar Financial Inc.  
1114 Avenue of the Americas, 27<sup>th</sup> Floor  
New York, New York 10036  
Attn: Nina B. Matis, Esq./General Counsel  
Telephone: 212-930-9406  
Facsimile: 212-930-9492

With a copy to: iStar Asset Services Inc.  
180 Glastonbury Boulevard, Suite 201  
Glastonbury, Connecticut 06033  
Attn: President  
Telephone: 860-815-5900  
Facsimile: 860-815-5901

With a copy to: Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661-3693  
Attn: Gregory P.L. Pierce, Esq.  
Telephone: 312-902-5541  
Facsimile: 312-577-8893

20. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

21. No Oral Change. This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of an Indemnitor or any Indemnified Party, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

22. Headings, Etc. The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

23. Number and Gender/Successors and Assigns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require. Without limiting the effect of specific references in any provision of this Agreement, the term "Indemnitor" shall be deemed to refer to each and every Person comprising an Indemnitor from time to time, as the sense of a particular provision may require, and to include the heirs, executors, administrators, legal representatives, successors and assigns of Indemnitors, all of whom shall be bound by the provisions of this Agreement, provided that except as permitted herein and in the Loan Agreement, no obligation of Indemnitors may be assigned except with the written consent of Lender. Each reference herein to Lender shall be deemed to include its successors and assigns. This Agreement shall inure to the benefit of Indemnified Parties and their respective successors and assigns.

24. Release of Liability. Any one or more parties liable upon or in respect of this Agreement may be released without affecting the liability of any party not so released.

25. Rights Cumulative. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies which Lender has under the other Loan Documents or would otherwise have at law or in equity.

26. Inapplicable Provisions. If any term, condition or covenant of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

27. Governing Law. PURSUANT TO SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, INDEMNITORS AND LENDER AGREE THAT THIS AGREEMENT AND ALL RIGHTS, OBLIGATIONS AND LIABILITIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

28. Conflict. In the event of any specific conflict between this Agreement and the Loan Agreement, the provisions of the Loan Agreement shall control. In the event such a determination cannot be made, the terms of the Loan Agreement shall control.

29. Joint and Several. The Obligations of Indemnitors, and each of them hereunder, are joint and several.

30. Miscellaneous. (a) Wherever pursuant to this Agreement (i) Lender exercises any right given to it approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Wherever pursuant to this Agreement it is provided that Indemnitors pay any costs and expenses, such costs and expenses shall include, but not be limited to, legal fees and disbursements actually incurred by Lender.

31. Consent of Jurisdiction/Service of Process. IN ACCORDANCE WITH SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, INDEMNITORS AND LENDER HEREBY CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLE AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. INDEMNITOR AND LENDER ACCEPT FOR ITSELF RESPECTIVELY AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVE ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREE TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. INDEMNITOR AND LENDER ACKNOWLEDGE AND AGREE THAT SERVICE OF PROCESS IN ANY SUCH ACTION, SUIT OR PROCEEDING WILL BE DEEMED EFFECTIVE. SERVICE OF PROCESS ON INDEMNITOR SHALL BE MADE IN ACCORDANCE WITH THE LAWS GOVERNING AT THE TIME OF SERVICE TO THE ADDRESS IN SECTION 19 ABOVE OR AT SUCH OTHER ADDRESS AS SUCH INDEMNITOR MAY HAVE FURNISHED AS TO ITSELF TO THE SERVING PARTY BY LIKE NOTICE, OR TO THE LAST KNOWN ADDRESS OF SUCH INDEMNITOR PROVIDED THEREUNDER WILL BE DEEMED EFFECTIVE.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, this Agreement has been executed by Indemnitor and is effective as of the day and year first above written.

INDEMNITORS:

ALEXION PHARMACEUTICALS, INC., a Delaware corporation

By: /s/ David Keiser

Name: DAVID KEISER

Title: PRES & COO

ALEXION MANUFACTURING LLC, a Delaware limited liability company

By: ALEXION PHARMACEUTICALS, INC., a Delaware corporation, its sole member

By: /s/ David Keiser

Name: DAVID KEISER

Title: PRES & COO

Environmental Indemnity

I, Leonard Bell, M.D., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Alexion Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.
  - (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 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:
  - (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.

Dated: November 8, 2006

/s/ Leonard Bell, M.D.

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Leonard Bell, M.D.  
Chief Executive Officer

I, Vikas Sinha, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Alexion Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.
  - (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 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:
  - (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.

Dated: November 8, 2006

/s/ Vikas Sinha

Vikas Sinha

Senior Vice President and Chief Financial Officer

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report on Form 10-Q of Alexion Pharmaceuticals, Inc. (the "Company") for the fiscal quarter ended September 30, 2006 as filed with the Securities and Exchange Commission (the "Report"), I, Leonard Bell M.D., Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 8, 2006

/s/ Leonard Bell, M.D.

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Leonard Bell, M.D.

Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.



CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report on Form 10-Q of Alexion Pharmaceuticals, Inc. (the "Company") for the fiscal quarter ended September 30, 2006 as filed with the Securities and Exchange Commission (the "Report"), I, Vikas Sinha, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 8, 2006

/s/ Vikas Sinha

Vikas Sinha

Senior Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.