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

# FORM 10-Q

**(Mark One)**

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

**For the quarterly period ended September 30, 2021**

**or**

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

**For the transition period from _____to _____**

**Commission File Number 001-40826**

Thorne HealthTech

# THORNE HEALTHTECH, INC.
**(Exact name of registrant as specified in its charter)**

| **Delaware** | **27-2877253** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |
| **152 W. 57 th Street, New York, NY** | **10019** |
| **(Address of Principal Executive Offices)** | **(Zip Code)** |

**Registrant's telephone number, including area code: (929) 251-6321**

**N/A**
**(Former name, former address and former fiscal year, if changed since last report)**

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

| Title of each class | Trading symbol(s) | Name of each exchange on which registered |
|---|---|---|
| **Common Stock, $0.01 par value per share** | **THRN** | **The Nasdaq Stock Market LLC** |

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

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

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

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | Accelerated filer | ☐ |
| Non-accelerated filer | ☒ | Smaller reporting | ☒ |

Emerging growth company ☒

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

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

The number of shares outstanding of the registrant's common stock, par value $0.01 per share, as of November 10, 2021 was 52,545,305.

**THORNE HEALTHTECH, INC.**
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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (Quarterly Report) contains forward-looking statements. All statements other than statements of historical facts contained in this Quarterly Report, including statements regarding our future results of operations and financial position, business strategy, commercial activities and costs, research and development costs, timing and likelihood of success, as well as plans and objectives of management for future operations, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that are in some cases beyond our control and may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "would," "expect," "plan," "anticipate," "could," "intend," "target," "project," "believe," "estimate," "predict," "potential," or "continue" or the negative of these terms or other similar expressions. Forward-looking statements contained in this Quarterly Report include, but are not limited to, statements about:

- our business, business strategy, products and services we may offer in the future;
- our ability to increase brand awareness, attract and retain customers and sell additional products and services to new and existing customers;
- our ability to convert customers into recurring subscribers;
- our ability to develop new products and services or improve existing products and services;
- our future financial performance, including trends in revenue, costs of revenue, gross profit, operating expenses and free cash flow;
- expectations about industry trends, such as a shift towards personalized healthcare and increasing demand for convenience;
- our ability to efficiently spend on advertising and marketing;
- our ability to maintain profitability;
- our ability to compete successfully in competitive markets and expand internationally;
- our ability to maintain relationships with key distributors, ingredient suppliers, influencers and research institutions;
- our ability to respond to rapid technological changes;
- our expectations and management of future growth;
- expectations about legal and regulatory changes;
- our ability to attract and retain key personnel and highly qualified personnel;
- our ability to protect our brand and maintain our NPS score;
- our ability to maintain key certifications, such as our NSF Certified Facility;
- our ability to maintain, protect and enhance our intellectual property, including our multi-omics database and trade secrets;
- restrictions and penalties as a result of privacy and data protection laws;

- our ability to successfully identify, acquire and integrate companies, technologies and assets;
- the increased expenses associated with being a public company;
- the outcome and impact of litigation, including litigation associated with the filings of IPRs;
- the timing and results of future regulatory filings; and
- other risks and uncertainties, including those listed under the caption "Risk Factors."

We have based these forward-looking statements largely on our current expectations and projections about our business, the industry in which we operate and financial trends that we believe may affect our business, financial condition, results of operations and prospects, and these forward-looking statements are not guarantees of future performance or development. These forward-looking statements speak only as of the date of this Quarterly Report and are subject to a number of risks, uncertainties and assumptions described in the section titled "Risk Factors" and elsewhere in this Quarterly Report. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Except as required by applicable law, we undertake no obligation to update or revise any forward-looking statements contained herein to reflect events or circumstances after the date of this Quarterly Report, whether as a result of any new information, future events or otherwise.

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

## PART I. FINANCIAL INFORMATION

### Item 1. Financial Statements

**THORNE HEALTHTECH, INC.**
**Condensed Consolidated Balance Sheets**

| | September 30, 2021 (unaudited) | December 31, 2020 |
|---|---|---|
| **Assets** | | |
| Current Assets | | |
| Cash | $ 76,690,725 | $ 15,262,094 |
| Accounts receivable, net | 5,684,332 | 2,378,994 |
| Related party receivables | 567,300 | 135,399 |
| Inventories, net | 37,742,924 | 28,066,024 |
| Prepaid expenses and other current assets | 4,405,006 | 886,328 |
| Total current assets | 125,090,287 | 46,728,839 |
| Property and equipment, net | 25,495,915 | 23,189,730 |
| Operating lease right-of-use asset, net | 18,822,817 | 17,740,816 |
| Finance right-of-use asset | 962,931 | 767,237 |
| Intangible assets, net | 6,876,583 | 7,635,253 |
| Goodwill | 14,440,683 | 14,440,683 |
| Investments | 1,150,000 | 1,150,000 |
| Equity-method investments | — | 3,382,147 |
| Other assets | 829,720 | 454,429 |
| Total assets | $193,668,936 | $115,489,134 |

**THORNE HEALTHTECH, INC.**
**Condensed Consolidated Balance Sheets**

| | September 30, 2021 (unaudited) | December 31, 2020 |
|---|---|---|
| **Liabilities, Convertible Preferred Stock and Stockholders' Equity (Deficit)** | | |
| **Current Liabilities** | | |
| Revolving line of credit | $ 20,000,000 | $ — |
| Accounts payable | 17,749,306 | 8,691,430 |
| Accrued payroll | 2,783,128 | 2,592,143 |
| Other accrued expenses | 1,294,299 | 891,018 |
| Related party payable | 1,116,306 | 809,080 |
| Current portion of operating lease liability | 3,048,842 | 2,603,930 |
| Current portion of finance lease liability | 400,336 | 269,212 |
| Current portion of long-term debt | 487,001 | 223,400 |
| Total current liabilities | 46,879,218 | 16,080,213 |
| **Long-term Liabilities** | | |
| Revolving line of credit | — | 20,000,000 |
| Operating lease liability, net of current portion | 27,693,191 | 27,284,356 |
| Finance lease liability, net of current portion | 536,442 | 454,857 |
| Long-term debt, net of current portion | 1,209,899 | 469,471 |
| Warrant liability | 3,028,402 | 3,930,930 |
| Other long-term liabilities | 746,564 | 621,115 |
| Total liabilities | 80,093,716 | 68,840,942 |
| **Commitments and Contingencies (Notes 8 and 13)** | | |
| **Series E convertible preferred stock;** par value $0.01, 0 and 27,011,500 authorized as of September 30, 2021 and December 31, 2020, respectively; 0 and 27,011,500 issued and outstanding as of September 30, 2021 and December 31, 2020, respectively; aggregate liquidation preference of $134,449,035 as of December 31, 2020 | — | 133,484,531 |
| **Stockholders' Equity (Deficit)** | | |
| Common stock; par value $0.01, 200,000,000 and 63,190,000 authorized as of September 30, 2021 and December 31, 2020, respectively; 52,514,600 and 12,323,830 issued and outstanding as of September 30, 2021 and December 31, 2020, respectively | 525,146 | 123,238 |
| Common stock, Class B; no par value, 0 and 8,900,000 shares authorized as of September 30, 2021 and December 31, 2020 respectively; 0 shares issued and outstanding as of September 30, 2021 and December 31, 2020 | — | — |
| Additional paid-in capital | 246,927,880 | 52,451,862 |
| Accumulated deficit | (133,764,392) | (132,964,365) |
| Total stockholders' equity (deficit)—Thorne HealthTech, Inc. | 113,688,634 | (80,389,265) |
| Non-controlling interest | (113,414) | (6,447,074) |
| Total stockholders' equity (deficit) | 113,575,220 | (86,836,339) |
| Total liabilities, convertible preferred stock and stockholders' equity (deficit) | $ 193,668,936 | $ 115,489,134 |

*See accompanying notes to financial statements.*

**THORNE HEALTHTECH, INC.**
**Condensed Consolidated Statements of Operations**
**(unaudited)**

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2021 | 2020 | 2021 | 2020 |
| Net sales | $48,009,678 | $38,774,342 | $135,383,383 | $102,278,334 |
| Cost of sales | 22,469,952 | 19,444,844 | 63,710,703 | 54,900,528 |
| Gross profit | 25,539,726 | 19,329,498 | 71,672,680 | 47,377,806 |
| Operating expenses: | | | | |
| Research and development | 2,236,913 | 552,060 | 4,279,854 | 3,123,593 |
| Write-off of acquired Drawbridge in-process research and development | — | — | 1,563,015 | — |
| Selling, general, and administrative | 24,222,656 | 13,478,279 | 57,078,758 | 43,003,047 |
| Income (loss) from operations | (919,843) | 5,299,159 | 8,751,053 | 1,251,166 |
| Other (income) expense: | | | | |
| Interest expense (income), net | 29,089 | (137,777) | 392,990 | 724,418 |
| Guarantee fees | 141,949 | 186,600 | 421,220 | 358,560 |
| Change in fair value of warrant liability | (2,212,554) | 420,084 | (902,528) | 1,138,268 |
| Loss on Drawbridge transaction | — | — | 165,998 | — |
| Other expense (income), net | (39,473) | 1,129 | (77,616) | 1,129 |
| Total other (income) expense, net | (2,080,989) | 470,036 | 64 | 2,222,375 |
| Income (loss) before income taxes and loss from equity interests in unconsolidated affiliates | 1,161,146 | 4,829,123 | 8,750,989 | (971,209) |
| Income tax expense | 78,914 | 47,934 | 122,452 | 128,708 |
| Net income (loss) before loss from equity interests in unconsolidated affiliates | 1,082,232 | 4,781,189 | 8,628,537 | (1,099,917) |
| Loss from equity interests in unconsolidated affiliates | (131,390) | (620,054) | (3,304,496) | (1,064,080) |
| Net income (loss) | 950,842 | 4,161,135 | 5,324,041 | (2,163,997) |
| Net (income) loss—non-controlling interests | (77,945) | 583,661 | (323,006) | (103,566) |
| Net income (loss) attributable to Thorne HealthTech, Inc. | 1,028,787 | 3,577,474 | 5,647,047 | (2,060,431) |
| Undistributed earnings attributable to Series E convertible preferred stockholders | (553,078) | (3,577,474) | (5,171,338) | — |
| Net income (loss) attributable to common stockholders | $ 475,709 | $ — | $ 475,709 | $ (2,060,431) |
| Earnings (loss) per share: | | | | |
| Basic | $ 0.02 | $ — | $ 0.02 | $ (0.20) |
| Diluted | $ 0.01 | $ — | $ 0.01 | $ (0.20) |
| Weighted average common shares outstanding: | | | | |
| Basic | 21,212,668 | 11,932,085 | 19,032,403 | 10,439,466 |
| Diluted | 51,222,522 | 40,413,805 | 50,327,893 | 39,866,905 |

*See accompanying notes to financial statements.*

**THORNE HEALTHTECH, INC.**
**Condensed Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit)**
**(unaudited)**

| | Convertible Preferred Stock | | Common Stock | | Class B Common Stock | | Additional Paid-In Capital | Accumulated Deficit | Noncontrolling Interests | Total Stockholders' Equity (Defic |
|---|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount | | | | |
| **Three Months Ended September 30, 2021:** | | | | | | | | | | |
| Balance, June 30, 2021 | 27,011,500 | $ 133,484,531 | 12,323,830 | $123,238 | 6,179,270 | $ — | $ 52,986,527 | $(134,793,179) | $ (35,469) | $ (81,718,8 |
| Conversion of all shares of Class B common stock to common stock | — | — | 6,179,270 | 61,793 | (6,179,270) | — | (61,793) | — | — | - |
| Conversion of Series E convertible preferred stock to common stock | (27,011,500) | (133,484,531) | 27,011,500 | 270,115 | — | — | 133,214,416 | — | — | 133,484,5 |
| Issuance of common stock in September 2021 initial public offering (IPO)at $10.00 per share, net of issuance costs of $10,031,797 | — | — | 7,000,000 | 70,000 | — | — | 59,898,203 | — | — | 59,968,2 |
| Stock-based compensation | — | — | — | — | — | — | 890,527 | — | — | 890,5 |
| Net income | — | — | — | — | — | — | — | 1,028,787 | (77,945) | 950,8 |
| Balance, September 30, 2021 | — | $ — | 52,514,600 | $525,146 | — | $ — | $246,927,880 | $(133,764,392) | $ (113,414) | $ 113,575,2 |
| **Three Months Ended September 30, 2020:** | | | | | | | | | | |
| Balance, June 30, 2020 | 27,011,500 | $ 133,484,531 | 9,749,505 | $ 97,495 | — | $ — | $ 29,015,348 | $(135,244,524) | $ (6,538,234) | $(112,669,9 |
| Exercise of common stock warrants | — | — | 4,230,170 | 42,302 | — | — | 22,087,672 | — | — | 22,129,9 |
| Exercise of stock options | — | — | 805,450 | 8,054 | — | — | 842,627 | — | — | 850,6 |
| Repurchase of common stock | — | — | (2,461,295) | (24,613) | — | — | 24,613 | — | — | - |
| Stock-based compensation | — | — | — | — | — | — | 240,801 | — | — | 240,8 |
| Net income | — | — | — | — | — | — | — | 3,577,474 | 583,661 | 4,161,1 |
| Balance, September 30, 2020 | 27,011,500 | $ 133,484,531 | 12,323,830 | $123,238 | — | $ — | $ 52,211,061 | $(131,667,050) | $ (5,954,573) | $ (85,287,3 |

**THORNE HEALTHTECH, INC.**
**Condensed Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit)**
**(unaudited)**

| | Convertible Preferred Stock | | Common Stock | | Class B Common Stock | | Additional Paid-In Capital | Accumulated Deficit | Noncontrolling Interests | Total Stockholde Equity (Def |
|---|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount | | | | |
| **Nine Months Ended September 30, 2021:** | | | | | | | | | | |
| Balance, December 31, 2020 | 27,011,500 | $ 133,484,531 | 12,323,830 | $123,238 | — | $ — | $ 52,451,862 | $(132,964,365) | $ (6,447,074) | $ (86,836, |
| Common stock issued in exchange for remaining interest in consolidated affiliate | — | — | — | — | 6,179,270 | — | — | (6,447,074) | 6,447,074 | |
| Noncontrolling interest in acquired subsidiary | — | — | — | — | — | — | — | — | 209,592 | 209, |
| Conversion of all shares of Class B common stock to common stock | — | — | 6,179,270 | 61,793 | (6,179,270) | — | (61,793) | — | — | |
| Conversion of Series E convertible preferred stock to common stock | (27,011,500) | (133,484,531) | 27,011,500 | 270,115 | — | — | 133,214,416 | — | — | 133,484, |
| Issuance of common stock in September 2021 IPO at $10.00 per share, net of issuance costs of $10,031,797 | — | — | 7,000,000 | 70,000 | — | — | 59,898,203 | — | — | 59,968, |
| Stock-based compensation | — | — | — | — | — | — | 1,425,192 | — | — | 1,425, |
| Net income | — | — | — | — | — | — | — | 5,647,047 | (323,006) | 5,324, |
| Balance, September 30, 2021 | — | $ — | 52,514,600 | $525,146 | — | $ — | $246,927,880 | $(133,764,392) | $ (113,414) | $ 113,575, |
| **Nine Months Ended September 30, 2020:** | | | | | | | | | | |
| Balance, December 31, 2019 | 27,011,500 | $ 133,484,531 | 9,642,705 | $ 96,427 | — | $ — | $ 28,443,614 | $(129,606,619) | $ (5,851,007) | $(106,917, |
| Exercise of common stock warrants | — | — | 4,336,970 | 43,370 | — | — | 22,177,803 | — | — | 22,221, |
| Exercise of stock options | — | — | 805,450 | 8,054 | — | — | 842,627 | — | — | 850, |
| Repurchase of common stock | — | — | (2,461,295) | (24,613) | — | — | 24,613 | — | — | |
| Stock-based compensation | — | — | — | — | — | — | 722,404 | — | — | 722, |
| Net loss | — | — | — | — | — | — | — | (2,060,431) | (103,566) | (2,163, |
| Balance, September 30, 2020 | 27,011,500 | $ 133,484,531 | 12,323,830 | $123,238 | — | $ — | $ 52,211,061 | $(131,667,050) | $ (5,954,573) | $ (85,287, |

*See accompanying notes to financial statements.*

**THORNE HEALTHTECH, INC.**
**Condensed Consolidated Statements of Cash Flows**
**(unaudited)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | **2021** | **2020** |
| **Cash Flows from Operating Activities** | | |
| Net income (loss) | $ 5,324,041 | $ (2,163,997) |
| Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities | | |
| Depreciation and amortization | 3,329,145 | 2,851,203 |
| Change in fair value of warrant liability | (902,528) | 1,138,268 |
| Non-cash lease expense | 4,897,207 | 3,826,305 |
| Stock-based compensation | 1,425,192 | 9,796,595 |
| Change in inventory and receivable reserves | 65,484 | (145,515) |
| Loss from equity interests in unconsolidated affiliate | 3,304,496 | 1,064,080 |
| Loss on Drawbridge transaction | 165,998 | — |
| Write-off of acquired Drawbridge in-process research and development | 1,563,015 | — |
| Change in operating assets and liabilities | | |
| Accounts receivable | (3,296,652) | (3,289,068) |
| Related party receivable | (563,291) | (157,611) |
| Related party payables | 307,226 | 248,745 |
| Inventories | (9,732,333) | 238,887 |
| Prepaid expenses and other assets | (3,164,633) | 281,713 |
| Accounts payable and accrued liabilities | 8,211,866 | 1,959,885 |
| Operating lease liabilities | (4,794,134) | (3,970,684) |
| Net cash provided by operating activities | $ 6,140,099 | $11,678,806 |
| **Cash Flows from Investing Activities** | | |
| Purchase of property and equipment | (2,124,385) | (1,099,414) |
| Acquisition of Drawbridge Health assets, net of cash acquired | (1,412,279) | — |
| Purchase of investment in equity-method investments | — | (400,000) |
| Purchase of investment in unconsolidated subsidiaries | — | (750,000) |
| Purchase of license agreements | (562,958) | (300,000) |
| Net cash used in investing activities | $(4,099,622) | $ (2,549,414) |

**THORNE HEALTHTECH, INC.**
**Condensed Consolidated Statements of Cash Flows**
**(unaudited)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | **2021** | **2020** |
| **Cash Flows from Financing Activities** | | |
| Proceeds from issuance of common stock in IPO | $ 70,000,000 | $ — |
| Payoff of line of credit | — | (12,208,450) |
| Repayment of loan from related party | — | (3,000,000) |
| Proceeds from revolving line of credit | — | 20,000,000 |
| Payments on long-term debt and finance leases | (580,049) | (335,328) |
| Dividends paid on convertible preferred stock | — | (3,266,918) |
| Common stock issuance costs | (10,031,797) | — |
| Proceeds from exercise of common stock warrants | — | 22,221,173 |
| Repurchase of common stock | — | (23,119,913) |
| Payments for loans to management | — | (710,000) |
| Proceeds from repayment of loans to management | — | 710,000 |
| Proceeds from exercise of stock options | — | 127,249 |
| Net cash provided by financing activities | $ 59,388,154 | $ 417,813 |
| **Net Increase in Cash** | 61,428,631 | 9,547,205 |
| **Cash,** beginning of period | 15,262,094 | 463,648 |
| **Cash,** end of period | $ 76,690,725 | $ 10,010,853 |
| **Supplemental Disclosure of Cash Flows Information** | | |
| Cash paid during the year for interest, net of interest received | $ 395,552 | $ 726,020 |
| Income tax paid, net of refunds received | $ 192,618 | $ 52,798 |
| **Noncash Investing and Financing Activities** | | |
| Equipment acquired through finance lease obligations | $ 420,361 | $ 681,247 |
| Equipment acquired through debt obligations | $ 1,274,601 | $ 1,262,237 |
| Right-of-use assets obtained in exchange for lease liabilities | $ 2,913,002 | $ 4,259,688 |
| Promissory note payable issued in exchange for buyback of management options | $ — | $ (6,270,092) |
| Conversion of Series E convertible preferred stock to common stock | $133,484,531 | $ — |
| Conversion of Class B common stock to common stock | $ 61,793 | $ — |

*See accompanying notes to financial statements.*

**THORNE HEALTHTECH, INC.**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**
**(Unaudited)**

## 1. Description of Business and Nature of Operations

Thorne HealthTech, Inc. was originally incorporated under the name of Thorne Holding Corp. (the Company) and was incorporated under the laws of the state of Delaware on June 17, 2010, to acquire 100% of the stock of Thorne Research, Inc. (Thorne Research). On November 13, 2020, the Company changed its name to Thorne HealthTech, Inc.

The Company is a science-driven wellness company, pioneering innovative solutions and personalized approaches to health and wellness. The Company is building a new health category to deliver better health outcomes through a proactive, empowered approach. Its unique, vertically integrated brands, Thorne and Onegevity, provide actionable insights and personalized data, products and services that help individuals take a proactive approach to improve and maintain their health over their lifetime. By combining its proprietary multi-omics database, artificial intelligence (AI) and digital health content with its science-backed nutritional supplements, the Company delivers a total system for health and wellness.

## 2. Summary of Significant Accounting Policies

### *Basis of Presentation*

The accompanying condensed consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles (U.S. GAAP). The condensed consolidated financial statements include the operations of the Company and all of its wholly-owned subsidiaries, as well as majority-owned subsidiaries over which the Company exercises control and, when applicable, entities for which the Company has a controlling financial interest or variable interest for which the Company is the primary beneficiary. All significant intercompany accounts and transactions have been eliminated in consolidation.

On September 10, 2021, the Company approved and effected a 445-for-1 forward stock split of the Company's Class A common stock, Class B common stock, and Series E convertible preferred stock. The par value and other terms of the common stock and preferred stock were not affected by the stock split. All related share and per share amounts have been retroactively adjusted in these condensed consolidated financial statements for all periods presented to reflect the 445-for-1 forward stock split. Furthermore, other related information, including shares of common stock underlying the Company's warrants, stock options and restricted stock units and their respective exercise prices have been retroactively adjusted in these condensed consolidated financial statements for all periods presented to reflect the 445-for-1 forward stock split.

### *Unaudited Consolidated Financial Statements*

The condensed consolidated balance sheet as of September 30, 2021, and the condensed consolidated statements of operations, condensed consolidated convertible preferred stock and stockholders' equity (deficit), and condensed consolidated statements of cash flows for the nine months ended September 30, 2020, and 2021, are unaudited. The unaudited condensed consolidated financial statements have been prepared on the same basis as the annual consolidated financial statements and reflect, in the opinion of management, all adjustments of a normal and recurring nature that are necessary for the fair statement of the Company's financial position as of September 30, 2021, and the results of operations and cash flows for the nine months ended September 30, 2021, and 2020. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. The financial data and the other financial information disclosed in these notes to the condensed consolidated financial statements related to the nine months ended September 30, 2021, and 2020, are also unaudited. The condensed consolidated results of operations for the nine months ended September 30, 2021, are not necessarily indicative of results to be expected for the year ending December 31, 2021, nor for any other future annual or interim period. The condensed consolidated balance sheet as of December 31, 2020, included herein was derived from the audited consolidated financial statements as of that date.

These interim condensed consolidated financial statements should be read in conjunction with the Company's audited financial statements.

### *Use of Estimates*

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and expenses, as well as related disclosure of contingent assets and liabilities. The Company bases its estimates on its historical experience and on assumptions that the Company believes are reasonable; however, actual results could significantly differ from those estimates.

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There have been no significant changes from the significant accounting policies disclosed in the Company's audited financial statements as of and for the year ended December 31, 2020.

***In-process Research and Development***

In-process research and development (IPR&D) was recorded at its fair value using a discounted cash flow model and was assigned to acquired research and development assets that were not fully developed as of the completion of the acquisition of Drawbridge Health, Inc. (the Drawbridge Transaction; see Note 15). IPR&D acquired in an asset purchase is capitalized on the Company's balance sheet at its acquisition-date fair value if the acquired IPR&D has alternative future use. For the IPR&D acquired from the Drawbridge Transaction it was determined that the IPR&D had no alternative future use and therefore it was expensed immediately following the Drawbridge Transaction and is being presented as write-off of acquired Drawbridge in-process research and development in the condensed consolidated statements of operations. Fair value measurement was classified as Level 3 under the fair value hierarchy.

***Fair Value Measurements***

ASC 820, *Fair Value Measurements and Disclosures,* establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs that may be used to measure fair value:

- *Level 1:* Quoted prices (unadjusted) for identical assets or liabilities in active markets that the entity has the ability to access as of the measurement date.
- *Level 2:* Significant other observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or that can be corroborated by observable market data.
- *Level 3:* Significant unobservable inputs that reflect a reporting entity's own assumptions about the assumptions that market participants would use in pricing an asset or liability.

The carrying amounts of certain financial instruments, which include cash, receivables, accounts payable, accrued expenses and the line of credit approximate their fair values as of September 30, 2021 and December 31, 2020 due to their short-term nature and management's belief that their carrying amounts approximate the amount for which the assets could be sold or the liabilities could be settled.

As of September 30, 2021, and December 31, 2020, there were 453,455 warrants classified as a liability (see Note 11). The fair value of the warrant liability is based on the Black-Scholes option model. The Company is required to revalue the warrants at each reporting date with any changes in fair value recorded on the condensed consolidated statement of operations. The valuation of the warrants is classified under Level 3 of the fair value hierarchy due to the need to use assumptions in the valuation that are both significant to the fair value measurement and unobservable.

***Deferred Offering Costs***

The Company capitalizes within other assets, certain legal, accounting and other third-party fees directly related to the Company's in-process equity financings until such financings are consummated. After consummation of the equity financing, these costs are recorded as a reduction of the proceeds received as a result of the offering. Should a planned equity financing be abandoned, terminated or significantly delayed, the deferred offering costs are immediately written off to operating expenses.

On September 22, 2021, the Company's Registration Statement on Form S-1, as amended, was declared effective and on September 23, 2021, the Company's common stock began trading on the Nasdaq Global Select Market, under the ticker symbol "THRN". On September 27, 2021, the Company closed its initial public offering (IPO) of 7,000,000 shares of common stock. Through the completion of the offering, the Company incurred $10.0 million of offering costs, which had been capitalized prior to the completion of the offering. Upon closing of the offering, the Company reclassified these amounts to additional paid in capital, as a reduction of the offering proceeds.

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***Revenue Recognition***

The Company accounts for revenues under Financial Accounting Standards Board (FASB) Topic 606, *Revenue from Contracts with Customers* (ASC 606) using the following steps:

- identify the contract, or contracts, with a customer;
- identify the performance obligations in the contract;
- determine the transaction price;
- allocate the transaction price to the identified performance obligations; and
- recognize revenue when, or as, the Company satisfies the performance obligations.

The Company recognizes revenue at a point in time when it satisfies a performance obligation by transferring control over a product and other promised goods and services to a customer. Significant judgments made in the application of ASC 606 include determining the transaction price and the timing of transfer of control of the performance obligation (i.e., sale of product). The Company considers several factors in determining the point in time when control transfers to the customer. These factors include that legal title transfers to the customer, the Company has a present right to payment, and the customer has assumed the risks and rewards of ownership.

*Professional/B2B Sales:* The Company sells to wholesale customers, including healthcare professionals, retail stores, and through various online sites operated by authorized resellers, such as Emerson Ecologics, LLC. Certain customers resell Company products in online marketplaces, however, no inventories are held on consignment; revenue is recognized when control of the goods is transferred to these customers which is typically at the time of shipment (FOB shipping point). For several specific customers, revenue is recognized at time of delivery (FOB destination). The terms of payment over the recognized receivables from distributors are less than one year and therefore these sales do not have any significant financing components. The Company uses standard price lists in determining the transaction price, adjusted for estimates of variable consideration. Discounts stated or implied are allocated entirely to the sole performance obligation.

*Direct-to-Consumer (DTC) Transaction Sales:* The Company also sells direct to consumers online through a Company owned and operated website. Revenue from online sales is recognized at time of shipment of the product. In addition, the Company sells testing services and test kits. Testing services and test kits are recorded as revenue when the test results are provided to the customer. Shipping and handling costs are considered a fulfillment activity and are expensed as incurred.

*DTC Subscription Sales:* The Company offers its customers the ability to opt into recurring automatic refills on Thorne.com and on Amazon.com. Revenue is recognized under the subscription program when product is shipped to the consumer. No funds are collected at the time a consumer signs up for a subscription and the customer can cancel or modify a subscription at any time at no cost to the customer. On the Company website, customers may elect to subscribe monthly, every 45 days, every two months , every three months, or every four months. For all these frequencies, a 10% discount is offered on retail refill orders. On Amazon, the discount ranges from 5% to 10% depending on the number of products to which a customer is subscribed; the average discount on Amazon for the Company's subscriptions is approximately 7%. The Company records revenues, net of estimated discounts.

If a customer is not satisfied for any reason with a product purchased, then the customer can return it to the place of purchase to receive a refund, a credit, or a replacement product. The return or refund request must be submitted within 60 days of the date of purchase. The Company estimates returns and accrues for potential returns based on historical data.

There are no material differences in the Company's revenue recognition policy between the DTC subscription program and the DTC transaction program.

The Company primarily sells to customers in the United States but also sells in international markets. Regardless of customer location, customers are invoiced and payments are required to be made in U.S. dollars. The Company has elected to exclude sales and use taxes for non-exempt customers from the transaction price and, therefore, sales and use taxes are excluded from revenue.

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**Product Returns, Sales Incentives and Other Forms of Variable Consideration**

In measuring revenue and determining the consideration the Company is entitled to as part of a contract with a customer, the Company takes into account the related elements of variable consideration. Such elements of variable consideration include product return rights, discounts, rebates, volume discounts and rebates, promotions, and other marketing offers that can impact net sales.

For the sale of goods with a right of return, the Company only recognizes revenue for the consideration it expects to be entitled to (considering the products to be returned) and records a sales return accrual within accrued liabilities for the amount it expects to credit back its customers. Given that most product returns cannot be resold to another customer, the Company does not recognize an asset in inventory or a corresponding adjustment to cost of sales for the right to recover goods from customers associated with the estimated returns.

The sales return accrual includes estimates that directly impact reported net sales. These estimates are calculated based on a history of actual returns and estimated future returns. In addition, as necessary, sales return accruals may be established for significant future known or anticipated events. The types of future known or anticipated events that are considered, and will continue to be considered, include the Company's decision to continue to support new and existing products.

Returns are handled on a case-by-case basis, but generally returns are accepted when the customer is not satisfied with the product. The Company has accrued an estimate for returns related to a future period. Sales returns accrued as of September 30, 2021 and 2020, were approximately $65 thousand and $58 thousand, respectively, and are accounted for as a reduction of net sales.

The Company estimates sales incentives and other variable consideration using the expected value method and records accruals within accrued liabilities when the liability becomes identifiable and quantifiable. Under this method, certain forms of variable consideration are based on volumes of sales to the customer, which requires subjective estimates. These estimates are supported by historical results, as well as specific facts and circumstances related to the current period. A select few customers, because of their size, are offered a discount for early payment.

The Company also enters into transactions and makes payments to certain of its customers related to advertising, some of which involve cooperative relationships with customers. These activities can be arranged either with unrelated third parties or in conjunction with the customer. To the extent the Company receives a distinct good or service in exchange for consideration and the fair value of the benefit can be reasonably estimated, the Company's share of the costs of these transactions (regardless of to whom they were paid) are reflected in selling, general and administrative expenses in the accompanying condensed consolidated statements of operations. The Company also enters into other advertising activities arranged with customers. These activities cannot be arranged with unrelated third parties; therefore, no distinct good or service is received in exchange for consideration and the fair value of the benefit is not reasonably estimated. The Company's share of the costs for these transactions paid to customers are reflected as a reduction in the transaction price within net sales in the accompanying condensed consolidated statements of operations.

For certain sales, the Company incurs incremental costs of obtaining the contract through the form of sales commissions. The sales commissions incurred are directly correlated to the sales generated and are therefore expensed as incurred.

The following table presents revenue disaggregated by geography, as determined by the country products were shipped to:

| | Three Months Ended | | | | Nine Months Ended | | | |
|---|---|---|---|---|---|---|---|---|
| | September 30, 2021 | | September 30, 2020 | | September 30, 2021 | | September 30, 2020 | |
| | Amount | Percent of Total | Amount | Percent of Total | Amount | Percent of Total | Amount | Percent of Total |
| Domestic | $44,651,461 | 93.0% | $36,449,460 | 94.0% | $127,376,553 | 94.1% | $ 95,445,059 | 93.3% |
| Foreign | 3,358,217 | 7.0% | 2,324,882 | 6.0% | 8,006,830 | 5.9% | 6,833,275 | 6.7% |
| Total sales | $48,009,678 | 100.0% | $38,774,342 | 100.0% | $135,383,383 | 100.0% | $102,278,334 | 100.0% |

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The following table presents disaggregated revenues based on sales channel:

| | Three Months Ended | | | | Nine Months Ended | | | |
|---|---|---|---|---|---|---|---|---|
| | September 30, 2021 | | September 30, 2020 | | September 30, 2021 | | September 30, 2020 | |
| | Amount | Percent of Total | Amount | Percent of Total | Amount | Percent of Total | Amount | Percent of Total |
| DTC Subscription Sales | $ 6,245,035 | 13.0% | $ 4,416,464 | 11.4% | $ 17,271,587 | 12.8% | $ 12,044,675 | 11.8% |
| DTC Transaction Sales | 12,076,469 | 25.2% | 10,288,536 | 26.5% | 37,486,115 | 27.7% | 29,362,995 | 28.7% |
| Professional/B2B Sales | 29,688,174 | 61.8% | 24,069,342 | 62.1% | 80,625,681 | 59.6% | 60,870,664 | 59.5% |
| Total sales | $48,009,678 | 100.0% | $38,774,342 | 100.0% | $135,383,383 | 100.0% | $102,278,334 | 100.0% |

***Segments***

The Company operates in one reportable segment–the selling of innovative solutions and personalized approaches to health and wellbeing. The Company's chief operating decision maker (determined to be the Chief Executive Officer) does not manage any part of the Company separately, and the allocation of resources and assessment of performance are based on the Company's condensed consolidated operating results and where the best future opportunities arise.

***Recent Accounting Pronouncements – Adopted***

*ASU 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes.* In December 2019, the FASB issued this ASU to simplify the accounting for income taxes by eliminating certain exceptions related to the approach for intra-period tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. This ASU also clarifies and simplifies other aspects of the accounting for income taxes. This update was adopted by the Company effective January 1, 2021. The Company has a full valuation allowance on its deferred income taxes and therefore the adoption did not have a material impact on its condensed consolidated financial statements.

***Recent Accounting Pronouncements – Not Yet Adopted***

*ASU 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments.* In June 2016, the FASB issued this ASU to amend the current accounting guidance which requires the measurement of expected losses to be based on historical experience, current conditions and reasonable and supportable forecasts. For trade receivables, loans, and other financial instruments, the Company will be required to use a forward-looking expected loss model that reflects probable losses rather than the incurred loss model for recognizing credit losses. This ASU was amended by ASU 2019-10 to be effective for smaller reporting companies beginning after December 15, 2022. The Company does not believe the adoption of this ASU will have a material impact on its condensed consolidated financial statements and disclosures.

*ASU 2020-04, Reference Rate Reform (Topic 848).* In March 2020, the FASB issued guidance providing optional expedients and exceptions to account for the effects of reference rate reform to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued. The optional guidance, which became effective on March 12, 2020 and can be applied through December 21, 2022, has not impacted the Company's condensed consolidated financial statements. The Company has various contracts that reference LIBOR and is assessing how this standard may be applied to specific contract modifications through December 31, 2022.

*COVID-19 Pandemic*

On January 30, 2020, The World Health Organization (WHO) announced a global health emergency because of a new strain of coronavirus (Covid-19) and the risks to the international community as the virus spreads globally. In March 2020, the WHO classified the Covid-19 outbreak as a pandemic.

The Company is a manufacturer of nutritional supplement products, a category of food regulated by the U.S. Food and Drug Administration. Based on guidance issued by the U.S. Department of Homeland Security / Cybersecurity and Infrastructure Security Agency, and in particular, specific guidance therein regarding the Food and Agriculture industries, the Company's manufacturing facility is designated as "Essential Critical Infrastructure Workers" and is therefore exempt from "shelter in place" restrictions that might be imposed by the State of South Carolina.

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The full impact of the Covid-19 outbreak continues to evolve. As such, the impact of this pandemic on the Company's financial condition is uncertain. Management is actively monitoring the impact of this virus on its financial condition, liquidity, operations, suppliers, customers, and workforce.

On March 27, 2020, the "Coronavirus Aid, Relief, and Economic Security (CARES) Act," was enacted. The CARES Act includes provisions relating to refundable payroll tax credits, deferment of employer-side Social Security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations, increased limitations on qualified charitable contributions, and technical corrections to tax depreciation methods for qualified improvement property. The Company deferred the employer portion of payroll taxes during the year ended December 31, 2020. The total amount deferred at year end was approximately $1.0 million and will be payable over the next two years. As of September 30, 2021, there remained $1.0 million of deferred payroll taxes accrued for, of which $0.5 million is due December 31, 2021, and the remainder is due December 31, 2022.

The Company's unaudited condensed consolidated financial statements reflect the latest estimates and assumptions made by management that affect the reported amounts of assets and liabilities and related disclosures as of the date of the condensed consolidated financial statements and reported amounts of revenue and expenses during the reporting periods presented.

**3. Related party transactions**

*Kirin Holdings Company Limited*

As of September 30, 2021, the Company had a related party receivable from Kirin Holdings Company Limited (Kirin), a significant stockholder, in the amount of $3 thousand, related to a research contract. Revenue related to these research services for the three and nine months ended September 30, 2021, was $3 thousand and $6 thousand, respectively. There was no related receivable as of December 31, 2020, nor any related revenue during the three and nine months ended September 30, 2020.

As of September 30, 2021, the Company had a related party payable of $259 thousand due to Kirin, related to the guarantee fees, as required under the 2021 Kirin Fee Letter (see Note 6). As of December 31, 2020, the Company had a related party payable related to the guarantee fees totaling $182 thousand. During the three months ended September 30, 2021 and 2020, the Company recorded guarantee fee expense of $112 thousand and $98 thousand, respectively. During the nine months ended September 30, 2021 and 2020, the Company recorded guarantee fee expense of $211 thousand and $179 thousand.

As of September 30, 2021, the Company had a related party payable of $21 thousand due to Kirin, related to the reimbursement of certain employee labor costs, as required under a secondment agreement with Kirin. As of December 31, 2020, the Company had a related party payable related to the reimbursement of certain employee labor costs of $21 thousand. During the three months ended September 30, 2021 and 2020, the Company recorded expense related to the reimbursement of $42 thousand and $21 thousand, respectively, in selling, general and administrative. During the nine months ended September 30, 2021 and 2020, the Company recorded expense for the reimbursed employee labor costs of $84 thousand and $63 thousand.

On July 24, 2019, Kirin provided us with a one-time loan of $3.0 million. The Company repaid this loan in 2020, including accrued interest of $128,219, from proceeds under our revolving line of credit with Sumitomo Mitsui Banking Corporation (SMBC). During the three and nine months ended September 30, 2020, the Company recorded interest expense of $0 and $128 thousand related to the one-time loan. As of December 31, 2020, there was no related payable outstanding.

*Mitsui & Co., Ltd.*

As of September 30, 2021, the Company had a related party payable of $192 thousand due to Mitsui & Co, Ltd. (Mitsui), a significant stockholder, related the to guarantee fees, as required under the Mitsui 2021 Fee Letter (see Note 6). As of December 31, 2020, the Company had a related party payable related to the guarantee fees totaling $182 thousand. During the three months ended September 30, 2021 and 2020, the Company recorded guarantee fee expense of $71 thousand and $98 thousand, respectively. During the nine months ended September 30, 2021 and 2020, the Company recorded guarantee fee expense of $211 thousand and $179 thousand.

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*Indena S.p.A.*

As of September 30, 2021, the Company had a related party payable with Indena S.p.A. (Indena), a stockholder, of approximately $369 thousand related to purchases of inventory. As of December 31, 2020, the Company had a related party payable of $613 thousand. During the three and nine months ended September 30, 2021, the Company purchas e d $1.0 million and $4.8 million of inventory from Indena; comparatively, during the three and nine months ended September 30, 2020, the Company purchased $0.8 million and $3.5 million of inventory from Indena.

*NR Therapeutics, LLC*

As of September 30, 2021, the Company had a related party payable of approximately $682 thousand with NR Therapeutics, LLC (NR Therapeutics), an entity in which the Company has invested and in which Paul Jacobson, our Chief Executive Officer, is a member of the board of directors. The payable is related to previous inventory purchases of Nicotinamide Riboside. As of December 31, 2020, the Company had a related party payable of $131 thousand. During the three and nine months ended September 30, 2021, the Company purchased $860 thousand and $3.7 million, respectively, of inventory from NR Therapeutics. There were no purchases of inventory by the Company during the three and nine months ended September 30, 2020.

*Tecton Group, LLC*

As of September 30, 2021, the Company had a related party receivable with Tecton Group LLC (Tecton), an entity in which the Company has invested, of approximately $558 thousand related to short-term advances and reimbursement of certain operating costs on Tecton's behalf. As of December 31, 2020, the Company had recorded a related party receivable with Tecton of approximately $135 thousand.

As of September 30, 2021, the Company had a related party payable with Tecton of approximately $2 thousand relate to certain reimbursable operating costs . As of December 31, 2020, the Company had no related party payable.

*Oova, Inc.*

As of September 30, 2021, the Company had a related party receivable with Oova, Inc. (Oova), an entity in which the Company has invested, of approximately $6 thousand related to reimbursement of certain distribution costs paid on behalf of Oova. As of December 31, 2020, the Company had recorded a related party receivable with Oova of approximately $4 thousand.

*Other Related Party Transactions*

As of September 30, 2021, and December 31, 2020, the Company had a related party payable of $43 thousand with Chief Executive Officer, Paul Jacobson.

See Notes 6, 10, 11, and 17 for additional related party transactions.

**4. Inventories, net**

Inventories consist of the following:

| | September 30, 2021 | December 31, 2020 |
|---|---|---|
| Raw materials | $ 19,328,877 | $13,751,348 |
| Work in process | 6,257 | 7,224 |
| Finished goods | 18,974,753 | 14,808,931 |
| Reserve for slow moving and obsolete inventory | (566,963) | (501,479) |
| Inventories, net | $ 37,742,924 | $28,066,024 |

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Raw materials consist primarily of powders, soft gels, and packaging components such as bottles, lids and labels. Work in process consists of premixed powders and encapsulated powders not yet bottled.

**5. Property and Equipment, net**

The components of property and equipment are as follows:

| | September 30, 2021 | December 31, 2020 |
|---|---|---|
| Machinery and equipment | $ 9,599,883 | $ 7,248,706 |
| Furniture and fixtures | 491,173 | 351,935 |
| Office equipment | 3,174,331 | 2,748,380 |
| Leasehold improvements | 19,059,683 | 18,858,225 |
| Vehicles | 98,282 | 98,282 |
| Lab equipment | 2,948,798 | 1,755,985 |
| Total property and equipment | 35,372,150 | 31,061,513 |
| Less, accumulated depreciation and amortization | (10,610,616) | (8,603,098) |
| In-process assets, including deposits on new equipment | 734,381 | 731,315 |
| Property and equipment, net | $ 25,495,915 | $23,189,730 |

In-process assets are stated at cost, which includes the cost of construction and other directly attributable costs. No provision for depreciation is made on in-process assets until the relevant assets are completed and available for intended use. The Company's leasehold improvements include approximately $12.1 million in improvements at its South Carolina facility that were paid for by the lessor. Management concluded the Company is the accounting owner of the leasehold improvements, and accordingly, has recorded the leasehold improvements as part of property and equipment on the condensed consolidated balance sheets.

Depreciation and amortization expense of property and equipment was $0.6 million and $2.0 million for the three and nine months ended September 30, 2021, respectively.

**6. Line of Credit**

On February 14, 2020, the Company entered into an Uncommitted and Revolving Credit Line Agreement (2020 Credit Agreement) with SMBC to provide a revolving line of credit of up to $20.0 million. Upon closing, the Company borrowed $20.0 million from the revolving line of credit and used the proceeds to paydown and close the previous line of credit, as well as pay off the dividend payable and related party payable. There were no debt issuance costs incurred to secure this financing. Borrowings under the 2020 Credit Agreement bear interest paid on a variable interest rate based on rates quoted by the bank. The Company can choose an interest rate, based on current market rates and on the number of days it chooses to lock in the interest rate. The number of days range from 30 days to 365 days.

On February 12, 2021, the Company entered into a new Uncommitted and Revolving Credit Line Agreement (2021 Credit Agreement) with SMBC to refinance and replace the 2020 Credit Agreement. The terms of the 2021 Credit Agreement are substantially similar to the terms of the 2020 Credit Agreement. Under the 2021 Credit Agreement, SMBC may in its sole discretion elect to make unsecured loans to the Company until February 11, 2022, in an aggregate principal amount up to, but not exceeding, $20.0 million at any time. Each loan made under the 2021 Credit Agreement may have a maturity date that is not less than one day and not more than twelve months after the date that such loan is disbursed, as the Company and SMBC mutually agree. SMBC may, in its sole discretion at any time, terminate in whole or partially reduce the unused portion of the credit line under the 2021 Credit Agreement. SMBC is not obligated to make any loan under the 2021 Credit Agreement.

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Both the 2020 Credit Agreement and 2021 Credit Agreement (together, the Credit Agreements) were guaranteed by two significant Company stockholders, Kirin and Mitsui. Each stockholder guaranteed 50% of the total amount of the loan. The guarantee fee during the period of February 14, 2020 through February 13, 2021 was calculated as 2.0% of the outstanding borrowings under the Credit Agreements, to be paid by the borrower on an annual basis. Beginning February 12, 2021, the guarantee fee was calculated as 1.2% of the outstanding borrowings under the Credit Agreements. The Company recorded $101 thousand and $299 thousand of related expense during the three and nine months ended September 30, 2021, which are included in the guarantee fees in the condensed consolidated statements of operations, compared to $123 thousand and $236 thousand of guarantee fees during the three and nine months ended September 30, 2020, respectively. As of September 30, 2021, and December 31, 2020, the Company had accrued guarantee fees related to the Credit Agreements of $250 thousand and $351 thousand, respectively, which is included in other accrued expenses in the condensed consolidated balance sheets.

The Company may prepay any outstanding loans under the 2021 Credit Agreement in whole, or in part, at any time without penalty, other than customary prepayment fees or additional costs as determined by SMBC. As of September 30, 2021, the Company has fully drawn down $20.0 million under the 2021 Credit Agreement to refinance its outstanding loans under the 2020 Credit Agreement. As a result, under the $20.0 million maximum credit line, no additional amount is available to be borrowed.

Any loans under the 2021 Credit Agreement bears interest at a per annum rate quoted by SMBC and agreed to by the Company when such loan is made. Interest on a loan is payable in arrears on the maturity date of such loan. The interest accrued on a loan and paid to the bank is a variable interest rate, based on rates quoted by the bank. The Company can choose an interest rate, based on current market rates and on the number of days it chooses to lock in the interest rate. The number of days range from 30 days to 365 days. On September 14, 2021, the Company locked in an interest rate for 30 days through October 13, 2021, at a rate of 0.595%.

The Company's obligations under the 2021 Credit Agreement are guaranteed by Kirin and Mitsui. The Company pays each guarantor an annual fee equal to 1.20% of each of their $10 million guarantees annually and on the occurrence of a change of control of the Company. Under the Fee Letter dated February 12, 2021, between the Company and Mitsui (2021 Mitsui Fee Letter), the Company also agreed to reimburse Mitsui in cash for any amounts that Mitsui pays under its guarantee of the 2021 Credit Agreement. However, if the Company is unable to wholly or partially reimburse such amounts to Mitsui, then the Company and Mitsui may agree to deem such unreimbursed amounts to be made for the Company's benefit in consideration for its debt or equity securities on terms reasonably satisfactory to Mitsui and the Company.

Under the Fee Letter dated February 12, 2021 between the Company and Kirin (2021 Kirin Fee Letter), the Company agreed to reimburse Kirin in cash for any amounts that Kirin pays under its guarantee of the 2021 Credit Agreement. If the Company is unable to wholly or partially reimburse such amounts to Kirin, however, then the Company and Kirin may agree to deem such unreimbursed amount to be made for the Company's benefit in consideration for its debt or equity securities on terms reasonably satisfactory to Kirin and the Company.

The 2021 Credit Agreement contains customary affirmative covenants, including covenants regarding the payment of taxes and other obligations, maintenance of insurance, reporting requirements and compliance with applicable laws and regulations, and customary negative covenants limiting the Company's ability, among other things, to merge or consolidate, dispose of all or substantially all of the Company's assets, liquidate or dissolve, and grant liens, subject to certain exceptions. Upon the occurrence and during the continuance of an event of default, SMBC may declare all outstanding principal of, and accrued and unpaid interest on, loans made under the 2021 Credit Agreement immediately due and payable and may exercise the other rights and remedies provided for under the 2021 Credit Agreement and related loan documents. The events of default under the 2021 Credit Agreement include, subject to grace periods in certain instances, payment defaults, cross defaults with certain other material indebtedness, certain material judgments, breaches of covenants or representations and warranties, change in control of the Company, a material adverse change as defined in the 2021 Credit Agreement, and certain bankruptcy and insolvency events.

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*Standby Letter of Credit*

In 2018, an irrevocable standby letter of credit was issued by a bank on the Company's behalf as required by the landlord of the South Carolina production facility, and guarantees were issued by related parties (see Note 8). The standby letter of credit is for $4.9 million and had an original expiration date of December 3, 2019, with automatic renewals until October 31, 2037. The guarantee fee is based on the 12-month USD LIBOR rate, plus 3% on the amount of the guarantee. The letter of credit has an annual fee of $20 thousand. The standby letter of credit is guaranteed 50% by Kirin and Mitsui, to whom we pay an annual guarantee fee. The Company incurred total guarantee fee expense for the standby letter of credit for the three and nine months ended September 30, 2021 of $41 thousand and $122 thousand, respectively; comparatively, the Company incurred guarantee fee expense of $64 thousand and $123 thousand, for the three and nine months ended September 30, 2020, respectively, which have been included in guarantee fees in the condensed consolidated statements of operations. As of September 30, 2021, and December 31, 2020, the Company had accrued guarantee fees of $135 thousand and $13 thousand, which have been included in other accrued expenses in the condensed consolidated balance sheets.

## 7. Long-Term Debt

The long-term debt related to the financing of encapsulation machines consists of the following:

| | September 30, 2021 | December 31, 2020 |
|---|---|---|
| Note payable with quarterly principal and interest payments of $30,917 per quarter, with fixed interest of 6.943%. The loan matures August 12, 2024 | $ 311,760 | $ 346,436 |
| Note payable with quarterly principal and interest payments of $30,917 per quarter, with fixed interest of 6.943%. The loan matures July 15, 2023 | 229,082 | 346,435 |
| Note payable with quarterly principal and interest payments of $56,548 per quarter, with fixed interest of 4.89%. The loan matures March 20, 2025 | 723,532 | — |
| Note payable with monthly principal and interest payments of $8,250, with fixed interest of 5.44%. The loan matures September 10, 2026 | 432,526 | |
| | $ 1,696,900 | $ 692,871 |
| Less current maturities | (487,001) | (223,400) |
| Long-term debt | $ 1,209,899 | $ 469,471 |

## 8. Leases

The Company leases real estate, vehicles, and equipment for use in its operations. The Company's leases generally have lease terms of 1 to 30 years, some of which include options to terminate or to extend leases. The Company includes options that are reasonably certain to be exercised as part of the determination of lease terms. The Company may negotiate termination clauses in anticipation of changes in market conditions, but generally these termination options are not exercised. Residual value guarantees are generally not included within operating leases. In addition to base rent payments, the leases may require the Company to pay directly for taxes and other non-lease components, such as insurance, maintenance, and other operating expenses, which may be dependent on usage or vary month-to-month. As part of the adoption of ASC 842, *Leases* (ASC 842), the Company elected the practical expedient to not separate non-lease components from lease components in calculating the amounts of right-of-use (ROU) assets and lease liabilities for underlying asset classes. The Company determined if an arrangement is a lease at inception of the contract, in accordance with guidance detailed in ASC 842, and performed the lease classification test as of the lease commencement date. An ROU asset represents the Company's right to use an underlying asset for the lease term; lease liabilities represent the obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at the lease's commencement date based on the present value of lease payments over the lease term. When a lease did not provide an implicit rate, the Company used its estimated incremental borrowing rate based on the information available at the commencement date in determining the present value of future payments.

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Leases that are economically similar to the purchase of an asset are classified as finance leases. As of September 30, 2021, and December 31, 2020, finance lease assets are included separately within the condensed consolidated balance sheets and classified as finance right-of-use asset; the corresponding finance lease liabilities are included within current portion of finance lease liability and within long-term finance lease liability, net of current portion. The finance lease classification under ASC 842 includes leases previously classified as capital leases under ASC 840.

The balances for the operating and finance leases where the Company is the lessee are presented as follows within the condensed consolidated balance sheets:

| | September 30, 2021 | December 31, 2020 |
|---|---|---|
| **Operating lease:** | | |
| Operating lease right-of-use assets | $ 18,822,817 | $17,740,816 |
| Current portion of operating lease obligations | 3,048,842 | 2,603,930 |
| Operating lease obligations, net of current portion | 27,693,191 | 27,284,356 |
| Total operating lease liabilities | $ 30,742,033 | $29,888,286 |
| **Finance lease:** | | |
| Finance lease right-of-use assets | $ 962,931 | $ 767,237 |
| Current portion of finance lease obligations | 400,336 | 269,212 |
| Finance lease obligation, net of current portion | 536,442 | 454,857 |
| Total finance lease liabilities | $ 936,778 | $ 724,069 |

The components of lease expense are as follows within our condensed consolidated statement of operations:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2021 | 2020 | 2021 | 2020 |
| **Operating lease expense:** | | | | |
| Operating lease cost [1] | 1,498,385 | 1,372,484 | 4,100,552 | 3,727,803 |
| **Finance lease expense:** | | | | |
| Amortization of leased assets | 100,062 | 40,602 | 268,395 | 98,420 |
| Interest on lease liabilities | 10,946 | 12,571 | 35,994 | 43,499 |
| Total lease cost. | $1,609,393 | $1,425,657 | $4,404,941 | $3,869,722 |

(1) Includes short-term leases and variable lease costs, which are immaterial.

The weighted average remaining lease term and weighted average discount rate as of September 30, 2021 are as follows:

| | |
|---|---|
| **Weighted average remaining lease term (years)** | |
| Operating leases | 13.07 years |
| Finance leases | .07 years |
| **Weighted average discount rate applied** | |
| Operating leases | 9.6% |
| Finance leases | 0.3% |

Supplemental cash flow information related to leases where the Company is the lessee is as follows:

| | Nine Months Ended September 30, 2021 | Nine Months Ended September 30, 2020 |
|---|---|---|
| Operating cash outflows from operating leases | $ 4,281,961 | $ 3,992,177 |
| Operating cash outflows from finance leases (interest payments) | 39,320 | 13,709 |
| Financing cash outflows from finance leases | 309,477 | 117,258 |
| Leased assets obtained in exchange for finance lease liabilities | 482,867 | 666,729 |
| Leased assets obtained in exchange for operating lease liabilities | $ 2,913,002 | $ 4,259,688 |

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As of September 30, 2021, the maturities of the operating and finance lease liabilities are as follows:

| Period | Operating leases | Finance leases |
|---|---|---|
| 2021 | $ 1,475,565 | $ 115,939 |
| 2022 | 5,196,447 | 429,428 |
| 2023 | 3,497,428 | 304,186 |
| 2024 | 3,589,923 | 121,420 |
| 2025 | 3,559,586 | 16,764 |
| Thereafter | 39,031,420 | 38,940 |
| Total minimum lease payments | $ 56,350,369 | $ 1,026,677 |
| Less: imputed interest | 25,608,336 | 89,899 |
| Total present value of lease liabilities | $ 30,742,033 | $ 936,778 |
| Less: current portion | 3,048,842 | 400,336 |
| Long-term portion of lease liabilities | $ 27,693,191 | $ 536,442 |

In 2016, the Company entered into a new lease agreement for office, warehouse and production space in Summerville, South Carolina. The Company began occupying the space in the summer of 2018, with the lease commencing April 2018. The lease requires monthly payments of $0.2 million, increasing by 2.5% annually, through January 31, 2037. As of September 30, 2021, monthly payments were approximately $0.2 million. The Company was required to provide the landlord with a $4.9 million irrevocable letter of credit as a security deposit (see Note 6). The required security deposit may be reduced on the attainment of certain EBITDA levels.

On January 26, 2021, the Company entered into a five-year lease agreement for 115,500 square feet within a 136,500 square foot building for the Company's shipping operations. The lease has two renewal options for three years each. Rent was abated for the first three months while the Company installed racking, packing stations, and other required equipment, prior to relocating the Company's shipping operations to this facility.

On July 27, 2021, the Company entered into a 12.25-year lease agreement for a 360,320 square foot industrial building for the Company's finished goods warehousing and shipping operations. The lease has one renewal option for a five-year term. The lease provides for an allowance for tenant improvements of up to $1.26 million. The building is currently under construction and the lease will commence on the date of which the landlord completes construction of the facility and required tenant improvements, currently estimated to be January 1, 2023. The annual base rent for the first year will be $1.98 million and is subject to an annual escalation of 2.0% on each anniversary. The Company has funded a customary security deposit of $331 thousand upon execution of the lease which has been recorded in other assets within our condensed consolidated balance sheets at September 30, 2021.

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**9. Concentrations**

**Credit Risk -** Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and accounts receivable. Although the Company places its cash with high quality institutions, these balances can exceed federally insured limits. Concentrations of credit risk primarily relate to unsecured trade receivables. Major customers who accounted for more than 10% of the Company's total receivables were as follows:

| | September 30, 2021 | December 31, 2020 |
|---|---|---|
| Emerson Ecologics, LLC | 32.0% | 39.4% |
| iHerb, Inc. | 47.0% | * |

* Represents less than 10%

**Sales -** Major customers who accounted for more than 10% of the Company's total sales were as follows:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2021 | 2020 | 2021 | 2020 |
| iHerb, Inc. | 17.0% | 11.2% | 15.9% | 11.3% |
| Emerson Ecologics, LLC | * | 11.5% | 10.7% | 11.3% |
| Pattern Inc. | 25.4 % | 26.4% | 27.3% | 28.4% |

* Represents less than 10%

**10. Convertible Preferred Stock and Stockholders' Equity (Deficit)**

On July 5, 2018, the Company issued 27,011,500 Series E convertible preferred stock to Kirin and Mitsui for $138.4 million. A summary of the significant rights and privileges of the Series E convertible preferred stock is as follows:

**Conversion—** Each share of Series E preferred stock is convertible at the option of the holder into common stock on a one-for-one basis. Each share of Series E preferred stock shall automatically be converted into shares of common stock at the then effective conversion price immediately after the consummation of a qualified public offering. Additionally, each share of preferred stock is automatically converted immediately upon the conversion or vote to convert by the holders of a majority of the then outstanding preferred stock.

**Liquidation—** Upon any liquidation, dissolution, or winding-up of the business, the assets of the Company available for distribution to its stockholders shall be distributed first to the holders of shares of Series E convertible preferred stock up to their original issue prices.

**Voting Rights—** The holder of each share of preferred stock shall be entitled to vote on all matters and shall be entitled to that number of votes equal to the total number of shares of common stock into which the preferred stock are convertible.

**Dividends—** In the event the Board of Directors declares the payment of dividends, they shall be distributed first to the holders of shares of Series E convertible preferred stock up to their original issue prices. Thereafter, the amounts remaining shall be distributed pro rata based on the number of shares of common stock then held by each shareholder (assuming conversion of all outstanding shares of Series E convertible preferred stock into common stock).

The agreement for the Series E convertible preferred stock issuance also resulted in $3.0 million of dividends becoming payable to stockholders related to the issuance of preferred stock and increased the accumulated deficit in the Company's stockholders' equity (deficit). These dividends were approved by the Board of Directors and declared payable in 2018 and were accrued for as of December 31, 2018. These dividends along with interest accrued on the dividends at the rate of 7.5% of $266,918 were paid during the nine months ended September 30, 2020.

The Company's Series E convertible preferred stock has been classified as temporary equity on the accompanying condensed consolidated balance sheet in accordance with authoritative guidance for the classification and measurement of redeemable securities. Upon certain change in control events outside of the Company's control, including liquidation, sale, or transfer of control of the Company, holders of the Series E convertible preferred stock can cause its redemption. The Company has determined not to adjust the carrying values of the Series E convertible preferred stock to the liquidation preferences of such shares because the Series E convertible preferred stock is not currently redeemable and not probable of becoming redeemable due to the uncertainty of whether or when the contingent events would occur.

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Immediately prior to the completion of the Company's IPO on September 22, 2021, all outstanding shares of the Series E convertible preferred stock automatically converted on a one-to-one basis into an aggregate of 27,011,500 shares of common stock. As of September 30, 2021, there were no shares of Series E convertible preferred stock outstanding. As of December 31, 2020, the Company had 27,011,500 shares of Series E convertible preferred stock outstanding that were recorded in the financial statements as temporary equity.

### 11. Warrants

Kirin and Mitsui each hold 2,225,000 warrants, for a total of 4,450,000, to purchase the Company's common stock, with an exercise price of $5.12 and an expiration date of October 11, 2028. These warrants are classified as equity on the condensed consolidated balance sheets. In July 2020, each shareholder exercised 2,168,485 equity-based warrants for a total of $22,220,880 in gross proceeds. As of September 30, 2021, 113,030 warrants remain outstanding.

As of September 30, 2021, and December 31, 2020, the Company had 2,532,050 additional common stock warrants outstanding that were classified as equity with an exercise price of $6.74 and an expiration date of June 23, 2030.

In April 2011, the Company issued 453,455 warrants to purchase common stock to a related-party stockholder, with a strike price of $6.74 per warrant. The warrants were originally classified as liability awards. In May 2019, the Board of Directors extended the term of the warrants for an additional 10 years to June 23, 2030. The extension was determined by management to be a modification of the warrant.

The warrant liability is remeasured at fair value at each reporting date and have a fair value of $3.0 million and $3.9 million as of September 30, 2021, and December 31, 2020, respectively.

To calculate the fair value of the warrants, certain assumptions were made, including the fair market value of the underlying common stock, risk-free interest rate, volatility, and remaining contractual life. Changes to the assumptions could cause significant adjustments to the valuation. Due to the Company's limited operating history and lack of Company-specific historical or implied volatility as a private company, the expected volatility assumption was determined by examining the historical volatilities of a group of industry peers whose share prices are publicly available. The risk-free interest rate is based on the U.S. Treasury yield in effect at the time of the grant for treasury securities of similar maturity. The Company has not paid and does not anticipate paying cash dividends on its shares of common stock; therefore, the expected dividend yield is assumed to be zero.

The Black-Scholes model was used to value the liability-classified warrants. The following assumptions were used:

| | As of September 30, 2021 | As of December 31, 2020 |
|---|---|---|
| Fair market value | $ 8.65 | $ 11.17 |
| Exercise price | $ 6.74 | $ 6.74 |
| Volatility | 76% | 68% |
| Annual dividend | 0 | 0 |
| Risk-free interest rate | 0.16% | 0.13% |

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The fair value of financial instruments measured on a recurring basis is as follows:

| | As of September 30, 2021 | | | |
|---|---|---|---|---|
| Description | Total | Level 1 | Level 2 | Level 3 |
| Liabilities: | | | | |
| Warrant liability | $3,028,402 | — | — | $3,028,402 |

The following table summarizes the change in fair value, as determined by Level 3 inputs, for all assets and liabilities using unobservable Level 3 inputs, as of September 30, 2021.

| | Warrant Liability |
|---|---|
| Balance as of December 31, 2020 | $3,930,930 |
| Change in fair value for nine months ended September 30, 2021 | (902,528) |
| Balance as of September 30, 2021 | $3,028,402 |

**12. Share-Based Compensation**

Prior to the Company's IPO, the Company's Board of Directors adopted, and the stockholders approved the Company's 2021 Equity Incentive Plan (2021 Plan). The 2021 Plan provides for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code, to Company employees and parent and subsidiary corporations' employees, and for the grant of non-statutory stock options, stock appreciation rights, restricted stock, restricted stock units (RSUs), and performance awards to employees, directors, and consultants and parent and subsidiary corporations' employees and consultants. Subject to the adjustment provisions of and the automatic increase described in the 2021 Plan, a total of 3,480,510 shares of the Company's common stock will be reserved for issuance pursuant to the 2021 Plan. In addition, subject to the adjustment provisions of the 2021 Plan, the shares reserved for issuance under the 2021 Plan will also include shares subject to awards granted under the Company's 2010 Equity Incentive Plan (2010 Plan) or the Company's Restated 2020 Onegevity Health Equity Plan, as amended (Onegevity Plan) that, on or after September 22, 2021 (the effective date of the IPO), expire or otherwise terminate without having been exercised or issued in full, are tendered to or withheld by the Company for payment of an exercise price or for satisfying tax withholding obligations, or are forfeited to or repurchased by the Company due to failure to vest (provided the maximum number of shares that may be added to the 2021 Plan pursuant to outstanding awards under the 2010 Plan or Onegevity Plan is 10,615,030 shares). Subject to the adjustment provisions of the 2021 Plan, the number of shares available for issuance under the 2021 Plan will also include an annual increase on the first day of each fiscal year beginning with the 2022 fiscal year and ending on the tenth anniversary of the date the Company's Board of Directors approved the 2021 Plan, in an amount equal to the least of:

- 8,701,275 shares;
- five percent (5%) of the outstanding shares of the Company's common stock as of the last day of the immediately preceding fiscal year; or
- such other amount as the Company's Board of Directors may determine.

The 2021 Plan is administered by the Company's Compensation Committee, a sub-committee of the Board of Directors. Options are granted at the discretion of the 2021 Plan's administrator and have a term of not greater than 10 years from issuance. Options are exercisable when vested. Vesting requires continuous employment up to the vesting date and the vesting schedule is determined by the 2021 Plan. Options generally vest over a four-year period.

Since becoming effective on September 22, 2021, the Company has issued no awards under the 2021 Plan. As of September 30, 2021, there were 10,615,030 share-based awards outstanding, comprised of 7,779,935 stock option awards and 875,760 restricted stock units (RSUs) previously issued under the 2010 Plan, and 1,959,335 stock option awards issued under the Onegevity Plan.

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Prior to the 2021 Plan becoming effective, the Company previously issued stock-based awards under the 2010 Plan. The 2010 Plan was created by the Company's Board of Directors and has been amended from time to time to grant additional options. The plan provides for the grant of stock options, restricted stock awards (RSAs), RSUs, and performance awards to employees, directors, and consultants and parent and subsidiary corporations' employees and consultants. Options are granted at the discretion of the Company's Board of Directors and have a term of not greater than 10 years from issuance. Options are exercisable when vested. Vesting requires continuous employment up to the vesting date and the vesting schedule is determined by the Plan. Options generally vest over a four-year period.

On May 1, 2019, certain members of management exercised 1,793,795 of the 2,538,280 options granted under the 2010 Plan, whereby promissory notes totaling $1.5 million, representing the exercise price of $0.85 per share, were executed in exchange for 1,793,795 shares of common stock. The promissory notes to management bear interest at 5.0%, with a maturity date of June 22, 2020. In addition, in May 2019, these same members of management and the Company entered into an additional put right agreement in which management could request the Company to purchase the 1,793,795 shares of common stock for cash.

Due to the terms of the promissory notes with management and the put right on both the stock options and common stock, the Company determined the put rights represent a liability of the Company to management and is remeasured at each balance sheet date. The change in liability is charged to stock-based compensation expense within selling, general, and administration expense in the condensed consolidated statements of operations. As of December 31, 2019, the stock-based compensation liability was $14.8 million and was recorded as a short-term liability on the condensed consolidated balance sheet as of December 31, 2019. In June 2020, members of management exercised 667,500 of the remaining options outstanding, via a cashless exercise, subject to the put rights. At that time, the Company agreed to purchase the common stock from these members of management at fair value. The stock-based compensation liability was again remeasured just prior to the exercise date of the stock options. Stock compensation expense related to the remeasurement of the options and common stock was $1.1 million and $9.0 million, respectively, during the nine months ended September 30, 2020. The Company paid $23.1 million to management and relieved the liability on July 14, 2020, in the amount of $23.8 million, and one option holder elected to cash exercise 106,800 options.

In February 2020, promissory notes to key members of management of the Company were executed totaling $0.7 million. The notes bear interest at 5.0%, with a maturity date of June 30, 2020. The promissory notes were issued so management would have the appropriate funds to pay taxes associated with the exercise of 1,793,795 stock options into common stock. These notes were paid off in July 2020. During the year ended December 31, 2020, management repaid all promissory notes at maturity.

In June 2020, the Company issued promissory notes to key members of management totaling $6.3 million in connection with the buyout of management stock options and the repurchase of common stock. Subsequently, the common stock and stock options were canceled. The notes bore interest at 5.0%, with a maturity date of July 31, 2020. These notes were repaid by the Company at maturity in July 2020.

As of December 31, 2020, there were 7,811,975 share-based awards outstanding under the 2010 Plan, which included 905,575 performance-based employee stock options, the exercise of which is dependent on the exercise of certain warrants for common stock. On September 22, 2021, and on the 2021 Plan becoming effective, the Company terminated the 2010 Plan and outstanding awards previously issued under the 2010 P lan were transferred under the 2021 Plan and all terms and conditions of the respective and outstanding awards remained in effect with no changes.

*Stock Options*

During the nine months ended September 30, 2021 and 2020, there were no grants of stock options.

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The following table summarizes stock option activity for the nine months ended September 30, 2021:

| | Options Issued and Outstanding | Weighted-Average Exercise Price | Weighted-Average Grant-Date Fair Value |
|---|---|---|---|
| Outstanding, December 31, 2020 | 7,811,975 | $ 4.66 | $ 0.58 |
| Granted [1] | 1,959,335 | 7.65 | 7.55 |
| Exercised | — | — | |
| Cancelled/forfeited | (32,040) | 5.12 | 0.75 |
| Outstanding, September 30, 2021 | 9,739,270 | $ 5.26 | $ 2.04 |
| Exercisable as of September 30, 2021 | 7,045,240 | $ 5.09 | $ 2.42 |

(1) 1,959,335 stock options granted during the nine months ended September 30, 2021 were granted in exchange for stock options of Onegevity in conjunction with the merger agreement as further discussed in Note 17. As a result of the stock option exchange, there was no incremental stock compensation expense recorded by the Company. The Company compared the fair value of the stock options immediately before and after the exchange and determined that the exchange did not result in incremental compensation expense. These stock options contain an accelerated vesting provision whereby upon the completion of an IPO by the Company or qualified change-in-control, any unvested stock options bec a me fully vested. Upon the Company's IPO on September 23, 2021, all 1,959,335 stock options fully vested.

The following information summarizes additional information on stock options outstanding as of September 30, 2021:

| Exercise Price | Number of Options Outstanding | Weighted-Average Remaining Contractual Life (Years) | Number of Options Available for Exercise |
|---|---|---|---|
| $ 1.16 | 424,975 | 2.20 | 424,975 |
| 1.35 | 716,450 | 3.62 | 716,450 |
| 4.49 | 767,625 | 3.62 | 767,625 |
| 6.74 | 785,425 | 3.62 | 785,425 |
| 5.12 | 5,085,460 | 7.28 | 2,558,750 |
| 7.01 | 1,792,015 | 9.09 | 1,792,015 |
| 14.46 | 167,320 | 2.42 | 167,320 |
| | 9,739,270 | | 7,212,560 |

During the three and nine months ended September 30, 2021, the Company recorded stock-based compensation expense related to stock options of $229 thousand and $892 thousand, respectively; comparatively, during the three and nine months ended September 30, 2020, the Company recorded stock-based compensation expense related to stock options of $241 thousand and $722 thousand, respectively. These amounts are classified as selling, general, and administrative on the condensed consolidated statements of operations.

As of September 30, 2021, the unrecognized stock-based compensation expense related to outstanding stock options was approximately $1.0 million and is expected to be recognized as expense over approximately 1.0 year.

*Restricted Stock Units*

On July 29, 2021, the Company issued RSUs to certain employees for an aggregate 875,760 shares, which vest ratably over a 4-year period.

The following table summarizes all RSU activity for the nine months ended September 30, 2021:

| | Number of Shares | Weighted-Average Grant-Date Fair Value |
|---|---|---|
| Outstanding, December 31, 2020 | — | $ — |
| Granted [1] | 1,348,350 | 12.96 |
| Released | 472,590 | 11.17 |
| Cancelled/forfeited | — | — |
| Outstanding, September 30, 2021 | 875,760 | $ 13.93 |
| Vested and expected to vest after September 30, 2021 | 875,760 | $ 13.93 |

(1) 472,590 RSUs granted during the nine months ended September 30, 2021 were granted in exchange for profits interest units held by employees of Onegevity in conjunction with the merger agreement as further discussed in Note 17. As a result of the RSU exchange, there was no incremental stock compensation expense recorded by the Company. The Company compared the fair value of the RSUs immediately before and after the exchange and determined that the exchange resulted in no incremental compensation expense. These RSUs contain an accelerated vesting provision whereby upon the completion of an IPO by the Company or qualified change-in-control, any unvested shares bec a me fully vested. Upon the Company's IPO on September 23, 2021, all restrictions on the unvested RSUs were released.

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During both the three and nine months ended September 30, 2021, the Company recorded stock-based compensation expense related to RSUs of $533 thousand. There was no compensation expense related to RSUs recorded during either the three or nine months ended September 30, 2020. These amounts are classified as selling, general, and administrative on the condensed consolidated statements of operations.

As of September 30, 2021, the unrecognized stock-based compensation expense related to outstanding RSUs was approximately $11.7 million and is expected to be recognized as expense over approximately 3.8 years.

**13. Commitments and Contingencies**

**Royalties and Other Agreements—** The Company has entered into various agreements that require future payments. The agreements call for future payments to a major hospital for use of their trademarks and tradenames in advertising the benefits of supplements and provides the Company access to research information owned by the hospital and provides for the hospital to perform clinical trials and to support the Company's products. As of September 30, 2021, future annual minimum commitments under these agreements are as follows:

| | Amount |
|---|---|
| Three months ended December 31, 2021 | $ 307,500 |
| Year ended December 31, 2022 | 1,030,000 |
| Year ended December 31, 2023 | 562,500 |
| Total | $1,900,000 |

The Company also has various royalty agreements, that are dependent on future sales. Total royalties paid during the three and nine months ended September 30, 2021, were $206 thousand and $463 thousand, respectively, and $121 thousand and $350 thousand, for the three and nine months ended September 30, 2020, respectively.

**Other** - In 2017, the Company recognized grant revenue of $0.8 million from Berkeley County, South Carolina, which includes certain performance obligations that must be met over the next seven years and maintained by the C ompany for five years once attained. The grant agreement includes the potential for repayment of proceeds in whole or in part for failure to satisfy the performance obligations. As of September 30, 2021, Berkeley County has not asked for repayment of these proceeds.

The Company, like other manufacturers of products that are ingested, faces an inherent risk of exposure to product liability claims if, among other things, the use of its product results in personal injury.

The Company maintains product liability insurance to manage these risks. However, there can be no assurance the amount of insurance would be sufficient to cover all product liability claims.

Occasionally, the Company is involved in lawsuits arising in the ordinary course of its operations. The Company's management does not expect the ultimate resolution of pending legal actions to have a material effect on the condensed consolidated financial statements of the Company.

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**14. Basic and Diluted Net Income (Loss) per Share**

Basic net income (loss) per share is calculated by dividing the net income (loss) available to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration for common stock equivalents. Diluted net income (loss) per share is computed by dividing the net income (loss) available to common stockholders by the weighted-average number of common stock equivalents outstanding for the period.

Holders of Series E convertible preferred stock met the definition of participating securities, which required the Company to apply the two-class method to compute both basic and diluted net income (loss) per share. The two-class m e thod is an earnings allocation formula that treats participating securities as having rights to earnings that would otherwise have been available to common stockholders. The two-class method requires earnings for the period to be allocated between common stock and participating securities based upon their respective rights to receive dividends as if all earnings for the period had been distributed. In the event the Board of Directors declared dividends or any distributions, the available distributions would be distributed (i) first, to the Series E convertible preferred stock until such holders have received on a cumulative basis an amount per share equal to the Series E original issue price, and (ii) second, to the holders of Class A common stock and Series E convertible preferred stock (on an as converted basis) on a pro rata, pari passu, basis. The Series E convertible preferred stock did not contractually participate in the Company's net losses, and therefore, undistributed losses were not allocated to Series E convertible preferred stock. Immediately prior to the completion of the Company's IPO on September 22, 2021, all outstanding shares of the Series E convertible preferred stock automatically converted on a one-to-one basis into an aggregate of 27,011,500 shares of common stock.

Refer to Note 10 for additional information regarding the Series E convertible preferred stock.

The dilutive effect of stock options, warrants, and unvested nonparticipating restricted stock is based on the treasury stock method while the dilutive effect of the convertible preferred stock is based on the if-converted method. These potential common stock equivalents are only included in the calculations when their effect is dilutive. The Company presents the more dilutive of the two-class method or if-converted method as diluted net income (loss) per share during the period.

The following table presents information necessary to calculate net income (loss) per share for the three and nine months ended September 30, 2021 and 2020:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2021 | 2020 | 2021 | 2020 |
| Net income (loss) available to Thorne HeathTech, Inc. common stockholders – basic and diluted | $ 475,709 | $ — | $ 475,709 | $ (2,060,431) |
| Weighted average number of common shares outstanding – basic | 21,212,668 | 11,932,085 | 19,032,403 | 10,439,466 |
| Basic EPS | $ 0.02 | $ — | $ 0.02 | $ (0.20) |
| Weighted average number of common shares outstanding – diluted [1][2] | 51,222,522 | 40,413,805 | 50,327,893 | 39,866,905 |
| Diluted EPS | $ 0.01 | $ — | $ 0.01 | $ (0.20) |

(1) Approximately 4.5 million, 2.6 million, 4.3 million, and 4.5 million warrants and stock-based awards were excluded from the computation of diluted EPS for the three months ended September 30, 2021 and 2020 and for the nine months ended September 30, 2021 and 2020, respectively, because their effect would have been anti-dilutive under the treasury stock method.

(2) For the nine months ended September 30, 2020, diluted EPS is the same as basic EPS because the effects of potentially dilutive securities are anti-dilutive.

**15. Mergers and Acquisitions**

On January 6, 2021, the Company announced a merger with Onegevity Health LLC, a health intelligence company.

As of December 31, 2020 the Company's ownership in Onegevity was approximately 50%. Since Onegevity's inception in 2018, the Company determined that it has been the primary beneficiary of Onegevity and has accordingly consolidated the assets and liabilities of Onegevity in accordance with ASC 810, *Consolidations* .

**THORNE HEALTHTECH, INC.**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**
**(Unaudited)**

To effect the merger, the Company issued 6,179,270 shares of Class B common stock, 472,590 which were subject to time-based restrictions, to the minority shareholders of Onegevity, plus an additional 1,959,335 stock options with various strike prices to key managers of Onegevity who had stock options in Onegevity in a tax-free exchange. No cash was involved in the transaction. The shares of Class B common stock did not have voting rights among other restrictions.

As part of the merger, the legal entity Onegevity Health, LLC was dissolved; its wholly owned subsidiary, Health Elements, LLC, became a wholly owned subsidiary of the Company.

The merger did not lead to a change in control and therefore the transaction was recorded in the equity section of the Company's balance sheet.

On April 26, 2021, the Company entered into a merger agreement (the Merger Agreement) with Drawbridge Health, Inc. (Drawbridge), to acquire the majority of the outstanding shares of Drawbridge, a healthcare technology company (the Drawbridge Transaction). Prior to the merger, the Company owned approximately 11.2% of the outstanding shares of Drawbridge and accounted for its investment in Drawbridge as an equity-method investment, because the Company determined it had significant influence over Drawbridge. The Company's net equity investment was approximately $3.2 million as of March 31, 2021. Under the Merger Agreement, the Company increased its ownership of Drawbridge by 76.3 percentage points to a total ownership of 87.5%. The Merger Agreement calls for the payment of approximately $1.4 million in cash and the assumption of certain liabilities of Drawbridge.

The Drawbridge Transaction was accounted for as an asset acquisition because the Company concluded the assets acquired and liabilities assumed did not constitute a business under ASC 805, Business Combinations (ASC 805). The Company performed a reassessment of Drawbridge as a variable interest entity under ASC 810, Consolidation (ASC 810), and concluded Drawbridge to be a variable interest entity as of the date of the transaction. Furthermore, the Company determined it was the primary beneficiary of Drawbridge as of the transaction date. Accordingly, the Drawbridge Transaction was accounted for as an asset acquisition under ASC 810, rather than under ASC 805. Under ASC 810, the Company is required to recognize a gain (loss) on the acquisition, equal to the sum of the consideration paid, the carrying value of the existing equity-method investment, and the fair value of the resulting non-controlling interest less the fair value of the net assets acquired. The Company concluded the carrying value of the Company's existing Drawbridge investment of approximately $3.2 million was impaired in the second quarter of 2021 prior to the transaction and recorded a loss from equity interest in unconsolidated affiliates of approximately $3.0 million on the condensed consolidated statements of operations for the nine months ended September 30, 2021. Additionally, a loss on the Drawbridge Transaction of approximately $0.2 million was recorded during the nine months ended September 30, 2021 within other (income) expense in the condensed consolidated statements of operations. The net tangible and intangible assets acquired, and liabilities assumed, in connection with the Drawbridge Transaction were recorded based on their fair values as of the acquisition date and the value associated with in-process research and development was expensed because it was determined to have no alternative future use. The in-process research and development costs of approximately $1.6 million are recorded as an operating expense on the condensed consolidated statement of operations. Subsequent to the acquisition, the operations of Drawbridge were fully consolidated in the Company's consolidated financial statements, and a non-controlling interest of approximately $0.2 million was recorded for the 12.5% equity interest held by other investors.

The assets and liabilities acquired based on their fair value were as follows:

| | |
|---|---|
| Cash | $ 11,823 |
| Accounts receivable | 8,686 |
| Prepaid expenses and other current assets | 711,389 |
| Inventories | 10,051 |
| Property and equipment | 914,716 |
| Operating lease right-of-use asset | 410,732 |
| Intangible asset consisting of in process research and development | 1,563,015 |
| Other assets | 22,782 |
| Accounts payable | (701,242) |
| Other accrued expenses | (864,483) |
| Current portion of operating lease obligations | (263,509) |
| Long term operating lease, net of current portion | (147,223) |
| Net assets acquired | $1,676,737 |
| Less: noncontrolling interest | (209,592) |
| Net assets acquired by Thorne HealthTech, Inc. | $1,467,145 |

**THORNE HEALTHTECH, INC.**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**
**(Unaudited)**

**16. Legal Proceedings**

The Company is aware of two third-party U.S. patents that have claims relating to compositions of Nicotinamide Riboside – an ingredient contained in several of the Company's nutritional supplement products – issued to the Trustees of Dartmouth College and licensed to ChromaDex Corporation (Chromadex), of Los Angeles, California. On December 1, 2020, and February 1, 2021, the Company filed separate petitions for inter partes review against U.S. Patent No. 8,383,086 and U.S. Patent No. 8,197,807, respectively, at the Patent Trial and Appeal Board to seek to invalidate these two patents. On June 10, 2021, the Patent Trial and Appeal Board issued a decision granting institution of inter partes review against U.S. Patent No. 8,383,086, and on August 12, 2021, the Patent Trial and Appeal Board issued a decision granting institution of inter partes review against U.S. Patent No. 8,197,807. On May 12, 2021, the Trustees of Dartmouth College and ChromaDex filed a complaint against the Company in the U.S. District Court for the Southern District of New York, alleging the Company's infringement of U.S. Patent Nos. 8,383,086 and 8,197,807. The complaint seeks to enjoin the Company from selling its nutritional supplement products that contain Nicotinamide Riboside and further seeks monetary damages for alleged infringement of the patents. On August 20, 2021, the trial judge in the patent infringement litigation issued an Order to Stay the litigation during the pendency of the two inter partes review, in which decisions will likely be made in mid-2022. On September 21, 2021, the U.S. District Court for the District of Delaware issued a summary judgment holding that U.S. Patent Nos. 8,383,086 and 8,197,807 are invalid in Chromadex, Inc. and Trustees of Dartmouth College v. Elysium Health, Inc. The Company has no t recorded a loss in connection with this matter because the Company believes that a loss is currently neither probable nor estimable.

**17. Subsequent Events**

The Company has evaluated subsequent events up to November 10, 2021, which represents the date the unaudited condensed consolidated financial statements were issued.

On October 4, 2021, the Company repaid the $20 million of outstanding borrowings under the 2021 Credit Agreement, plus interest accrued and unpaid interest on the loan through the date of repayment. The Company incurred incremental fees related to the payoff totaling $7 thousand. Upon repayment of the outstanding borrowings under the 2021 Credit Agreement, the related Kirin and Mitsui guarantees were released and terminated.

On October 29, 2021, the Company deposited $4.9 million into a restricted interest bearing account with SMBC to fund the standby letter of credit and release the guarantees provided by Kirin and Mitsui (see Note 7).

There were no other subsequent events requiring recognition or disclosure in the accompanying condensed consolidated financial statements.

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

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q and with our Registration Statement on Form S-1, as amended. Some of the information contained in this discussion and analysis or set forth elsewhere in this Quarterly Report on Form 10Q, includes forward-looking statements that involve risks, uncertainties and assumptions. As a result of many factors, including those factors set forth in the section titled "Risk Factors," our actual results could differ materially from the results described in or implied by these forward-looking statements. You should carefully read the section titled "Risk Factors" to gain an understanding of the factors that could cause actual results to differ materially from our forward-looking statements. Also see the section titled "Special Note Regarding Forward-Looking Statements".*

### Overview

We are a science-driven wellness company pioneering innovative solutions and personalized approaches to health and well-being. We are building a new health category to deliver better health outcomes through a proactive, empowered approach. Our unique, vertically integrated brands, Thorne and Onegevity, provide actionable insights and personalized data, products and services that help individuals take a proactive approach to improve and maintain their health over their lifetime. By combining our proprietary multi-omics database, artificial intelligence (AI) and digital health content with our science-backed nutritional supplements, we deliver a total system for wellness. We believe our integrated solution will redefine the expectations for good health and peak performance.

Founded in 1984, Thorne Research was a small company dedicated to being a "thorn" in the side of the traditional supplement industry by making the purest and highest quality nutritional supplements to sell to healthcare professionals. With a vision for an unparalleled health ecosystem fueled by innovation and technology, our current Chief Executive Officer, Paul F. Jacobson, and the management team, acquired Thorne Research in 2010 and co-founded Onegevity. We completed our acquisition of Onegevity and combined these two complementary companies in January 2021. During the past 10 years, we have evolved to become a transformative consumer brand, trusted by more than 4,000,000 customers, 45,000 healthcare professionals, thousands of professional athletes, more than 100 professional sports teams and 11 U.S. Olympic teams.

Key milestones in our growth history include:

- 2011: Strategic ingredient and botanical agreement with Indena, a company dedicated to the identification, development and production of high-quality active principals derived from plants, for use in the pharmaceutical and health-food industries;
- 2014: Clinical Study Agreement with Mayo Clinic to design and conduct clinical trials of our dietary supplements;
- 2017: Launch of NSF Certified for Sport product line;
- 2018: Onegevity founded; we expanded capacity by moving to a new, state-of-the-art 272,000 square foot facility in South Carolina;
- 2019-2020: Sponsorships of the U.S. Army World Class Athlete Program, UFC, USA Rugby, and Penske Racing; and
- 2020-2021: Thorne HealthTech, Inc. facilitated the merger of the Thorne and Onegevity brands.

Our revenue is generated primarily from the sale of our nutritional supplements and health tests. We have experienced significant sales growth of our nutritional supplements and health tests through the acquisition of new customers and strong customer retention.

For the nine months ended September 30, 2021 and 2020:

- we generated net sales of $135.4 million and $102.3 million, respectively, representing 32.4% growth;
- we generated gross profit of $71.7 million and $47.4 million, respectively, representing 52.9% and 46.3% of net sales, respectively;

- net income of $5.6 million in 2021 and a net loss of $2.1 million in 2020; and
- Adjusted EBITDA of $15.1 million and $13.9 million, representing 11.2% and 13.6% of net sales, respectively.

Our management's discussion and analysis of financial condition and results of operations is based on our financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States (GAAP). We use certain non-GAAP financial measures, including Adjusted EBITDA, Adjusted EBITDA Margin and free cash flow. These measures are derived on the basis of methodologies other than in accordance with GAAP. The SEC has adopted rules to regulate the use of "non-GAAP financial measures" in filings with the SEC and in other public disclosures. Non-GAAP financial measures used by us may be calculated differently from, and therefore may not be comparable to, similarly titled measures used by other companies. We have provided a reconciliation of each non-GAAP financial measure to the most directly comparable GAAP financial measure. These non-GAAP financial measures should be considered along with, but not as alternatives to, the operating performance measure as prescribed by GAAP.

**Key Financial and Operating Data**

Our financial profile is characterized by high growth, recurring revenue, improving gross margins, efficient customer acquisition, and free cash flow.

We measure our business using both financial and operational data and use the following metrics to assess the near-term and long-term performance of our brands and business. These metrics serve as guidance for identifying trends, formulating financial projections, making strategic decisions, assessing operational efficiencies, and monitoring our business.

***Net Sales***

We define net sales as sales of our goods and services and related shipping fees less discounts and returns following the accounting guidelines in accordance with Financial Accounting Standards Board (FASB), Topic 606, "Revenue from Contracts with Customers," (ASC 606). Our net sales consist of sales of our nutritional supplements, health tests, and sales associated with services leveraging our AI and multi-omics databases, such as product development services. We recognize revenues, when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services or when a service contract's term is ended. Several factors are considered in determining that control transfers to the customer on shipment or on delivery for certain customers. These factors include when legal title transfers to the customer, if we have a present right to payment and whether the customer has assumed the risks and rewards of ownership at the time of shipment. Shipping and handling costs are considered a fulfillment activity and are expensed as incurred. We view net sales as a key indicator of demand for our products and services.

***Gross Profit***

We define gross profit as net sales less cost of sales. Cost of sales consists of depreciation and amortization, product and packaging costs, including manufacturing costs, inventory freight, testing costs of raw materials and finished goods, inventory shrinkage costs and inventory valuation adjustments, offset by reductions for promotions and percentage or volume rebates offered by our vendors.

***Adjusted EBITDA and Adjusted EBITDA Margin***

We calculate Adjusted EBITDA as net income (loss) adjusted to exclude: interest income (expense), net; guarantee fees; other income (expense), net; provision for income taxes; depreciation and amortization expense; stock-based compensation expense; change in fair value of warrant liability; write-off of acquired Drawbridge in-process research and development; loss on the Drawbridge Transaction; loss from equity interest in unconsolidated affiliates; and the costs of relocating our production facility from Idaho to South Carolina and the associated start-up costs of the new facility. Adjusted EBITDA Margin is calculated by dividing Adjusted EBITDA by total revenue.

We use Adjusted EBITDA and Adjusted EBITDA Margin as measures of operating performance and the operating leverage in our business. We believe that these non-GAAP financial measures are useful to investors for period-to-period comparisons of our business and in understanding and evaluating our operating results for the following reasons:

- Adjusted EBITDA and Adjusted EBITDA Margin are widely used by investors and securities analysts to measure a company's operating performance without regard to items such as stock-based compensation expense, depreciation and amortization expense, interest (income) expense, net, other (income) expense, net, loss from non-controlling interest and provision for income taxes, each of which can vary substantially from company to company depending on their financing, capital structures and the method by which assets are acquired;
- our management uses Adjusted EBITDA and Adjusted EBITDA Margin in conjunction with financial measures prepared in accordance with GAAP for planning purposes, including the preparation of our annual operating budget, as a measure of our core operating results and the effectiveness of our business strategy, and in evaluating our financial performance; and
- Adjusted EBITDA and Adjusted EBITDA Margin provide consistency and comparability with our past financial performance, facilitate period-to-period comparisons of our core operating results, and facilitate comparisons with other peer companies, many of which use similar non-GAAP financial measures to supplement their GAAP results.

Use of Adjusted EBITDA and Adjusted EBITDA Margin have limitations as analytical tools, and you should not consider these measures in isolation or as substitutes for analysis of our financial results as reported under GAAP. Some of these limitations are, or may in the future be, as follows:

- although depreciation and amortization expense are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA and Adjusted EBITDA Margin do not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- Adjusted EBITDA and Adjusted EBITDA Margin exclude stock-based compensation expense, which is a recurring expense for our business and an important part of our compensation strategy;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect: (1) changes in, or cash requirements for, our working capital needs; (2) interest expense, or the cash requirements necessary to service interest or principal payments on our debt, which reduces cash available to us; (3) tax payments that may represent a reduction in cash available to us; or (4) the use of net operating loss (NOL) carryforwards and the full valuation reserve against deferred tax assets and liabilities are non-cash items that can have an impact on GAAP performance, but may not reflect the continuing operating results of our business;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect certain one-time relocation costs from Idaho to South Carolina where significant cash was expended to relocate personnel, relocate equipment, purchase new equipment, and start up a newly built manufacturing facility that had not operated previously; and
- the expenses and other items that we exclude in our calculation of Adjusted EBITDA and Adjusted EBITDA Margin may differ from the expenses and other items, if any, that other companies may exclude from Adjusted EBITDA when they report their operating results and we may, in the future, exclude other significant, unusual, or non-recurring expenses or other items from these financial measures.

Because of these limitations, Adjusted EBITDA and Adjusted EBITDA Margin should be considered along with other operating and financial performance measures presented in accordance with GAAP.

The following table presents a reconciliation of Adjusted EBITDA to net loss, the most directly comparable financial measure prepared in accordance with GAAP, for each of the periods indicated (unaudited; in thousands, except margin figures):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2021 | 2020 | 2021 | 2020 |
| **EBITDA Calculation and reconciliation** | | | | |
| Net income (loss) | $ 951 | $4,161 | $ 5,324 | $ (2,164) |
| Depreciation and amortization | 1,067 | 958 | 3,329 | 2,851 |
| Interest expense (income), net | 29 | (138) | 393 | 724 |
| Income tax expense | 79 | 48 | 122 | 129 |
| Rounding | — | — | 1 | — |
| EBITDA | $ 2,126 | $5,029 | $ 9,169 | $ 1,540 |
| EBITDA margin | 4.4% | 13.0% | 6.8% | 1.5% |
| **Adjustments:** | | | | |
| Stock-based compensation | 891 | 1,396 | 1,425 | 9,797 |
| Change in fair value of warrant liability | (2,213) | 420 | (903) | 1,138 |
| Write-off of acquired Drawbridge in-process research and development | — | — | 1,563 | — |
| Loss on Drawbridge transaction | — | — | 166 | — |
| Guarantee fees | 142 | 187 | 421 | 359 |
| Loss from equity interests in unconsolidated affiliates | 131 | 620 | 3,304 | 1,064 |
| Rounding | — | — | 1 | — |
| Adjusted EBITDA | $ 1,077 | $7,652 | $15,146 | $13,898 |
| Adjusted EBITDA margin | 2.2% | 19.7% | 11.2% | 13.6% |

***Free Cash Flow***

We define free cash flow as net cash provided by (used in) operating activities, less capital expenditures, which consist of purchases of property and equipment, as well as purchase of licensing agreements. Accordingly, we believe that free cash flow provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and Board of Directors. Free cash flow can be affected in the near-to-medium-term by the timing of capital investments, such as purchases of machinery, information technology and other equipment, the launch of new fulfillment centers, customer service centers and new products, fluctuations in our growth and the effect of such fluctuations on working capital and changes in our cash conversion cycle due to increases or decreases of customer and vendor payment terms as well as inventory turnover. We expect free cash flow to increase over the long term as investments made in prior years drive increased profitability. If we experience an unforeseen increase in demand, we may need to make additional capital investments in manufacturing facility expansion.

The following table presents a reconciliation of free cash flow to net cash, the most directly comparable financial measure prepared in accordance with GAAP, for each of the periods indicated (unaudited; in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| **Free Cash flow Calculation** | 2021 | 2020 | 2021 | 2020 |
| Net cash provided by (used in) operating activities | $5,254 | $15,096 | $ 6,140 | $11,679 |
| Purchase of equipment | (987) | (221) | (2,124) | (1,099) |
| Purchase of licensing agreements | — | (100) | (563) | (300) |
| Free cash flow | $4,267 | $14,775 | $ 3,453 | $10,280 |

***Number of Subscriptions***

We define subscriptions as orders resulting from direct-to-consumer (DTC) customers opting into automatic refills or orders that are recurring on Thorne.com and Amazon. Our subscription programs on both platforms offer automatic ordering, payment and delivery of our products to a customer's designation location .

***Subscription Sales as a Percentage of Net DTC Sales***

We define subscription sales as sales generated from retail subscription orders on Thorne.com and Amazon within a given period. Subscription sales are taken as a percentage of net sales from all DTC orders in that same period. We view subscription sales as a percentage of net DTC sales as a key indicator of our recurring sales and customer retention.

***Annual LTV to CAC***

We define annual life-time value (LTV) to customer acquisition costs (CAC) as LTV from a specific twelve-month period divided by the CAC of that same twelve-month period. Annual LTV is defined as the average gross contribution per purchasing DTC customer within a particular twelve-month period divided by one, less the customer retention rate (Churn Rate), during the same twelve-month period. Average gross contribution is defined as the cumulative revenue from our DTC customers during a particular twelve-month period, less the cost of goods, divided by the number of purchasing DTC customers in the same twelve-month period. To arrive at the annual LTV for a particular calendar year, the average gross contribution is divided by that respective twelve-month period Churn Rate. Annual CAC is defined as the total advertising and marketing expenses, less headcount expenses and associated benefit expenses, in a particular twelve-month period, divided by the number of customers who placed their first order during that same twelve-month period. We view the annual LTV to CAC ratio as a key indicator for marketing efficiency.

***Orders per Customer per Year (Annual Period)***

We define orders per customers per year, or twelve-month period, as the total number of sales orders placed by our DTC customers in a given year, or twelve-month period, divided by the total number of DTC customers who purchased within that same period. We view orders per customer per annual period as a key indicator of our customers' purchasing patterns, including their initial and repeat purchase behavior, and as an indication of the desirability of our products to our customers. We expect orders per customer per annual period to remain steady or increase modestly over the long term as we continue to grow and acquire new customers and as our customers continue to demand our high-quality products.

**Factors Affecting Our Performance**

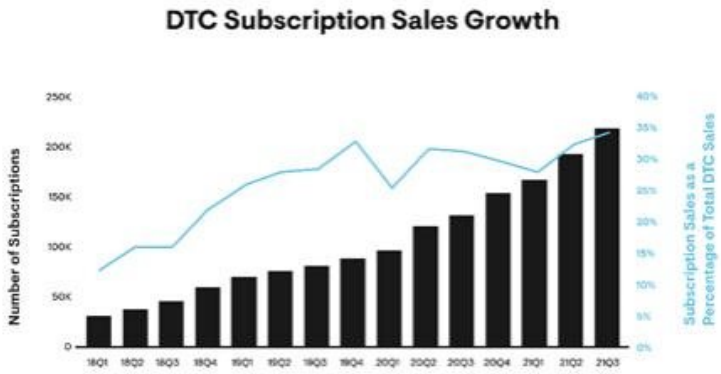
***Ability to Increase Brand Awareness and Attract New Customers***

Our long-term growth will depend on our continued ability to attract new customers. Our historical growth was largely driven by organic customer acquisition. We are still in the early stages of our growth and believe we can significantly expand our customer base as brand awareness is increased. Growing brand awareness through efficient, impactful communications and through building brand equity and loyalty is central to our marketing and growth strategy. We believe optimizing the message of our brand as one that defies expectations of good health differentiates us and is key to our ability to attract customers and retain them within our ecosystem. As our brand awareness grows, we intend to strengthen our reach across demographics and markets.

***Growth in Subscriptions***

We offer our customers the ability to opt into recurring automatic refills on Thorne.com and Amazon. A customer can cancel or modify a subscription at any time at no cost to the customer on both platforms. On Thorne.com, customers can subscribe monthly, every 45 days, every two months, every three months, or every four months. For each ordering frequency, a 10% discount is offered on retail refill orders. On Amazon, the discount ranges from 5% to 10% depending on the number of products to which a customer is subscribed, with an average discount of approximately 8%.

We view our growing subscription business on Thorne.com and Amazon as a key driver of profitable future sales growth. The chart below shows active subscription numbers and subscription sales as a percentage of net DTC sales by quarter from 2018 to September 30, 2021.




The total number of subscriptions grew from 61,135 at the end of 2018, to 89,178 at the end of 2019 and to 155,305 at the end of 2020, representing a compounded annual growth rate of 59.4%. The total number of subscriptions as of September 30, 2020, was 132,307 and as of September 30, 2021, was 218,935, representing 65.5% year-over-year growth. Subscription sales are expected to continue to grow as we continue to invest in brand awareness, innovate new products, and market the convenience and savings of our nutritional supplements and tests.

***Efficiency of Spending on Advertising and Marketing***

We are disciplined in measuring and managing CAC and LTV of our customers. We are consistently looking for new ways to acquire customers more efficiently, grow revenue per customers, and retain our customers for longer periods of time.

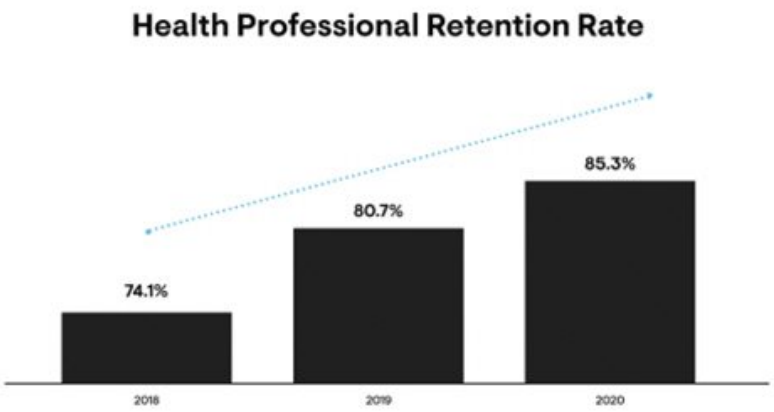
We experience high retention, repeat purchases and low CAC as seen by our 2019 and 2020 LTV to CAC ratios of 4.5x and 7.6x, respectively, and by our LTV to CAC ratios of 6.1x and 3.7x for the nine months ended September 30, 2020 and 2021, respectively. The annual LTV is calculated by taking the average gross contribution per purchasing DTC customer in a rolling 12-month period and dividing it by the same period's Churn Rate. Our retention rate is calculated by taking the number of customers at the end of the period minus the number of new customers during the period divided by the number of customers at the beginning of the time period. The 2020 retention rate was calculated as the number of total customers at the end of 2020, less the number of customers acquired during the year, divided by the number of customers at the end of 2019. The retention rate for the three-months ended September 30, 2021, was calculated as the number of total customers at September 30, 2021, less the number of customers acquired during the prior 12-month period, divided by the number of customers at September 30, 2020. Average gross profit contribution is defined as cumulative sales from DTC customers during a 12-month period, less cost of goods, divided by the number of purchasing DTC customers in the same period. CAC is calculated as total advertising and marketing expenses, less advertising and marketing payroll and associated benefit expenses in a period, divided by the total number of customers during that same period. For 2019 and 2020 CAC, we calculated it on a calendar year basis, and for the CAC for the nine months ended September 30, 2021, we calculated it using the same method for the period January 1, 2021 to September 30, 2021. To arrive at the LTV to CAC ratio, we divide LTV by CAC.

***Ability to Engage and Retain Our Existing Customers***

Our success is impacted not only by efficient and profitable customer acquisition, but also by our ability to retain customers and encourage repeat purchases. In 2020, 45.6% of DTC sales were generated from new, first-time purchasers versus 54.4% from existing customers. Relationships with our customers are deepened and retention is driven by engaging the customers with digital health content and educational resources. Usage of our products and engaging with our content has resulted in our strong annual DTC retention rate of 68% in 2020. Annual retention rate is calculated by subtracting the number of customers acquired during the period from the number of purchasing customers at the end of the period and dividing that number by the number of customers at the start of the period. Of our total 2020 DTC sales, nearly one-third were recurring subscription sales. The growth in annual net sales is expected to continue as we generate and grow sales from existing customers and from newly acquired customers.

***Healthcare Professionals***

Our network of 45,000 healthcare professionals serves two key purposes. First, it distinguishes our brand by offering both credibility and validation to patients at times when the industry is struggling with trust. Secondly, healthcare professionals carry, promote, and distribute our products to consumers. Based on a 2018 survey conducted with 1,188 consumers, primary care physicians were identified as the most common entry point for nutritional supplement category consumers with nearly 60% of patients looking to their primary care providers when considering which nutritional supplements to buy. Therefore, retention and expansion of our network of healthcare professionals is important to our strategy.




As seen in the chart above, in 2020, our annual retention rate of healthcare professionals was 85.3%, up from 74.1% in 2018.

***Ability to Invest***

Because we expect to continue to make investments across our business to drive growth, we expect expenses to increase. We plan to continue to invest in sales and marketing to drive demand for our products and services. We expect to continue to invest in research and development to enhance our platform, develop new nutritional supplements, expand our testing portfolio, grow our multi-omics database and AI capabilities, and improve our brand ecosystem's infrastructure.

***Ability to Grow in New Geographies***

Entering new geographic markets requires us to invest in distribution and marketing, infrastructure and personnel. International growth will depend on our ability to sell in international markets. In 2020, we shipped to 37 countries. We believe capital investment coupled with our regulatory expertise will lead to promising results. However, international sales are dependent on local regulations, as well as customs and importation practices, which both change continuously.

**Components of our Operating Results**

***Net Sales***

Net sales consist of sales of nutritional supplements, health tests and sales associated with services that leverage our AI and multi-omics databases, such as product development services. Net sales are recognized when control over the product has transferred to customers in accordance with our revenue recognition policy.

***Cost of Sales***

Cost of sales consists of depreciation and amortization, product and packaging costs, including manufacturing costs, inventory freight, testing costs of raw materials and finished goods, inventory shrinkage costs and inventory valuation adjustments, offset by reductions for promotions and percentage or volume rebates offered by vendors, which can depend on reaching minimum purchase thresholds. We expect cost of sales to increase on an absolute dollar basis and improve as a percentage of net sales long-term.

***Operating Expenses***

Selling, general and administrative expenses consist of

- sales and marketing;
- research and development;
- payroll and related expenses for employees involved in general corporate functions, including accounting, finance, tax, legal, and human resources;
- costs associated with use by these functions, such as depreciation expense and rent relating to facilities and equipment;
- professional fees and other general corporate costs;
- stock-based compensation; and
- fulfillment costs.

Marketing expenses consist of performance marketing media spend, asset creation, and other brand creation, as well as sales and marketing personnel-related expenses. We intend to continue to invest in sales and marketing capabilities and expect this increase in absolute dollars in future periods as new products are released and we expand into additional international markets. Sales and marketing expense as a percentage of net sales might fluctuate from period to period based on net sales and the timing of our investments in our sales and marketing functions as these investments vary in scope and scale over future periods.

Research and development expenses support our efforts to add new features to existing solutions and to ensure the reliability and scalability of our product development and testing. Research and development expenses consist of personnel expenses, including salaries, bonuses, stock-based compensation expense and benefits for employees and contractors for our engineering, product, and design teams and allocated overhead costs. Research and development costs are expensed as incurred, except those costs that have been capitalized as software development costs.

We plan to hire employees for our science and engineering team to support our research and development efforts. Research and development expenses are expected to increase on an absolute dollar basis in the foreseeable future as we continue to increase investments in our technology platform. However, our research and development expenses might fluctuate as a percentage of revenue from period to period due to the timing and amount of these expenses.

Fulfillment costs represent costs incurred in operating, manufacturing, and staffing order fulfillment and customer service teams, including costs attributable to buying, receiving, inspecting and warehousing inventories, picking, packaging and preparing customer orders for shipment, payment processing and related transaction costs and responding to inquiries from customers. Included within fulfillment costs are merchant processing fees charged by third parties that provide merchant processing services for credit cards.

Additional expenses are expected to be incurred as a result of operating as a public company, including expenses to comply with the rules and regulations applicable to companies listed on the Nasdaq, expenses related to compliance and reporting obligations pursuant to the rules and regulations of the SEC, as well as higher expenses for general and director and officer insurance, investor relations, and professional services. Fulfillment costs are anticipated to fluctuate as a percentage of net sales over the long term. Overall, as we continue to grow as a company, we expect that our selling, general and administrative costs will increase on an absolute dollar basis but decrease as a percentage of net sales over the long term.

***Interest expense, net***

Interest expense, net consists primarily of interest earned on cash we hold, and interest incurred on borrowings.

***Income Tax Provision***

Our income tax provision consists of an estimate of federal and state income taxes based on enacted federal and state tax rates, as adjusted for allowable credits, deductions and uncertain tax positions. Because we have experienced net losses we have fully reserved for all deferred tax assets and liabilities. Our income tax provision consists of cash taxes paid during the year in review .

**Results of Operations**

The following table summarizes our results of operations for the periods indicated:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2021 | 2020 | 2021 | 2020 |
| | (unaudited; dollars in thousands, except per share amounts) | | | |
| Net sales | $ 48,010 | $ 38,774 | $ 135,383 | $ 102,278 |
| Cost of sales | 22,470 | 19,445 | 63,710 | 54,900 |
| Gross profit | 25,540 | 19,329 | 71,673 | 47,378 |
| | 53.2% | 49.9% | 52.9% | 46.3% |
| Operating expenses: | | | | |
| Research and development | 2,237 | 552 | 4,280 | 3,124 |
| Write-off of acquired Drawbridge in-process research and development | — | — | 1,563 | — |
| Selling, general and administrative | 24,223 | 13,478 | 57,079 | 43,003 |
| Income (loss) from operations | (920) | 5,299 | 8,751 | 1,251 |
| Other expense (income): | | | | |
| Interest expense (income), net | 29 | (138) | 393 | 724 |
| Guarantee fees | 142 | 187 | 421 | 359 |
| Change in fair value of warrant liability | (2,213) | 420 | (903) | 1,138 |
| Loss on Drawbridge transaction | — | — | 166 | — |
| Other expense (income), net | (39) | 1 | (77) | 1 |
| Total other expense (income), net | (2,081) | 470 | — | 2,222 |
| Income (loss) before income taxes and loss from equity interests in unconsolidated affiliates | 1,161 | 4,829 | 8,751 | (971) |
| Income tax expense | 79 | 48 | 123 | 129 |
| Net income (loss) before loss from equity interests in unconsolidated affiliates | 1,082 | 4,781 | 8,628 | (1,100) |
| Loss from equity interests in unconsolidated affiliates | (131) | (620) | (3,304) | (1,064) |
| Net income (loss) | 951 | 4,161 | 5,324 | (2,164) |
| Net (income) loss - non-controlling interests | (78) | 584 | (323) | (104) |
| Net income (loss) attributable to Thorne HealthTech, Inc. | 1,029 | 3,577 | 5,647 | (2,060) |
| Undistributed earnings attributable to Series E convertible preferred stockholders | $ (553) | (3,577) | $ (5,171) | — |
| Net income (loss) attributable to common stock | $ 476 | $ — | $ 476 | (2,060) |
| Earnings (loss) per share: | | | | |
| Basic | $ 0.02 | $ — | $ 0.02 | $ (0.20) |
| Diluted | $ 0.01 | $ — | $ 0.01 | $ (0.20) |
| Weighted average common shares outstanding: | | | | |
| Basic | 21,212,668 | 11,932,085 | 19,032,403 | 10,439,466 |
| Diluted | 51,222,522 | 40,413,805 | 50,327,893 | 39,866,905 |

***Net sales***

Net sales for the three months ended September 30, 2021, increased by $9.2 million, or 23.8%, to $48.0 million, compared to $38.8 million for the same period in 2020. This growth was largely driven by an increase in our DTC customers, specifically our subscription-based customer sales, which grew to $6.2 million during the three months ended September 30, 2021, representing an

increase of $1.8 million, or 41.4%, from $4.4 million during the three months ended September 30, 2020. The introduction of new innovative products along with a continued increase in demand for our immune-supportive suite products helped drive sales and new customers, while the expansion of our health evaluations with quizzes and tests increased the conversion of those participants to new customers.

Net sales during the nine months ended September 30, 2021, increased by $33.1 million, or 32.4%, to $135.4 million, compared to $102.8 million in the nine months ended September 30, 2020. For the nine months ended September 30, 2021, all sales channels continued to show strength with DTC and professional (B2B) sales growing 32.2% and 32.5%, respectively, compared to the same prior-year period, led by DTC subscription sales which grew $5.2 million, or 43.4%, to $17.3 million for the nine months ended September 30, 2021, compared to $12.0 million during the nine months ended September 30, 2020. The introduction of new innovative products along with an increase in demand for our immune-supportive suite products helped drive sales and new customers, while the expansion of our health evaluations with quizzes and tests increased the conversion of those new customers.

***Cost of Sales and Gross Profit***

The following table summarizes our cost of goods sold and gross profit for the periods indicated (unaudited; in thousands, except percentage figures):

| | Three Months Ended September 30, | | | | Nine Months Ended September 30, | | | |
|---|---|---|---|---|---|---|---|---|
| | 2021 | 2020 | Change | Percent Change | 2021 | 2020 | Change | Percent Change |
| Net sales | $48,010 | $38,774 | $ 9,236 | 23.8% | $135,383 | $102,278 | $ 33,105 | 32.4% |
| Cost of sales | 22,470 | 19,445 | 3,025 | 15.6% | 63,710 | 54,901 | 8,809 | 16.0% |
| Percent of net sales | 46.8% | 50.1% | -335 bps | (6.6)% | 47.1% | 53.7% | -662 bps | (12.3)% |
| Gross profit | $25,540 | $19,329 | $ 6,210 | 32.1% | $ 71,673 | $ 47,378 | $ 24,295 | 51.3% |
| Percent of net sales | 53.2% | 49.9% | 335 bps | 6.7% | 52.9% | 46.3% | 662 bps | 14.3% |

Cost of sales for the three months ended September 30, 2021, increased by $3.0 million, or 15.6%, to $22.5 million, compared to $19.4 million for the same period in 2020. This increase in cost of sales was primarily due to a 23.8% increase in net sales and associated product costs, partially offset by additional efficiencies in our manufacturing processes, including increased capacity, increased batch sizes and improved fixed cost leverage. The increase in cost of sales was lower than the increase in revenues on a percentage basis, primarily due to lower production costs.

Gross profit for the three months ended September 30, 2021, increased by $6.2 million, or 32.1%, to $25.5 million, compared to $19.3 million for the same period in 2020. This increase was primarily due to the increase in net sales described above and additional efficiencies in our manufacturing processes, including increased capacity, increased batch sizes and improved fixed cost leverage. Gross profit as a percentage of sales for the three months ended September 30, 2021, increased by 6.7%, compared to the same period of 2020.

Cost of sales for the nine months ended September 30, 2021, increased by $8.8 million, or 16.0%, to $63.7 million, compared to $54.9 million in the nine months ended September 30, 2020. This increase in cost of sales was primarily due to a 32.4% increase in net sales and associated product costs, partially offset by a reduction of our product manufacturing costs. The increase in cost of sales was lower than the increase in revenues on a percentage basis, primarily due to lower production costs.

Gross profit for the nine months ended September 30, 2021, increased by $24.3 million, or 51.3%, to $71.7 million, compared to $47.4 million in the nine months ended September 30, 2020. This increase was primarily due to the increase in net sales described above and additional efficiencies in our manufacturing processes, including increased capacity, increased batch sizes and improved fixed cost leverage. Gross profit as a percentage of sales for the first nine months of 2021, increased by 14.3%, compared to the same period of 2020.

***Operating Expenses***

The following table summarizes our selling, general and administrative expenses for periods indicated: (unaudited; in thousands except percentage figures):

| | Three Months Ended September 30, | | | | Nine Months Ended September 30, | | | |
|---|---|---|---|---|---|---|---|---|
| | 2021 | 2020 | Change | Percent Change | 2021 | 2020 | Change | Percent Change |
| Net sales | $48,010 | $38,774 | $ 9,236 | 23.8% | $135,383 | $102,278 | $ 33,105 | 32.4% |
| Total operating expenses | $26,460 | $14,030 | $ 12,430 | 88.6% | $ 62,922 | $ 46,127 | $ 16,795 | 36.4% |
| Percent of net sales | 55.1% | 36.2% | 1,890 bps | 52.2% | 46.5% | 45.1% | 140 bps | 3.1% |
| Marketing | $10,792 | $ 2,442 | $ 8,350 | 341.9% | $ 20,077 | $ 6,150 | $ 13,927 | 226.5% |
| Percent of net sales | 22.5% | 6.3% | 1,620 bps | 257.0% | 14.8% | 6.0% | 880 bps | 146.6% |
| Research and development | $ 2,237 | $ 552 | $ 1,685 | 305.3% | $ 4,280 | $ 3,124 | $ 1,156 | 37.0% |
| Percent of net sales | 4.7% | 1.4% | 330 bps | 227.2% | 3.2% | 3.1% | 10 bps | 3.5% |
| Other selling, general and administrative expenses | $11,473 | $ 8,682 | $ 2,791 | 32.1% | $ 32,248 | $ 24,205 | $ 8,043 | 33.2% |
| Percent of net sales | 23.9% | 22.4% | 150 bps | 6.7% | 23.8% | 23.7% | 15 bps | 0.6% |
| Stock-based compensation | $ 891 | $ 1,396 | $ (505) | (36.2)% | $ 1,425 | $ 9,797 | $ (8,371) | (587.4)% |
| Percent of net sales | 1.9% | 3.6% | -170 bps | (48.5)% | 1.1% | 9.6% | -850 bps | (89.0)% |
| Depreciation and amortization | $ 1,067 | $ 958 | $ 109 | 11.4% | $ 3,329 | $ 2,851 | $ 478 | 16.8% |
| Percent of net sales | 2.2% | 2.5% | -25 bps | (10.0)% | 2.5% | 2.8% | -33 bps | (11.8)% |
| Write-off of acquired Drawbridge in-process research and development | — | — | $ — | — | $ 1,563 | — | $ 1,563 | 100.0% |
| Percent of net sales | 0.0% | 0.0% | 0.0% | 0.0% | 1.2% | 0.0% | 1.2% | 100.0% |

Total selling, general and administrative expenses for the three months ended September 30, 2021, increased by $10.7 million, or 79.7%, to $24.2 million, compared to $13.5 million for the same period in 2020. This increase was primarily due to an increase in marketing expenses which increased by $8.4 million, or 341.9%, to $10.8 million, compared to $2.4 million for the same period in 2020, driven by an increase in our investment in paid, working media. The increased investment in our paid media efforts is attributable to the strategy of increasing brand awareness and reaching and acquiring more consumers, particularly to the Thorne.com website. Research and development expense for the three months ended September 30, 2021, increased by $1.7 million, or 305.3%, to $2.2 million, compared to $0.6 million for the same period in 2020. The increase was primarily due to achieving our objective to increase research spending as a percent of sales to drive innovation and new product development.

Total selling, general and administrative expenses for the nine months ended September 30, 2021, increased by $14.1 million, or 32.7%, to $57.1 million, compared to $43.0 million in the nine months ended September 30, 2020. This increase was primarily due to an increase in marketing expenses and the write-off of acquired Drawbridge in-process research and development of $1.6 million. Marketing expenses for the nine months ended September 30, 2021, increased by $13.9 million, or 226.5%, to $20.1 million, compared to $6.2 million for the same period in 2020. The increase was primarily due to our investment in paid, working media. The increased investment in our paid media efforts attributable to the strategy of increasing brand awareness and reaching and acquiring more consumers, particularly to the Thorne.com website. Research and development expense for the nine months ended September 30, 2021, increased by $1.2 million, or 37.0%, to $4.3 million, compared to $3.1 million for the same period in 2020. The increase was primarily due to achieving the objective to increase research spending as a percent of sales to drive new product development and clinical trial investments.

***Interest Expense (Income), Net***

The following table summarizes our interest expense, net for the periods indicated: (unaudited; in thousands except percentage figures):

| | Three Months Ended September 30, | | | | Nine Months Ended September 30, | | | |
|---|---|---|---|---|---|---|---|---|
| | 2021 | 2020 | Change | Percent Change | 2021 | 2020 | Change | Percent Change |
| Interest expense (income), net | $ 29 | $(138) | $ 167 | >100.0% | $393 | $724 | $ (331) | (45.8)% |

Interest expense (income), net for the three months ended September 30, 2021, increased by $0.2 million, or 146.6%, to $0.1 million, compared to $(0.1) million for the same period in 2020. This increase was primarily due to the change in interest rate associated with a $20.0 million loan obtained beginning in February 2020.

Interest expense, net for the nine months ended September 30, 2021, decreased by $0.3 million, or 39.9%, to $0.4 million, compared to $0.7 in the nine months ended September 30, 2020. This decrease was primarily due to the lower interest rate associated with a $20.0 million loan obtained, beginning in February 2020, and repayment of our existing loan.

**Liquidity and Capital Resources**

***Revolving Credit Line***

On February 14, 2020, we entered into an Uncommitted and Revolving Credit Line Agreement, by and among us as the borrower and Sumitomo Mitsui Banking Corporation (SMBC) as the lender (2020 Credit Agreement). Upon closing, we borrowed $20.0 million from the revolving line of credit and used the proceeds to repay the outstanding principal and accrued interest under the previous line of credit totaling approximately $13.6 million, as well as payment of the Series D dividend, plus all accrued and unpaid interest, totaling approximately $3.3 million, and repay the outstanding related party note payable to Kirin of approximately $3.1 million.

Our obligations under the 2020 Credit Agreement were guaranteed by two significant shareholders, Kirin Holdings Company, Limited (Kirin) and Mitsui & Co., Ltd. (Mitsui). We paid each guarantor an annual fee equal to two percent of $10 million for such guarantees annually and upon the occurrence of any change of control in respect of our company. Under separate Fee Letters, dated February 14, 2020, between us and each Mitsui (2020 Mitsui Fee Letter) and Kirin (2020 Kirin Fee Letter), we also agreed to reimburse Mitsui and/or Kirin, in cash, for any amounts that Mitsui and/or Kirin paid under its respective guarantee of the 2020 Credit Agreement. However, if we were not able to reimburse such amounts, wholly or partially, to Mitsui and/or Kirin, then we and Mitsui and/or Kirin agreed to deem such unreimbursed amount to have been made for the benefit of our company in consideration for our debt or equity securities on terms reasonably satisfactory to Mitsui and/or Kirin, and us.

In February 2021, we replaced and refinanced the 2020 Credit Agreement and all loans outstanding thereunder with a new uncommitted revolving credit line from SMBC having substantially similar terms, as further described below and under Note 6 to our condensed consolidated financial statements.

On February 12, 2021, we entered into an Uncommitted and Revolving Credit Line Agreement, by and among us as the borrower and SMBC as the lender (2021 Credit Agreement), to refinance and replace the 2020 Credit Agreement. The terms of the 2021 Credit Agreement are substantially similar to the terms of the 2020 Credit Agreement. Under the 2021 Credit Agreement, SMBC may in its sole discretion elect to make unsecured loans to us until February 11, 2022, in an aggregate principal amount up to but not exceeding $20.0 million at any time. Each loan made under the 2021 Credit Agreement may have a maturity date that is not less than one day and not more than twelve months after the date that such loan is disbursed, as we and SMBC may mutually agree. SMBC may, in its sole discretion at any time, terminate in whole or partially reduce the unused portion of the credit line under the 2021 Credit Agreement. SMBC is not obligated to make any loan under the 2021 Credit Agreement.

We may prepay any outstanding loans under the 2021 Credit Agreement in whole or in part at any time without penalty, other than customary prepayment fees or additional costs as determined by SMBC. As of February 12, 2021, we have fully drawn down $20.0 million under the 2021 Credit Agreement to refinance our outstanding loans under the 2020 Credit Agreement. As a result, under the $20.0 million maximum credit line, no additional amount is available to be borrowed.

A loan under the 2021 Credit Agreement bears interest at a per annum rate quoted by SMBC and agreed to by us when such loan is made. Interest on a loan is payable in arrears on the maturity date of such loan. Principal of a loan is due on such loan's maturity date. We are also obligated to pay other expenses and indemnities customary for a credit facility of this size and type.

Our obligations under the 2021 Credit Agreement continue to be guaranteed Kirin and Mitsui. We are required pay each guarantor an annual fee equal to 1.20% of each of their $10 million guarantees annually and upon the occurrence of any change of control in respect of our company. We recorded $101 thousand and $299 thousand of related expense during the three and nine months ended September 30, 2021; comparatively, we recorded $123 thousand and $236 thousand of guarantee fees during the three and nine months ended September 30, 2020, which are included in the guarantee fees in the condensed consolidated statements of operations. Under separate Fee Letters, dated February 12, 2021, between us and each Mitsui (2021 Mitsui Fee Letter) and Kirin (2021 Kirin Fee Letter), we also agree to reimburse Mitsui and/or Kirin, in cash, for any amounts that Mitsui and/or Kirin pay under its respective guarantee of the 2021 Credit Agreement. However, if we are not able to reimburse such amounts, wholly or partially, to Mitsui and/or Kirin, then we and Mitsui and/or Kirin may agree to deem such unreimbursed amount to be made for our benefit in consideration for our debt or equity securities on terms reasonably satisfactory to Mitsui and/or Kirin, and us.

The 2021 Credit Agreement contains customary affirmative covenants, including covenants regarding the payment of taxes and other obligations, maintenance of insurance, reporting requirements and compliance with applicable laws and regulations, and customary negative covenants limiting our ability, among other things, to merge or consolidate, dispose of all or substantially all of its assets, liquidate or dissolve, and grant liens, subject to certain exceptions. Upon the occurrence and during the continuance of an event of default, SMBC may declare all outstanding principal of, and accrued and unpaid interest on, loans made under the 2021 Credit Agreement immediately due and payable and may exercise the other rights and remedies provided for under the 2021 Credit Agreement and related loan documents. The events of default under the 2021 Credit Agreement include, subject to grace periods in certain instances, payment defaults, cross defaults with certain other material indebtedness, certain material judgments, breaches of covenants or representations and warranties, change in control of our company, a material adverse change as defined in the 2021 Credit Agreement, and certain bankruptcy and insolvency events.

On October 4, 2021, we repaid the $20.0 million of outstanding borrowings, plus all accrued and unpaid interest 2021 Credit Agreement through the date of repayment. We incurred incremental fees related to the payoff totaling $7 thousand. Upon repayment of the outstanding borrowings under the 2021 Credit Agreement, the related Mitsui and Kirin guarantees were released and terminated.

***Letter of Credit Reimbursement Agreement***

On October 31, 2018, we entered into a Reimbursement Agreement with SMBC (LC Reimbursement Agreement), under which we may request SMBC to issue up to $4.9 million in letters of credit in the aggregate and we agree to reimburse SMBC for any drawings under such letters of credit. Our obligations under the LC Reimbursement Agreement are guaranteed by Kirin and Mitsui. We pay each guarantor an annual fee equal to 12-month LIBOR, plus 3.0%, of $2,450,000 for such guarantees annually and upon the occurrence of any change of control in respect of our company. Considering the future cessation of LIBOR interest rates, we are discussing with Kirin and Mitsui shifting to a SOFR based rate on terms yet to be negotiated. The 12-month LIBOR rate was last set on February 12, 2021. Under the Fee Letter dated November 30, 2018, between us and Mitsui (2018 Mitsui Fee Letter), amounts paid by Mitsui under its guarantee shall be deemed made for our benefit in consideration for our debt or equity securities on terms reasonably satisfactory to Mitsui and us. Under the Fee Letter dated November 30, 2018 between us and Kirin (2018 Kirin Fee Letter), amounts paid by Kirin under its guarantee shall be deemed made for our benefit in consideration for our debt or equity securities on terms reasonably satisfactory to Kirin and us.

The LC Reimbursement Agreement contains customary affirmative covenants, including covenants regarding the payment of taxes and other obligations, reporting requirements and compliance with applicable laws and regulations, and customary negative covenants limiting our ability, among other things, to merge or consolidate, dispose of all or substantially all of its assets, liquidate or dissolve. Upon the occurrence and during the continuance of an event of default, SMBC may declare all outstanding obligations owing under the LC Reimbursement Agreement immediately due and payable and may exercise the other rights and remedies provided for under the LC Reimbursement Agreement and related documents. The events of default under the LC Reimbursement Agreement include, subject to grace periods in certain instances, payment defaults, cross defaults with other indebtedness, certain material judgments, breaches of covenants or representations and warranties, a material adverse effect as defined in the LC Reimbursement Agreement and certain bankruptcy and insolvency events.

To support the obligation of our subsidiary, Thorne Research, Inc., to make a security deposit under its facility lease in Summerville, South Carolina, SMBC has issued an irrevocable standby letter of credit pursuant to the LC Reimbursement Agreement in the amount of $4.9 million with an original expiration date of December 3, 2019, and automatic renewals until October 31, 2037.

This letter of credit has an annual fee of $19,946. We incurred guarantee fees for this letter of credit under the 2018 Mitsui Fee Letter and the 2018 Kirin Fee Letter for three months ended September 30, 2021 and 2020, of $41 thousand and $64 thousand, respectively. The related guarantee fee expense incurred during the nine months ended September 30, 2021 and 2020 were $122 thousand and $123 thousand, respectively. These fees are included in guarantee fees within the condensed consolidated statements of operations.

We are currently negotiating with the South Carolina facility's landlord to remove the requirement for such letter of credit. If the negotiation of such removal or alternate replacement credit support is successful, then the related supporting Mitsui and Kirin guarantees may also not be required and could be terminated. There is no guarantee, however, that the landlord will agree to remove the letter of credit or to accept an alternative, replacement credit support.

**Sources and Uses of Our Cash and Cash Equivalents**

***Operating Activities***

Cash provided by operating activities consisted of net loss adjusted for non-cash items, including depreciation and amortization, stock-based compensation, change in fair value of warrant liability and certain other non-cash items, as well as the effect of changes in working capital and other activities.

Net cash provided by operating activities was $6.1 million for the nine months ended September 30, 2021, compared to $11.7 million during the nine months ended September 30, 2020. Cash generated from operations decreased $5.5 million due to an incremental cash outflow of $8.2 million stemming from changes to our net working capital, mainly driven by increases in inventories, prepaid expenses, and accounts payable, partially offset by an increase in net income after adjustments for non-cash items of $2.7 million. We made a conscious effort to increase our working capital to protect our supply chain to ensure sufficient raw materials were on-hand to support increased product demand.

***Investing Activities***

Our primary investing activities consisted of purchases of property and equipment, mainly to increase our manufacturing and fulfillment capabilities to support our growth, as well as leasehold improvements. Use of cash for investing activities also includes payments to support agreements with non-consolidated subsidiaries and the purchase and use of certain license and research agreements.

Net cash used in investing activities was $4.0 million for the nine months ended September 30, 2021, primarily consisting of investing in the acquisition of Drawbridge of $1.4 million, capital spending to support our growth of $2.1 million and the entry into certain licensing and research agreements with Mayo Clinic of $0.6 million.

Net cash used in investing activities was $5.7 million for the nine months ended September 30, 2020, primarily consisting of $1.1 million of capital expenditures to support our growth, $1.2 million of incremental investment in equity-method investees and unconsolidated subsidiaries, as well as the purchase of certain licensing and research agreements with Mayo Clinic of $0.3 million.

***Financing Activities***

Net cash provided by financing activities was $59.4 million for the nine months ended September 30, 2021, primarily consisting of gross proceeds from our IPO of $70.0 million, offset by offering costs of $10.0 million and payments on our debt and leases of $0.6 million.

Net cash provided by financing activities was $0.4 million for the nine months ended September 30, 2020, primarily consisting of borrowing $20.0 million revolving line of credit from SMBC, offset by $12.2 million payoff of the prior line of credit, payments on our debt and leases of $0.3 million, , the exercise of certain stock options that were set to expire, the repurchase of common stock from management, the payment of the Series D dividend of $3.3 million to Mitsui and the repayment of a one-time loan to Kirin of $3.0 million, both of which are current stockholders.

**Contractual Obligations and Other Commitments**

The following table summarizes our contractual obligations as of September 30, 2021 (unaudited; in thousands):

| | Payments Due by Year | | | | |
|---|---|---|---|---|---|
| | Total | 2021 | 2022 – 2024 | 2025 – 2026 | beyond 2026 |
| Operating Lease Obligations | $ 85,443 | $ 1,476 | $16,287 | $11,050 | $56,630 |
| Finance Lease Obligations | 1,026 | 115 | 855 | 56 | — |
| Line of Credit | 20,000 | 20,000 | — | — | — |
| Notes Payable | 1,697 | 487 | 1,114 | 96 | — |
| Total | $108,166 | $22,078 | $18,256 | $11,202 | $56,630 |

We lease all of our manufacturing and distribution facilities, corporate offices and certain equipment under non-cancelable operating and finance leases. These leases expire at various dates through 2037.

**Off Balance Sheet Arrangements**

See Note 14: “Commitments and Contingencies” in our unaudited condensed consolidated financial statements for a discussion of off-balance sheet arrangements.

**Critical Accounting Policies and Estimates**

The preparation of our unaudited condensed consolidated financial statements in accordance with GAAP requires us to make estimates and assumptions that affect reported amounts and related disclosures. We have discussed the policies and estimates that we believe are critical and require the use of complex judgment in their application in our Registration Statement on Form S-1, as amended, and, during the nine months ended September 30, 2021, there were no material changes to those previously disclosed.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

*Market Risk Disclosure*

We do not hold market risk-sensitive trading instruments, nor are financial instruments used for trading purposes. Sales, operating items and balance sheet data are denominated in U.S. dollars; therefore, there is no significant foreign currency exchange rate risk.

We use many different commodities, such as Vitamin C and Vitamin D. Commodities are subject to price volatility caused by commodity market fluctuations, supply and demand, and currency fluctuations. Commodity price increases will result in increases in raw material costs and operating costs.

In the ordinary course of our business, commitments are entered to purchase raw materials over a period of time, generally six months or less at contracted prices. As of September 30, 2021, these future commitments were not at prices in excess of current market, nor in quantities in excess of normal requirements. We do not utilize derivative contracts either to hedge existing risks or for speculative purposes.

*Interest Rate Risk*

We invest excess cash in variable income investments consisting of cash equivalents. The magnitude of the interest income generated by these cash equivalents is affected by market interest rates. We do not use marketable securities or derivative financial instruments in our investment portfolio.

The interest payable on our bank line of credit is based on variable interest rates and therefore is affected by changes in market interest rates.

*Currency Risk*

For the three and nine months ended September 30, 2021 and 2020, we did not sell any product or services for payment in currency other than U.S. dollars.

## Item 4. Controls and Procedures

### Evaluation of Disclosure Controls and Procedures

The Company maintains a set of disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) designed to ensure that information required to be disclosed by the Company in reports it files or submits under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. The design of disclosure controls and procedures is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under potential future conditions. Controls and procedures, no matter how well designed and operated, can provide only reasonable, not absolute, assurance of achieving the desired control objectives. In accordance with Rule 13a-15(b) of the Exchange Act, as of the end of the period covered by this Quarterly Report on Form 10-Q, an evaluation was carried out under the supervision and with the participation of the Company's management, including its Chief Executive Officer and Chief Financial Officer, of the effectiveness of its disclosure controls and procedures. Based on that evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures, as of the end of the period covered by this Quarterly Report on Form 10-Q, were not effective at a reasonable assurance level as of September 30, 2021 because of the material weakness in internal controls further discussed below. Notwithstanding the material weakness, our management, including our CEO and CFO, has concluded that our unaudited consolidated financial statements, included in this Quarterly Report fairly present, in all material respects, our financial condition, results of operations and cash flows for the periods presented in conformity with generally accepted accounting principles.

Under standards established by the Public Company Accounting Oversight Board (PCAOB), a material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected and corrected on a timely basis.

Specifically, our management determined that, as of September 30, 2021, we have material weaknesses in each of the following components of the "Internal Control—Integrated Framework" (2013), issued by the Committee of Sponsoring Organizations of the Treadway Commission:

- an insufficient complement of personnel possessing the appropriate accounting and financial reporting knowledge and experience; and
- we did not maintain effective controls relating to revenue recognition, accounting for significant and unusual transactions and our financial statement close process, which have not been remediated).

These material weaknesses could result in a misstatement of account balances or disclosures that would result in a material misstatement of our annual or interim consolidated financial statements that may not be prevented or detected, and accordingly, it was determined that these control deficiencies constitute material weaknesses.

We are working to remediate the material weaknesses and are taking steps to strengthen our internal control over financial reporting through the hiring of additional finance and accounting personnel. With the additional personnel, we intend to take appropriate and reasonable steps to remediate these material weaknesses through the implementation of appropriate segregation of duties, formalization of accounting policies and controls and retention of appropriate expertise for complex accounting transactions. However, we cannot assure you that these measures will significantly improve or remediate the material weaknesses described above. As of September 30, 2021, the material weaknesses have not been remediated.

### Inherent Limitations on Effectiveness of Controls

Our management, including our CEO and CFO, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. The design of a control

system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within a company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of controls effectiveness to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

**Changes in Internal Control Over Financial Reporting**

Except for the progress made towards the remediation plan described above, there has been no change in the Company's internal control over financial reporting during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

From time to time, we may be subject to claims, lawsuits, government investigations and other proceedings involving products liability, competition and antitrust, intellectual property, privacy, data protection, information security, customer protection, securities, tax, labor and employment, commercial disputes and other matters that could adversely affect our business operations and financial condition. Litigation and regulatory proceedings, and particularly the intellectual property infringement matters that we are currently facing or could face, may be protracted and expensive, and the results are difficult to predict. Certain of these matters include speculative claims for substantial or indeterminate amounts of damages and include claims for injunctive relief. Additionally, our litigation costs could be significant. Adverse outcomes with respect to litigation or any legal proceedings may result in significant settlement costs or judgments, penalties, and fines, or require us to modify products or services, make content unavailable, or require us to stop offering certain features, all of which could negatively affect our customer base and revenue growth.

We are aware of two third-party U.S. patents that have claims relating to compositions of Nicotinamide Riboside – an ingredient contained in several of the Company's nutritional supplement products – issued to the Trustees of Dartmouth College and licensed to ChromaDex Corporation (Chromadex), of Los Angeles, California. On December 1, 2020, and February 1, 2021, the Company filed separate petitions for inter partes review against U.S. Patent No. 8,383,086 and U.S. Patent No. 8,197,807, respectively, at the Patent Trial and Appeal Board to seek to invalidate these two patents. On June 10, 2021, the Patent Trial and Appeal Board issued a decision granting institution of inter partes review against U.S. Patent No. 8,383,086, and on August 12, 2021, the Patent Trial and Appeal Board issued a decision granting institution of inter partes review against U.S. Patent No. 8,197,807. On May 12, 2021, the Trustees of Dartmouth College and ChromaDex filed a complaint against the Company in the U.S. District Court for the Southern District of New York, alleging the Company's infringement of U.S. Patent Nos. 8,383,086 and 8,197,807. The complaint seeks to enjoin us from selling its nutritional supplement products that contain Nicotinamide Riboside and further seeks monetary damages for alleged infringement of the patents. On August 20, 2021, the trial judge in the patent infringement litigation issued an Order to Stay the litigation during the pendency of the two inter partes review, in which decisions will likely be made in mid-2022. On September 21, 2021, the U.S. District Court for the District of Delaware issued a summary judgment holding that U.S. Patent Nos. 8,383,086 and 8,197,807 are invalid in Chromadex, Inc. and Trustees of Dartmouth College v. Elysium Health, Inc. We have not recorded a loss in connection with this matter because the Company believes that a loss is currently neither probable nor estimable.

For further information regarding Legal Proceedings please see "Risk Factors—Risks Relating to our Intellectual Property—Litigation or other proceedings or third-party claims of intellectual property infringement, misappropriation or other violations may require us to spend significant time and money, and could in the future prevent us from selling our products or services or impact our stock price, any of which could have a material adverse effect," previously described the Company's Registration Statement on Form S-1, as amended, filed September 22, 2021.

### Item 1A. Risk Factors

See the risk factors previously described the Company's Registration Statement on Form S-1, as amended, filed September 22, 2021.

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

**Unregistered Sales of Equity Securities**

None.

**Use of Proceeds from Public Offering of Common Stock**

On September 27, 2021, we closed our IPO of 7,000,000 shares of common stock. The offer and sale of all of the shares in the IPO were registered under the Securities Act pursuant to a registration statement on Form S-1 (File No. 333-257987), which was declared effective by the SEC on September 22, 2021. BofA Securities, Cowen, Evercore ISI and RBC Capital Markets acted as underwriters for the offering. The public offering price of the shares sold in the offering was $10.00 per share. The total gross proceeds from the offering were $70.0 million.

After deducting underwriting discounts and commissions of $4.9 million and offering expenses paid or payable by us of approximately $5.1 million, the net proceeds from the offering were approximately $60.0 million.

There has been no material change in the planned use of proceeds from our IPO as described in our final IPO prospectus filed with the SEC on September 23, 2021 pursuant to rule 424(b) of the Securities Act. We invested the funds received in short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

None.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

| Exhibit Number | Description | Incorporated by Reference | | | Filed Herewith |
|---|---|---|---|---|---|
| | | Form | Date | Number | |
| 3.1 | Amended and Restated Certificate of Incorporation of the Registrant, dated September 27, 2021. | | | | X |
| 3.2 | Amended and Restated Bylaws of the Registrant, dated September 27, 2021. | | | | X |
| 4.1 | Fourth Amended and Restated Registration Rights Agreement by and among the Registrant and certain of its stockholders, dated July 5, 2018. | S-1/A | 9/21/21 | 4.1 | |
| 4.2 | Fourth Amended and Restated Stockholders Agreement by and among the Registrant and certain of its stockholders, dated July 5, 2018. | S-1 | 7/16/21 | 4.2 | |
| 4.3 | Specimen common stock certificate of the Registrant. | S-1 | 7/16/21 | 4.3 | |
| 4.4 | Amended and Restated Common Stock Purchase Warrant issued to Kirin Holdings Company, Limited, dated as of July 15, 2020. | S-1/A | 9/21/21 | 4.4 | |
| 4.5 | Amended and Restated Common Stock Purchase Warrant issued to Mitsui & Co., Ltd, dated as of July 15, 2020. | S-1/A | 9/21/21 | 4.5 | |
| 4.6 | Amended and Restated Common Stock Purchase Warrant issued to Diversified Natural Products, Inc., dated as of May 10, 2011. | S-1/A | 9/21/21 | 4.6 | |
| 4.7 | Amended and Restated Common Stock Purchase Warrant issued to ELUS Holdings Corporation, dated as of May 10, 2011. | S-1/A | 9/21/21 | 4.7 | |
| 4.8 | Amendment to Warrant to Purchase Common Stock, between the Registrant and Diversified Natural Products, Inc., effective May 2, 2019. | S-1/A | 9/21/21 | 4.8 | |
| 4.9 | Amendment to Warrant to Purchase Common Stock, between the Registrant and ELUS Holdings Corporation, effective May 2, 2019. | S-1/A | 9/21/21 | 4.9 | |
| 10.1 | Industrial Lease between Registrant and SFG Charleston Omni, LLC, dated July 28, 2021. | | | | X |
| 31.1 | Certification of the Chief Executive Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. | | | | X |
| 31.2 | Certification of the Chief Financial Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. | | | | X |
| 32.1* | Certification of the Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | | | | X |
| 32.2* | Certification of the Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | | | | X |
| 101 | The following financial information from Thorne HealthTech Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2021 formatted in Inline XBRL (Extensible Business Reporting Language) includes: (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Operations, (iii) the Condensed Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit), (v) the Condensed Consolidated Statements of Cash Flows, and (vi) Notes to the Condensed Consolidated Financial Statements. | | | | X |
| 104 | Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101) | | | | X |

* The certifications filed as Exhibits 32.1 and 32.2 are not deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of the Company under the Securities Exchange Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof irrespective of any general incorporation by reference language contained in any such filing, except to the extent that the registrant specifically incorporates it by reference.

The agreements and other documents filed as exhibits to this report are not intended to provide factual information or other disclosure other than with respect to the terms of the agreements or other documents themselves, and you should not rely on them for that purpose. In particular, any representations and warranties made by us in these agreements or other documents were made solely within the specific context of the relevant agreement or document and may not describe the actual state of affairs as of the date they were made or at any other time.

**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.

THORNE HEALTHTECH, INC.

By: /s/ Paul F. Jacobson
Name: Paul F. Jacobson
Chief Executive Officer

By: /s/ Scott S. Wheeler
Name: Scott S. Wheeler
Chief Financial Officer

Date: November 10, 2021

**Exhibit 3.1**

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**THORNE HEALTHTECH, INC.**

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Thorne HealthTech, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the name of this corporation is Thorne HealthTech, Inc., and that this corporation was initially incorporated under the name of Thorne Holding Corp., pursuant to a Certificate of Incorporation filed with the Secretary of State of Delaware on June 17, 2010 (the "**Original Certificate**").

2. Pursuant to Sections 242 and 245 of the General Corporation Law, this Amended and Restated Certificate of Incorporation (this "**Certificate**") amends and restates the Sixth Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on February 25, 2021 (the "**Sixth Restated Certificate**") in its entirety.

3. This Certificate was duly adopted by the written consent of the Board of Directors of Thorne HealthTech, Inc. (the "**Board of Directors**") and by the written consent of the stockholders of Thorne HealthTech, Inc., in accordance with the applicable provisions of Sections 141, 228, 242, and 245 of the General Corporation Law.

4. The text of the Sixth Restated Certificate is hereby restated and further amended to read in its entirety as follows:

**FIRST**: The name of this corporation is Thorne HealthTech, Inc. (the "**Corporation**").

**SECOND**: The address of the registered office of the Corporation in the State of Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

**THIRD**: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**FOURTH**:

1. The Corporation is authorized to issue two classes of stock, to be designated as Common Stock and Preferred Stock. The total number of shares of all classes of stock which the Corporation will have authority to issue is 210,000,000 shares, consisting of: (i) 200,000,000 shares of Common Stock, $0.01 par value per share ("**Common Stock**"), and (ii) 10,000,000 shares of Preferred Stock, $0.01 par value per share ("**Preferred Stock**").

2. The following is a statement of the designations and the powers, privileges, and rights, and the qualifications, limitations, or restrictions thereof in respect to each class of capital stock of the Corporation.

3. Immediately on the filing and effectiveness of this Certificate (the "**Filing Time**") each share of Class A Common Stock, Class B Common Stock, and Series E Preferred Stock (as each such term is defined in the Sixth Restated Certificate as it may have been amended prior to the Filing Time) issued and outstanding or held in treasury immediately prior to the Filing Time is hereby reclassified into one share of Common Stock (the "**Reclassification**"). Each certificate that immediately prior to the Filing Time represented any of such shares of capital stock of the Corporation ("**Old Certificates**") will thereafter represent that number of shares of Common Stock into which the shares represented by the Old Certificate will have been reclassified pursuant to the Reclassification.

Common Stock.

a. The voting, dividend, and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors on any issuance of the Preferred Stock of any series.

b. Each share of Common Stock outstanding as of the applicable record date will entitle the holder thereof to one vote on any matter submitted to a vote at a meeting of the stockholders; provided, however, that, except as required by law, holders of Common Stock will not be entitled to vote on any amendment to this Certificate (which, as used herein, will mean the Certificate of Incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate or the General Corporation Law of the State of Delaware. There will be no cumulative voting.

c. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of capital stock of the Corporation entitled to vote thereon, regardless of the provisions of Section 242(b)(2) of the General Corporation Law.

d. Dividends may be declared and paid on the Common Stock if, as, and when determined by the Board of Directors subject to the rights of any then-outstanding Preferred Stock and to the requirements of applicable law.

e. On the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive the assets of the Corporation available for distribution to its stockholders, subject to any preferential or other rights of any then-outstanding Preferred Stock.

Preferred Stock.

a. Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board of Directors).

b. The Board of Directors is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences, and rights, and the qualifications, limitations, or restrictions thereof, of any series of Preferred Stock, including, without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, subject to the powers, preferences, and rights, and the qualifications, limitations, and restrictions thereof stated in this Certificate or the resolution of the Board of Directors originally fixing the number of shares of such series. Except as may be otherwise specified by the terms of any series of Preferred Stock, if the number of shares of any series of Preferred Stock is so decreased, then the Corporation will take all such steps as are necessary to cause the shares constituting such decrease to resume the status they had prior to the adoption of the resolution originally fixing the number of shares of such series.

c. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of capital stock of the Corporation entitled to vote thereon, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote of any holders of one or more series of Preferred Stock is required pursuant to the terms of any certificate of designation relating to any series of Preferred Stock, regardless of the provisions of Section 242(b)(2) of the General Corporation Law.

**FIFTH**:

1. The business and affairs of the Corporation will be managed by or under the direction of the Board of Directors, except as otherwise provided by law, by this Certificate, or by the Bylaws of the Corporation.

2. Subject to the rights of holders of Preferred Stock, the number of directors that constitutes the entire Board of Directors will be fixed only by resolution of the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. For the purposes of this Certificate, the term "**Whole Board**" means the total number of authorized directorships whether or not there exist any vacancies or other unfilled seats in previously authorized directorships. At each annual meeting of stockholders, directors of the Corporation will be elected to hold office until the expiration of the term for which they are elected and until their successors have been duly elected and qualified or until their earlier resignation or removal; except that if any such meeting will not be so held, then such election will take place at a stockholders' meeting called and held in accordance with the General Corporation Law.

3. From and after the date of effectiveness of this Certificate, the directors of the Corporation (other than any who may be elected by holders of Preferred Stock under specified circumstances) will be divided into three classes as nearly equal in size as is practicable, hereby designated as Class I, Class II, and Class III. Directors already in office will be assigned to each class at the time such classification becomes effective in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders following the date of effectiveness of this Certificate, the term of office of the Class I directors will expire and Class I directors will be elected for a full term of three years. At the second annual meeting of stockholders following the date of effectiveness of this Certificate, the term of office of the Class II directors will expire and Class II directors will be elected for a full term of three years. At the third annual meeting of stockholders following the date of effectiveness of this Certificate, the term of office of the Class III directors will expire and Class III directors will be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors will be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting. If the number of directors is changed, any newly created directorships or decrease in directorships will be so apportioned hereafter among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board of Directors will shorten the term of any incumbent director.

4. From and after the effectiveness of this Certificate, only for so long as the Board of Directors is classified and subject to the rights of holders of Preferred Stock, any director or the entire Board of Directors may be removed from office at any time, but only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding capital stock of the Corporation entitled to vote in the election of directors.

5. Except as otherwise provided for or fixed by or pursuant to the provisions of this Article FIFTH in relation to the rights of the holders of Preferred Stock to elect directors under specified circumstances, or except as otherwise provided by resolution of a majority of the Whole Board, newly created directorships resulting from an increase in the number of directors, created in accordance with the Bylaws of the Corporation, and vacancies on the Board of Directors resulting from death, resignation, disqualification, removal, or other cause will be filled only by

the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders. A person so elected by the Board of Directors to fill a vacancy or newly created directorship will hold office until the next election of the class for which such director will have been chosen until his or her successor will have been duly elected and qualified or until such director's earlier death, resignation, or removal. No decrease in the number of directors constituting the Board of Directors will shorten the term of any incumbent director.

6. The election of directors need not be by written ballot unless the Bylaws of the Corporation so provide.

**SIXTH**: In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized to adopt, amend, alter, repeal, and rescind the Bylaws of the Corporation. The affirmative vote of at least a majority of the Whole Board will be required in order for the Board of Directors to adopt, amend, alter, repeal, or rescind the Bylaws of the Corporation. The Bylaws of the Corporation may also be adopted, amended, altered, repealed, or rescinded by the stockholders of the Corporation. Notwithstanding the above or any other provision of this Certificate, the Bylaws of the Corporation may not be amended, altered, repealed, or rescinded except in accordance with the provisions of the Bylaws relating to amendments to the Bylaws. No Bylaw hereafter legally adopted, amended, altered, repealed, or rescinded will invalidate any prior act of the directors or officers of the Corporation that would have been valid if such Bylaw had not been adopted, amended, altered, repealed, or rescinded.

**SEVENTH:**

1. From and after the closing of a firm commitment underwritten initial public offering of securities of the Corporation pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, and subject to the rights of holders of Preferred Stock, no action will be taken by the stockholders of the Corporation except at an annual or special meeting of the Stockholders called in accordance with the Bylaws of the Corporation, and no action will be taken by the stockholders by written consent. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation will be given in the manner and to the extent provided in the Bylaws of the Corporation.

2. Subject to the terms of any series of Preferred Stock, special meetings of stockholders of the Corporation may be called only by the Chairperson of the Board of Directors, the Chief Executive Officer, or the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board, and a special meeting may not be called by any other person or persons and any power of stockholders to call a special meeting of stockholders is specifically denied. Only such business will be considered at a special meeting of stockholders as will have been stated in the notice for such meeting.

3. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

**EIGHTH**: To the fullest extent permitted by law, a director of the Corporation will not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article EIGHTH to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation will be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article EIGHTH by the stockholders of the Corporation will not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

**NINTH**:

1. Subject to any provisions in the Bylaws of the Corporation related to indemnification of directors of the Corporation, the Corporation will indemnify, and advance expenses to, to the fullest extent permitted by applicable law, any director of the Corporation who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**") by reason of the fact that he or she is or was a director of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding. Subject to any provisions in the Bylaws of the Corporation, the Corporation will be required to indemnify a person in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board of Directors.

2. The Corporation will have the power to indemnify, to the extent permitted by applicable law, any officer, employee, or agent of the Corporation who was or is a party or is threatened to be made a party to a Proceeding by reason of the fact that he or she is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding.

3. Any amendment, repeal, or modification of the foregoing provisions of this Article NINTH will not adversely affect any right or protection of any director, officer, or other agent of the Corporation existing at the time of such amendment, repeal, or modification.

**TENTH**: The Corporation reserves the right to amend or repeal any provision contained in this Certificate in the manner prescribed by the laws of the State of Delaware, and all rights conferred on stockholders are granted subject to this reservation; provided, however, that notwithstanding any other provision of this Certificate or any provision of law that might otherwise permit a lesser vote, the Board of Directors acting pursuant to a resolution adopted by a majority

of the Whole Board and the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the voting power of the then-outstanding voting securities of the Corporation, voting together as a single class, will be required for the amendment, repeal, or modification of the provisions of Section 2 of Article FOURTH, Sections 3-5 of Article FIFTH, Sections 1-2 of Article SEVENTH, this Article TENTH, or Article ELEVENTH of this Certificate.

**ELEVENTH**: The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "**Excluded Opportunity**" is any matter, transaction, or interest that is presented to, or acquired, created, or developed by, or which otherwise comes into the possession of: (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries; or (ii) any holder of Preferred Stock, or of Common Stock issued on conversion of Preferred Stock, or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "**Covered Persons**"), unless such matter, transaction, or interest is presented to, or acquired, created, or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation. Any person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation will be deemed to have notice of and have consented to the provisions of this Article ELEVENTH. Neither the alteration, amendment, or repeal of this Article ELEVENTH, nor the adoption of any provision of this Certificate inconsistent with this Article ELEVENTH, nor, to the fullest extent permitted by law, any modification of law, will eliminate or reduce the effect of this Article ELEVENTH in respect of any Excluded Opportunity first identified or any other matter occurring, or any cause of action, suit, or claim that, but for this Article ELEVENTH, would accrue or arise, prior to such alteration, amendment, repeal, adoption, or modification. If any provision or provisions of this Article ELEVENTH is held to be invalid, illegal, or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality, and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article ELEVENTH (including, without limitation, each portion of any paragraph of this Article ELEVENTH containing any such provision held to be invalid, illegal, or unenforceable that is not itself held to be invalid, illegal, or unenforceable) will not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article ELEVENTH (including, without limitation, each such portion of any paragraph of this Article ELEVENTH containing any such provision held to be invalid, illegal, or unenforceable) will be construed so as to permit the Corporation to protect its directors, officers, employees, and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law. This Article ELEVENTH will not limit any protections or defenses available to, or indemnification, or advancement rights of any director or officer of the Corporation under this Certificate, the Bylaws, applicable law, any agreement, or otherwise.

**TWELFTH**: This Certificate will become effective on the filing and acceptance hereof by the Secretary of State of Delaware.

**IN WITNESS WHEREOF**, Thorne HealthTech, Inc., has caused this Amended and Restated Certificate of Incorporation to be signed by the Chief Executive Officer of the Corporation on this 27th day of September, 2021.

By: /s/ Paul F. Jacobson
Paul F. Jacobson
Chief Executive Officer

**Exhibit 3.2**

# AMENDED AND RESTATED BYLAWS OF

# THORNE HEALTHTECH, INC.

(Initially adopted by the Board of Directors on June 20, 2010.)

(As amended and restated on September 27, 2021. Effective as of the closing of the Corporation's initial public offering.)

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# BYLAWS OF THORNE HEALTHTECH, INC.

## ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of Thorne HealthTech, Inc. (the "**Corporation**") will be fixed in the Corporation's Certificate of Incorporation, as the same may be amended from time to time.

1.2 OTHER OFFICES

The Corporation may at any time establish other offices.

## ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS

Meetings of stockholders will be held at a place, if any, within or outside the State of Delaware, determined by the Corporation's board of directors (the "**Board of Directors**"). The Board of Directors may, in its discretion, determine that a meeting of stockholders will not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "**General Corporation Law**"). In the absence of such designation or determination, stockholders' meetings will be held at the Corporation's principal executive offices.

2.2 ANNUAL MEETING

The annual meeting of stockholders will be held each year. The Board of Directors will designate the date and time of the annual meeting. At the annual meeting, directors will be elected and any other proper business, brought in accordance with Section 2.4 of these Bylaws, may be transacted. The Board of Directors, acting pursuant to a resolution adopted by a majority of the Whole Board, may cancel, postpone, or reschedule any previously scheduled annual meeting at any time, before or after the notice for such annual meeting has been sent to the stockholders. For the purposes of these Bylaws, the term "**Whole Board**" will mean the total number of authorized directors whether or not there exists any vacancies or unfilled seats in previously authorized directors.

2.3 SPECIAL MEETING

(a) A special meeting of the stockholders, other than as required by law, may be called at any time by: (i) the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board, (ii) the chairperson of the Board of Directors, or (iii) the Corporation's Chief Executive Officer, but a special meeting may not be called by any other person or persons, and any power of stockholders to call a special meeting of stockholders is specifically denied. The Board of Directors, acting pursuant to a resolution adopted by a majority of the Whole Board, may cancel, postpone, or reschedule any previously scheduled special meeting at any time, before or after the notice for such special meeting has been sent to the stockholders.

(b) The notice of a special meeting will include the purpose for which the meeting is called. Only such business will be conducted at a special meeting of the stockholders as will have been brought before the meeting by or at the direction of a majority of the Whole Board, the chairperson of the Board of Directors, or the Corporation's Chief Executive Officer. Nothing contained in this Section 2.3(b) will be construed as limiting, fixing, or affecting the time when a meeting of the stockholders called by action of the Board of Directors may be held.

2.4 ADVANCE NOTICE PROCEDURES

(a) *Annual Meetings of Stockholders.*

(i) Nominations of persons for election to the Board of Directors or the proposal of other business to be transacted by the stockholders at an annual meeting of stockholders may be made only: (1) pursuant to the Corporation's notice of meeting (or any supplement thereto); (2) by or at the direction of the Board of Directors; (3) as may be provided in the certificate of designations for any class or series of preferred stock; or (4) by any stockholder of the Corporation who: (A) is a stockholder of record at the time of giving of the notice contemplated by Section 2.4(a)(ii); (B) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the annual meeting; (C) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the annual meeting; (D) is a stockholder of record at the time of the annual meeting; and (E) complies with the procedures set forth in this Section 2.4(a).

(ii) For nominations or other business to be properly brought before an annual meeting of the stockholders by a stockholder pursuant to clause (4) of Section 2.4(a)(i), the stockholder must have given timely notice in writing to the Secretary, and such nomination or proposed business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be received by the Secretary at the Corporation's principal executive offices no earlier than 8:00 a.m., local time, on the 120th day and no later than 5:00 p.m., local time, on the 90th day prior to the day of the first anniversary of the preceding year's annual meeting of stockholders. However, if no annual meeting of stockholders was held in the preceding year, or if the date of the applicable annual meeting has been changed by more than 25 days from the first anniversary of the preceding year's annual meeting, then to be timely such notice must be received by the Secretary at the Corporation's principal executive offices no earlier than 8:00 a.m., local time, on the 120th day prior to the day of the annual meeting and no later than 5:00 p.m., local time, on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Corporation. In no event will the adjournment, rescheduling, or postponement of an annual meeting, or an announcement thereof, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. If the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming the nominees for director or specifying the size of the increased Board of Directors at least 10 days before the last day that a stockholder may deliver a notice of nomination pursuant to the foregoing provisions, then a stockholder's notice required by this Section 2.4(a)(ii) will also be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the Secretary at the Corporation's principal executive offices no later than 5:00 p.m., local time, on the tenth day following the day on which such public announcement is first made. "**Public announcement**" means disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the U.S. Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Securities Exchange Act of 1934 (as amended and inclusive of rules and regulations thereunder, the "**1934 Act**").

(iii) A stockholder's notice to the Secretary must set forth:

(1) as to each person whom the stockholder proposes to nominate for election as a director:

(A) such person's name, age, business address, residence address, and principal occupation or employment; the class and number of shares of the Corporation that are held of record or are beneficially owned by such person, and a description of any Derivative Instruments (defined below) held or beneficially owned thereby or of any other agreement, arrangement, or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of such person; and all information relating to such person required to be disclosed in solicitations of proxies for the contested election of directors, or is otherwise required, in each case pursuant to the Section 14 of the 1934 Act;

(B) such person's written consent to being named in such stockholder's proxy statement as a nominee of such stockholder and to serving as a director of the Corporation if elected;

(C) a reasonably detailed description of any direct or indirect compensatory, payment, indemnification, or other financial agreement, arrangement, or understanding that such person has, or has had within the previous three years, with any person or entity other than the Corporation (including the amount of any payment or payments received or receivable thereunder), in each case in connection with candidacy or service as a director of the Corporation (a "**Third-Party Compensation Arrangement**"); and

(D) a description of any other material relationships between such person and such person's respective affiliates and associates, or others acting in concert with them, on the one hand, and such stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made, and their respective affiliates and associates, or others acting in concert with them, on the other hand;

(2) as to any other business that the stockholder proposes to bring before the annual meeting:

(A) a brief description of the business desired to be brought before the annual meeting;

(B) the text of the proposal or business (including the text of any resolutions proposed for consideration and, if applicable, the text of any proposed amendment to these Bylaws or the Certificate of Incorporation);

(C) the reasons for conducting such business at the annual meeting;

(D) any material interest in such business of such stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates and associates, or others acting in concert with them; and

(E) a description of all agreements, arrangements, and understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates or associates or others acting in concert with them, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and

(3) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:

(A) the name and address of such stockholder as appears on the Corporation's books, of such beneficial owner, and of their respective affiliates or associates or others acting in concert with them;

(B) for each class or series, the number of shares of stock of the Corporation that are, directly or indirectly, held of record or are beneficially owned by such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them;

(C) a description of any agreement, arrangement, or understanding between such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, and any other person or persons (including, in each case, their names) in connection with the proposal of such nomination or other business;

(D) a description of any agreement, arrangement, or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares), that has been entered into by or on behalf of such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, with respect to the Corporation's securities (any of the foregoing, a "**Derivative Instrument**"), or any other agreement, arrangement, or understanding that has been made the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, with respect to the Corporation's securities;

(E) any rights to dividends on the Corporation's securities owned beneficially by such stockholder, such beneficial owner, or their respective affiliates or associates, or others acting in concert with them, that are separated or separable from the underlying security;

(F) any proportionate interest in the Corporation's securities or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership;

(G) any performance-related fees (other than an asset-based fee) that such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, is entitled to, based on any increase or decrease in the value of the Corporation's securities or Derivative Instruments, including, without limitation, any such interests held by members of the immediate family of such persons sharing the same household;

(H) any significant equity interests or any Derivative Instruments in any principal competitor of the Corporation that are held by such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them;

(I) any direct or indirect interest of such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, in any contract with the Corporation, any affiliate of the Corporation, or any principal competitor of the Corporation (in each case, including any employment agreement, collective bargaining agreement, or consulting agreement);

(J) a representation and undertaking that the stockholder is a holder of record of stock of the Corporation as of the date of submission of the stockholder's notice and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting;

(K) a representation and undertaking that such stockholder or such beneficial owner intends, or is part of a group that intends, to: (x) deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Corporation's then-outstanding stock required to approve or adopt the proposal or to elect each such nominee; or (y) otherwise solicit proxies from stockholders in support of such proposal or nomination;

(L) any other information relating to such stockholder, such beneficial owner or their respective affiliates or associates, or others acting in concert with them, or director nominee or proposed business that, in each case, would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies in support of such nominee (in a contested election of directors) or proposal pursuant to Section 14 of the 1934 Act; and

(M) such other information relating to a proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

(iv) In addition to the requirements of this Section 2.4, to be timely, a stockholder's notice (and any additional information submitted to the Corporation in connection therewith) must further be updated and supplemented: (1) if necessary, so that the information provided or required to be provided in such notice is true and correct as of the record date(s) for determining the stockholders entitled to notice of, and to vote at, the meeting and as of the date that is ten business days prior to the meeting or any adjournment, rescheduling, or postponement thereof; and (2) to provide additional information that the Corporation may reasonably request. Such update and supplement or additional information, if applicable, must be received by the Secretary at the Corporation's principal executive offices, in the case of a request for additional information, promptly following a request therefor, which response must be delivered not later than such reasonable time as is specified in such request from the Corporation or, in the case of any other update or supplement of any information, not later than five business days after the record date(s) for the meeting (in the case of an update and supplement required to be made as of the record date(s)), and not later than eight business days prior to the date for the meeting or any adjournment, rescheduling, or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment, rescheduling, or postponement thereof). The failure to timely provide such update, supplement, or additional information will result in the nomination or proposal not being eligible for consideration at the meeting.

(b) *Special Meetings of Stockholders*. Except to the extent required by the General Corporation Law, and subject to Section 2.3(a), a special meeting of the stockholders may be called only in accordance with the Corporation's Certificate of Incorporation and these Bylaws. Only such business will be conducted at a special meeting of the stockholders as has been brought before the special meeting pursuant to the Corporation's notice of meeting. If the election of directors is included as business to be brought before a special meeting in the Corporation's notice of meeting, then nominations of persons for election to the Board of Directors at such special meeting may be made by any stockholder who: (i) is a stockholder of record at the time of giving of the notice contemplated by this Section 2.4(b); (ii) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the special meeting; (iii) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the special meeting; (iv) is a stockholder of record at the time of the special meeting; and (v) complies with the procedures set forth in this Section 2.4(b). For nominations to be properly brought by a stockholder before a special meeting pursuant to this Section 2.4(b), the stockholder's notice must be received by the Secretary at the Corporation's principal executive offices no earlier than 8:00 a.m., local time, on the 120th day prior to the day of the special meeting and no later than 5:00 p.m., local time, on the tenth day following the day on which public announcement of the date of the special meeting was first made. In no event will any adjournment, rescheduling, or postponement of a special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice. A stockholder's notice to the Secretary must comply with the applicable notice requirements of Section 2.4(a)(iii).

(c) *Other Requirements.*

(i) To be eligible to be a nominee by a stockholder for election as a director of the Corporation, the proposed nominee must provide to the Secretary, in accordance with the applicable time periods prescribed for delivery of notice under Section 2.4(a)(ii) or Section 2.4(b):

(1) a signed and completed written questionnaire (in the form provided by the Secretary at the written request of the nominating stockholder, which form will be provided by the Secretary within ten days of receiving such request) containing information regarding such nominee's background and qualifications and such other information as may reasonably be required by the Corporation to determine the eligibility of such nominee to serve as a director of the Corporation or as an independent director of the Corporation;

(2) a written representation and undertaking that, unless previously disclosed to the Corporation, such nominee is not, and will not become, a party to any voting agreement, arrangement, commitment, assurance, or understanding with any person or entity as to how such nominee, if elected as a director, will vote on any issue;

(3) a written representation and undertaking that, unless previously disclosed to the Corporation, such nominee is not, and will not become, a party to a Third-Party Compensation Arrangement;

(4) a written representation and undertaking that, if elected as a director, such nominee would be in compliance with, and will continue to comply with, the Corporation's Corporate Governance Guidelines as disclosed on the Corporation's website, as amended from time to time; and

(5) a written representation and undertaking that such nominee, if elected, intends to serve a full term on the Board of Directors.

(ii) At the request of the Board of Directors, a person nominated by the Board of Directors for election as a director must furnish to the Secretary the information that is required to be set forth in a stockholder's notice of nomination that pertains to such nominee.

(iii) No person will be eligible to be nominated by a stockholder for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.4. No business proposed by a stockholder will be conducted at a stockholder meeting except in accordance with this Section 2.4.

(iv) The chairperson of the applicable meeting of stockholders will, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws or that business was not properly brought before the meeting. If the chairperson of the meeting should so determine, then the chairperson of the meeting will so declare to the meeting, and the defective nomination will be disregarded or such business will not be transacted, as the case may be.

(v) Notwithstanding anything to the contrary in this Section 2.4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear in person at the meeting to present a nomination or other proposed business, then such nomination will be disregarded or such proposed business will not be transacted, as the case may be, notwithstanding that proxies in respect of such nomination or business may have been received by the Corporation and counted for purposes of determining a quorum. For purposes of this Section 2.4, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager, or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

(vi) Without limiting this Section 2.4, a stockholder must also comply with applicable requirements of the 1934 Act with respect to the matters set forth in this Section 2.4, it being understood that: (1) any references in these Bylaws to the 1934 Act are not intended to, and will not, limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.4; and (2) compliance with clause (4) of Section 2.4(a)(i) and with Section 2.4(b) are the exclusive means for a stockholder to make nominations or submit other business (other than as provided in Section 2.4(c)(vii)).

(vii) Notwithstanding anything to the contrary in this Section 2.4, the notice requirements set forth in these Bylaws with respect to the proposal of business pursuant to this Section 2.4 will be deemed to be satisfied by a stockholder if: (1) such stockholder has submitted a proposal to the Corporation in compliance with Rule 14a-8 under the 1934 Act; and (2) such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for the meeting of stockholders. Subject to Rule 14a-8 and other applicable rules and regulations under the 1934 Act, nothing in these Bylaws will be construed to permit a stockholder, or give a stockholder the right, to include or have disseminated or described in the Corporation's proxy statement a nomination of a director or any other business proposal.

2.5 NOTICE OF STOCKHOLDERS' MEETINGS

Whenever stockholders are required or permitted to take action at a meeting, a notice of the meeting will be given that will state the place, if any, date, and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the General Corporation Law, the Certificate of Incorporation, or these Bylaws, the notice of a meeting of stockholders will be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

2.6 QUORUM

The holders of a majority of the voting power of the capital stock of the Corporation issued and outstanding and entitled to vote, present in person or represented by proxy, will constitute a quorum for the transaction of business at all meetings of the stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, will constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws.

If, however, such quorum is not present or represented at a meeting of the stockholders, then either the chairperson of the meeting or the stockholders entitled to vote at the meeting, present in person or represented by proxy, will have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the original meeting.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, then a notice of the adjourned meeting will be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, then the Board of Directors will fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the General Corporation Law and Section 2.11 of these Bylaws and will give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 CONDUCT OF BUSINESS

The chairperson of a meeting of stockholders will determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business and discussion as seem appropriate to the chairperson. The chairperson of a meeting of the stockholders will be designated by the Board of Directors; in the absence of such designation, the chairperson of the Board of Directors, or the Chief Executive Officer in the absence of the chairperson of the Board of Directors, or in their absence another executive officer of the Corporation will serve as chairperson of the stockholder meeting. The chairperson of a meeting of stockholders will have the power to adjourn the meeting to another place, if any, date, or time, whether or not a quorum is present.

2.9 VOTING

The stockholders entitled to vote at a meeting of stockholders will be determined in accordance with the provisions of Section 2.11 of these Bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors, and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the General Corporation Law.

Except as may be otherwise provided in the Certificate of Incorporation or these Bylaws, each stockholder will be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise provided by law, the Certificate of Incorporation, these Bylaws, or the rules of the stock exchange on which the Corporation's securities are listed, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter will be the act of the stockholders. Except as otherwise required by law, the Certificate of Incorporation, or these Bylaws, directors will be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the outstanding shares of such class or series or classes or series present in person or represented by proxy at the meeting and entitled to vote on the subject matter will be the act of such class or series or classes or series, except as otherwise provided by law, the Certificate of Incorporation, these Bylaws, or the rules of the stock exchange on which the securities of the Corporation are listed.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Subject to the rights of holders of preferred stock of the Corporation, any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly called annual or special meeting of the stockholders of the Corporation and may not be taken by any consent in writing by such stockholders.

2.11 RECORD DATES

So the Corporation can determine the stockholders entitled to notice of a meeting of the stockholders or an adjournment thereof, the Board of Directors may fix a record date, which record date will not precede the date on which the resolution fixing the record date is adopted by the Board of Directors

and which record date will not be more than sixty nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, then such date will also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting will be the date for making such determination.

If no record date is fixed by the Board of Directors, then the record date for determining stockholders entitled to notice of and to vote at a meeting of the stockholders will be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of the stockholders will apply to an adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case will also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the General Corporation Law and this Section 2.11 at the adjourned meeting.

So the Corporation may determine the stockholders entitled to receive payment of any dividend, or other distribution, or allotment of any rights of the stockholders entitled to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date will not precede the date on which the resolution fixing the record date is adopted, and which record date will be not more than sixty days prior to such action. If no record date is fixed, then the record date for determining stockholders for any such purpose will be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

2.12 PROXIES

Each stockholder entitled to vote at a meeting of the stockholders, or such stockholder's authorized officer, director, employee, or agent, may authorize another person or persons to act for such stockholder by proxy authorized by a document or by a transmission permitted by law that is filed in accordance with the procedure established for the meeting, but no such proxy will be voted or acted on after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable will be governed by the provisions of Section 212 of the General Corporation Law.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The Corporation will prepare, at least ten days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than ten days before the meeting date, the list will reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation will not be required to include electronic mail addresses or other electronic contact information on such list. Such list will be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided

with the notice of the meeting; or (b) during ordinary business hours, at the Corporation's principal place of business. If the Corporation determines to make the list of stockholders available on an electronic network, then the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting will be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list will also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list will be provided with the notice of the meeting.

2.14 INSPECTORS OF ELECTION

Before a meeting of the stockholders, the Corporation will appoint an inspector or inspectors of election to act at the meeting or its adjournment. The Corporation may designate one or more persons as alternate inspectors to replace an inspector who fails to act.

Such inspectors will:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at the meeting and the validity of proxies and ballots;

(c) count all votes and ballots;

(d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and

(e) certify their determination of the number of shares represented at the meeting and their count of votes and ballots.

The inspectors of election will perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical. If there are multiple inspectors of election, then the decision, act, or certificate of a majority is effective in all respects as the decision, act, or certificate of all. A report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein.

## ARTICLE III - DIRECTORS

3.1 POWERS

The business and affairs of the Corporation will be managed by and under the direction of the Board of Directors, except as may be otherwise provided by law or the Certificate of Incorporation.

3.2 NUMBER OF DIRECTORS

The Board of Directors will consist of one or more members, each of whom will be a natural person. Unless the Certificate of Incorporation fixes the number of directors, the number of directors will be determined from time to time by resolution of a majority of the Whole Board. No reduction of the authorized number of directors will have the effect of removing a director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION, AND TERM OF OFFICE OF DIRECTORS

Except as provided in the Certificate of Incorporation or Section 3.4 of these Bylaws, each director, including a director elected to fill a vacancy or newly created directorship, will hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation, or removal. Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws. The Certificate of Incorporation or these Bylaws may prescribe other qualifications for directors.

If so provided in the Certificate of Incorporation, then the directors of the Corporation will be divided into three classes.

3.4 RESIGNATION AND VACANCIES

A director may resign at any time on notice given in writing or by electronic transmission to the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined on the happening of an event or events. A resignation that is conditioned on the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, when one or more directors resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, will have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations become effective.

Unless otherwise provided in the Certificate of Incorporation, or these Bylaws, or permitted in the specific case by resolution of the Board of Directors, and subject to the rights of holders of Preferred Stock, vacancies and newly created directorships resulting from an increase in the authorized number of directors elected by the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and not by stockholders; notwithstanding anything in these Bylaws to the contrary, for so long as any party to that certain nominating, observer, and secondment agreement, dated as of September 22, 2021, by and among the Corporation, Kirin Holdings Company, Limited, and Mitsui & Co., Ltd., (as may be amended from time to time, the "**Nominating Agreement**"), is entitled to designate a person to be included in a future slate of nominees recommended by the Corporation to the Corporation's stockholders for election at an Election Meeting (as defined therein) as a director of the Corporation pursuant to the Nominating Agreement (each a "**Nominating Party**"), and the director previously designated by such Nominating Party has resigned from the Board of Directors, the directors then in office will take reasonable action to fill such vacancy with the designee of such Nominating Party that it intends to nominate at the next Election Meeting (as defined therein) pursuant to the Nominating Agreement. If the directors are divided into classes, then a person so chosen to fill a vacancy or newly created directorship will hold office until the next election of the class for which such director will have been chosen and until that director's successor will have been duly elected and qualified.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The Board of Directors may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors may participate in a meeting of the Board of Directors by means of telephone conference or other communications equipment by means of which persons participating in the meeting can hear each other, and such participation in a meeting will constitute presence in person at the meeting.

3.6 REGULAR MEETINGS

Regular meetings of the Board of Directors may be held without notice at such time and at such place as from time to time is determined by the Board of Directors.

3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairperson of the Board of Directors, the Chief Executive Officer, the Secretary, or a majority of the Whole Board.

Notice of the time and place of special meetings will be:

(a) delivered personally by hand, by courier, or by telephone;

(b) sent by U.S. first-class mail, postage prepaid;

(c) sent by facsimile;

(d) sent by electronic mail; or

(e) otherwise given by electronic transmission (as defined in Section 232 of the General Corporation Law),

directed to each director at that director's address, telephone number, facsimile number, electronic mail address, or other contact for notice by electronic transmission, as the case may be, as shown on the Corporation's records.

If the notice is: (i) delivered personally by hand, by courier, or by telephone, (ii) sent by facsimile, (iii) sent by electronic mail, or (iv) otherwise given by electronic transmission, then it will be delivered, sent, or otherwise directed to each director, as applicable, at least 24 hours before the time of the holding of the meeting. If the notice is sent by U.S. mail, then it will be deposited in the U.S. mail at least four days before the time of the holding of the meeting. An oral notice of the time and place of the meeting may be communicated to the director in lieu of written notice if such notice is communicated at least 24 hours before the time of the holding of the meeting. The notice need not specify the place of the meeting if the meeting is to be held at the Corporation's principal executive offices nor the purpose of the meeting, unless required by law.

3.8 QUORUM; VOTING

At all meetings of the Board of Directors, a majority of the Whole Board will constitute a quorum for the transaction of business. If a quorum is not present at a meeting of the Board of Directors, then the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

The affirmative vote of a majority of the directors present at a meeting at which a quorum is present will be the act of the Board of Directors, except as may be otherwise specifically provided by law, the Certificate of Incorporation, or these Bylaws.

If the Certificate of Incorporation provides that one or more directors will have more or less than one vote per director on any matter, except as may otherwise be expressly provided herein or therein and denoted with the phrase "notwithstanding the final paragraph of Section 3.8 of the Bylaws" or language to similar effect, then every reference in these Bylaws to a majority or other proportion of the directors will refer to a majority or other proportion of the votes of the directors.

3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at a meeting of the Board of Directors, or of a committee thereof, may be taken without a meeting if all members of the Board of Directors or a committee, as the case may be, consent thereto in writing or by electronic transmission. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined on the happening of an event), no later than sixty days after such instruction is given or such provision is made, and such consent will be deemed to have been given for purposes of this Section 3.9 at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent will be revocable prior to it becoming effective.

3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors will have the authority to fix the compensation of directors.

3.11 REMOVAL OF DIRECTORS

A director or the entire Board of Directors may be removed from office by the stockholders of the Corporation in the manner specified in the Certificate of Incorporation and applicable law. No reduction of the authorized number of directors will have the effect of removing a director prior to the expiration of such director's term of office.

## ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The Board of Directors may, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The

Board of Directors may designate one or more directors as alternate members of a committee, who may replace an absent or disqualified member at a meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at a meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of such absent or disqualified member. Such committee, to the extent provided in the resolution of the Board of Directors or in these Bylaws, will have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to papers that may require it; but no such committee will have the power or authority: (a) to approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the General Corporation Law to be submitted to stockholders for approval; or (b) to adopt, amend, or repeal a Bylaw of the Corporation.

4.2 COMMITTEE MINUTES

Each committee and subcommittee will keep regular minutes of its meetings.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees and subcommittees will be governed by, and be held and taken in accordance with, the provisions of:

(a) Section 3.5 (place of meetings and meetings by telephone);

(b) Section 3.6 (regular meetings);

(c) Section 3.7 (special meetings and notice);

(d) Section 3.8 (quorum; voting);

(e) Section 3.9 (action without a meeting); and

(f) Section 7.4 (waiver of notice),

with such changes in the context of those Bylaws as are necessary to substitute the committee or subcommittee and its members for the Board of Directors and its members. However: (i) the time and place of regular meetings of committees or subcommittees may be determined either by resolution of the Board of Directors or by resolution of the committee or subcommittee; (ii) special meetings of committees or subcommittees may also be called by resolution of the Board of Directors or the committee or the subcommittee; and (iii) notice of special meetings of committees and subcommittees will also be given to alternate members who have the right to attend all meetings of the committee or subcommittee. The Board of Directors may adopt rules for the governance of committees not inconsistent with the provisions of these Bylaws.

Any provision in the Certificate of Incorporation providing that one or more directors will have more or less than one vote per director on any matter will apply to voting in any committee or subcommittee, unless otherwise provided in the Certificate of Incorporation or these Bylaws.

4.4 SUBCOMMITTEES

Unless otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolutions of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee the powers and authority of the committee.

## ARTICLE V - OFFICERS

5.1 EXECUTIVE OFFICERS

The executive officers of the Corporation will be a Chief Executive Officer, a Chief Operating Officer, and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board of Directors, a chairperson of the Board of Directors and such other subordinate officers, including one or more vice presidents, one or more assistant vice presidents, a treasurer and one or more assistant treasurers, a secretary and one or more assistant secretaries, and such other subordinate officers as may be appointed in accordance with the provisions of these Bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF EXECUTIVE OFFICERS

The Board of Directors will appoint the executive officers of the Corporation, subject to the rights, if any, of an officer under a contract of employment.

5.3 APPOINTMENT OF SUBORDINATE OFFICERS

The Board of Directors may appoint, or empower the Chief Executive Officer to appoint, such other subordinate officers as the business of the Corporation may require. Each of such other subordinate officers will hold office for such period, have such authority, and perform such duties as are directed by the Board of Directors or the Chief Executive Officer as the business of the Corporation may require and from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under a contract of employment, any executive or subordinate officer may be removed, either with or without cause, by the Board of Directors or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof, or by an executive officer who has been conferred such power of removal.

An officer may resign at any time by giving notice, in writing or by electronic transmission, to the Corporation. A resignation will take effect at the date of the receipt of such notice or at any later time specified in such notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation will not be necessary to make it effective. A resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

A vacancy occurring in an office of the Corporation will be filled by the Board of Directors or as provided in Section 5.3.

5.6 REPRESENTATION OF SECURITIES OF OTHER ENTITIES

The chairperson of the Board of Directors, the Chief Executive Officer, any executive officer, the Secretary, or any other person authorized by the Board of Directors or the Chief Executive Officer, is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to the shares or other securities of any other entity or entities, and all rights incident to any management authority conferred on the Corporation in accordance with the governing documents of any such entity or entities, standing in the name of the Corporation, including the right to act by written consent. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS

The officers of the Corporation will respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board of Directors and the Chief Executive Officer, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors.

## ARTICLE VI - STOCK

6.1 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of the Corporation will be represented by certificates, provided that the Board of Directors may provide by resolution that some or all of any or all classes or series of its stock will be uncertificated shares. Any such resolution will not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Unless otherwise provided by a resolution of the Board of Directors, every holder of stock represented by certificates will be entitled to have a certificate signed by, or in the name of the Corporation, by the Chief Financial Officer (or another officer designated by the Chief Financial Officer) and one other officer of the Corporation, representing the number of shares registered in certificate form. The signatures on a certificate may be a facsimile. If any officer, transfer agent, or registrar who has signed or whose facsimile signature has been affixed on a certificate has ceased to be such officer, transfer agent, or registrar before such certificate is issued, then it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

The Corporation will not have power to issue share certificates in bearer form.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. On the face or back of each stock certificate issued to represent any such partly-paid shares, or on the books and records of the Corporation in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon will be stated. On the declaration of any dividend on fully-paid shares, the Corporation will declare a dividend on partly-paid shares of the same class, but only on the basis of the percentage of the consideration actually paid thereon.

6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations, or restrictions of such preferences and/or rights will be set forth in full or summarized on the face or back of the certificate that the Corporation issues to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation issues to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, and preferences, and the relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations, or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof will be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 6.2 or Sections 156, 202(a), 218(a) or 364 of the General Corporation Law or with respect to this Section 6.2 a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, and preferences, and the relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations, or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series will be identical.

6.3 LOST CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares will be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it that is alleged to have been lost, stolen, or destroyed. The Corporation may require the owner of the lost, stolen, or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against the Corporation on account of the alleged loss, theft, or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 DIVIDENDS

The Board of Directors, subject to any restrictions contained in the Certificate of Incorporation or applicable law, may declare and pay dividends on the shares of the Corporation's capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, subject to the provisions of the Certificate of Incorporation. The Board of Directors may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the Corporation will be made only on its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, on the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation, or authority to transfer.

6.6 STOCK TRANSFER AGREEMENTS

The Corporation will have power to enter and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law.

6.7 REGISTERED STOCKHOLDERS

The Corporation:

(a) will be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and notices and to vote as such owner; and

(b) will not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it will have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

## ARTICLE VII - MANNER OF GIVING NOTICE AND WAIVER

7.1 NOTICE OF STOCKHOLDERS' MEETINGS

Notice of any meeting of the stockholders will be given in the manner set forth in the General Corporation Law.

7.2 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the General Corporation Law, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under the provisions of the General Corporation Law, the Certificate of Incorporation, or these Bylaws will be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent will be revocable by the stockholder by written notice to the Corporation. A stockholder who fails to object in writing to the Corporation within sixty days of having been given written notice by the Corporation of its intention to send the single notice, will be deemed to have consented to receiving such single written notice. This Section 7.2 will not apply to Sections 164, 296, 311, 312, or 324 of the General Corporation Law.

7.3 NOTICE TO PERSONS WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the General Corporation Law, the Certificate of Incorporation, or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person will not be required and there will be no duty to apply to a governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that will be taken or held without notice to any such person with whom communication is unlawful will have the same force and effect as if such notice had been duly given. If the action taken by the Corporation is such as to require the filing of a certificate under the General Corporation Law, then the certificate will state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice, except such persons with whom communication is unlawful.

7.4 WAIVER OF NOTICE

Whenever notice is required to be given under a provision of the General Corporation Law, the Certificate of Incorporation, or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, will be deemed equivalent to notice. Attendance of a person at a meeting will constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in a written waiver of notice or a waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

## ARTICLE VIII - INDEMNIFICATION

8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD-PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the Corporation will indemnify, to the fullest extent permitted by the General Corporation Law, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**") (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to a criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of a Proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent, will not, of itself, create a presumption that the person did not act in good faith and in a manner that such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to a criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article VIII, the Corporation will indemnify, to the fullest extent permitted by the General Corporation Law, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification will be made in respect of any claim, issue, or matter as to which such person will have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought determines on application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or such other court deems proper.

8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer (for purposes of this Section 8.3 only, as such term is defined in Section 145(c)(1) of the General Corporation Law) of the Corporation is successful on the merits or otherwise in defense of an action, suit, or proceeding described in Section 8.1 or Section 8.2, or in defense of a claim, issue, or matter therein, such person will be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. The Corporation may indemnify any other person who is not a present or former director or officer of the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by such person to the extent that person is successful on the merits or otherwise in defense of any suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue, or matter therein.

8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the Corporation has power to indemnify its employees and agents, or any other persons, to the extent not prohibited by the General Corporation Law or other applicable law. The Board of Directors has the power to delegate to any person or persons identified in subsections (1) through (4) of Section 145(d) of the General Corporation Law the determination of whether employees or agents will be indemnified.

8.5 ADVANCED PAYMENT OF EXPENSES

Expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the Corporation in defending a Proceeding will be paid by the Corporation in advance of the final disposition of such Proceeding on receipt of a written request therefor (together with documentation reasonably evidencing such expenses), including an undertaking by or on behalf of the person to repay such amounts if it is ultimately determined that the person is not entitled to be indemnified under this Article VIII or the General Corporation Law. Such expenses (including attorneys' fees) actually and reasonably

incurred by former directors and officers or other employees and agents of the Corporation or by persons serving at the request of the Corporation as directors, officers, employees, or agents of another corporation, partnership, joint venture, trust, or other enterprise may be so paid on such terms and conditions, if any, as the Corporation deems appropriate. The right to advancement of expenses will not apply to a Proceeding (or any part of a Proceeding) for which indemnity is excluded pursuant to these Bylaws, but will apply to a Proceeding (or any part of a Proceeding) referenced in Section 8.6(b) or 8.6(c) prior to a determination the person is not entitled to be indemnified by the Corporation.

Notwithstanding the foregoing, unless otherwise dictated pursuant to Section 8.8, no advance will be made by the Corporation to an officer of the Corporation (except by reason of the fact that such officer is or was a director of the Corporation, in which event this paragraph will not apply) in a Proceeding if a determination is reasonably and promptly made: (a) by a vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (b) by a committee of such directors designated by the vote of the majority of such directors, even though less than a quorum, or (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation.

8.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the General Corporation Law, the Corporation is not obligated to indemnify any person pursuant to this Article VIII in connection with a Proceeding (or any part of a Proceeding):

(a) for which payment has actually been made to or on behalf of such person under any law, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act or similar provisions of federal, state, or local statutory law or common law if such person is held liable therefor (including pursuant to any settlement arrangements);

(c) for reimbursement of the Corporation by such person of a bonus or other incentive-based or equity-based compensation or of profits realized by such person from the sale of securities of the Corporation, as required in each case under the 1934 Act (including such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the Corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(d) initiated by such person, including a Proceeding (or any part of a Proceeding) initiated by such person against the Corporation or its directors, officers, employees, agents, or other indemnitees, unless: (i) the Board of Directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, (iii) otherwise required to be made under Section 8.7, or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

8.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within ninety days after receipt by the Corporation of the written request therefor, the claimant will be entitled to an adjudication by a court of competent jurisdiction of the claimant's entitlement to such indemnification or advancement of expenses. The Corporation will indemnify such claimant against expenses actually and reasonably incurred by the claimant in connection with an action for indemnification or advancement of expenses from the Corporation under this Article VIII to the extent such claimant is successful in such action and to the extent not prohibited by law. In any such suit, the Corporation will have, to the fullest extent not prohibited by law, the burden of proving the claimant is not entitled to the requested indemnification or advancement of expenses.

8.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII will not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, law, bylaw, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The Corporation is specifically authorized to enter individual contracts with any or all of its directors, officers, employees, or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the General Corporation Law or other applicable law.

8.9 INSURANCE

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of the General Corporation Law.

8.10 SURVIVAL

The right to indemnification and advancement of expenses conferred by this Article VIII will continue as to a person who has ceased to be a director, officer, employee, or agent and will inure to the benefit of the person's heirs, executors, and administrators.

8.11 EFFECT OF REPEAL OR MODIFICATION

A right to indemnification or to advancement of expenses arising under a provision of the Certificate of Incorporation or these Bylaws will not be eliminated or impaired by amendment or restatement of the Certificate of Incorporation or these Bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative, or investigative action, suit, or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

8.12 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the "**Corporation**" includes, in addition to the resulting Corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, or agents, so that any person who is or was a director, officer, employee, or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, will stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "**other enterprises**" includes employee benefit plans; references to "**fines**" includes any excise taxes assessed on a person with respect to an employee benefit plan; and references to "**serving at the request of the Corporation**" includes any service as a director, officer, employee, or agent of the Corporation that imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner "**not opposed to the best interests of the Corporation**" as referred to in this Article VIII.

## ARTICLE IX - GENERAL MATTERS

9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, the Board of Directors may authorize an officer or officers, or agent or agents, to enter into a contract or execute a document or instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent, or employee will have power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

9.2 FISCAL YEAR

The fiscal year of the Corporation will be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

9.3 SEAL

The Corporation may adopt a corporate seal, which will be adopted, and which may be altered by the Board of Directors. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed, affixed, or in any other manner reproduced.

9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the General Corporation Law govern the construction of these Bylaws. Without limiting the generality

of this provision, the singular number includes the plural, the plural number includes the singular, and the term "**person**" includes a corporation, partnership, limited liability company, joint venture, trust, other enterprise, and a natural person. A reference in these Bylaws to a section of the General Corporation Law will be deemed to refer to such section as amended from time to time and any successor provisions thereto.

9.5 FORUM SELECTION

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) will, to the fullest extent permitted by law, be the sole and exclusive forum for: (a) a derivative action or proceeding brought on behalf of the Corporation; (b) an action asserting a claim of breach of a fiduciary duty owed by a director, stockholder, officer, employee, or agent of the Corporation to the Corporation or its stockholders, creditors, or other constituents; (c) an action arising pursuant to the General Corporation Law, the Certificate of Incorporation, or these Bylaws; or (d) an action asserting a claim governed by the internal affairs doctrine, except for, as to each of (a) through (c), a claim as to which court determines there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court or for which such court does not have subject matter jurisdiction; provided, the provisions of the first sentence of this Section 9.5 will not apply to suits brought to enforce a liability or duty created by the Securities Act of 1933, as amended, the 1934 Act, any successors thereto or any other claim for which the federal courts have exclusive jurisdiction; and provided further that, if and only if the Court of Chancery of the State of Delaware dismisses such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court in the State of Delaware.

Unless the Corporation consents in writing to the selection of an alternative forum, the U.S. federal district courts will be the sole and exclusive forum for the resolution of a complaint asserting a cause of action arising under the Securities Act of 1933, as amended, or any successor thereto.

To the fullest extent permitted by applicable law, any person or entity purchasing or otherwise acquiring or holding an interest in a security of the Corporation will be deemed to have notice of and consented to the provisions of this Section 9.5. For the avoidance of doubt, nothing contained in this Section 9.5 will apply to any action brought to enforce a duty or liability created by the 1934 Act.

## ARTICLE X - AMENDMENTS

These Bylaws may be adopted, amended, or repealed by the stockholders entitled to vote; provided, however, that the affirmative vote of the holders of at least sixty-six and two-thirds percent of the total voting power of outstanding voting securities, voting together as a single class, will be required for the stockholders of the Corporation to alter, amend, or repeal, or adopt any Bylaw inconsistent with the following provisions of these Bylaws: Article II, Section 3.1, Section 3.2, Section 3.4, Section 3.11, Article VIII, Section 9.5, or this Article X (including, without limitation, any such Article or Section as renumbered as a result of any amendment, alteration, change, repeal, or adoption of any other Bylaw). The Board of Directors will also have the power to adopt, amend, or repeal Bylaws; provided, however, that a Bylaw amendment adopted by stockholders that specifies the votes that will be necessary for the election of directors will not be further amended or repealed by the Board of Directors.

**Exhibit 10.1**

INDUSTRIAL LEASE

BETWEEN

SFG CHARLESTON OMNI, LLC,

AS LANDLORD

AND

THORNE HEALTHTECH, INC.

AS TENANT

**THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, FOUND AT SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.**

**LEASE INDEX**

**THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, FOUND AT SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.**

INDUSTRIAL LEASE

THIS INDUSTRIAL LEASE (the "**Lease**") is made as of the Lease Date by and between **SFG CHARLESTON OMNI, LLC**, a Delaware limited liability company ("**Landlord**"), and **THORNE HEALTHTECH, INC.**, a Delaware corporation ("**Tenant**") (the words "Landlord" and "Tenant" to include their respective legal representatives, successors and permitted assigns where the context requires or permits).

W I T N E S S E T H:

1. **Basic Terms**. This Section 1 contains the basic terms of this Lease. Capitalized terms used in this Lease will have the meanings given them in this Section 1 and elsewhere in this Lease, including SCHEDULE A hereto.

| | |
|---|---|
| (a) **"Premises"** | Defined in Section 2(a). |
| (b) **"Building"** | The building to be constructed in accordance with the provisions of the Construction Addendum, in the location depicted as Building 2 on EXHIBIT A hereto, to contain approximately 360,320 square feet (the "**Presumed Square Footage**"). |
| (c) **"Project"** | Omni Industrial Campus, Summerville, Berkeley County, South Carolina |
| (d) **"Base Rent"** | $5.50 per square foot, escalating 2% on the first day of each Lease Year, as shown in the chart below |

| Period | Rate Per Square Foot | "Annual Base Rent" | "Monthly Base Rent Installment" |
|---|---|---|---|
| Lease Year 1 | $ 5.50 | $ 1,981,760.00* | $ 165,146.67* |
| Lease Year 2 | $ 5.61 | $ 2,021,395.20 | $ 168,449.60 |
| Lease Year 3 | $ 5.72 | $ 2,061,823.10 | $ 171,818.59 |
| Lease Year 4 | $ 5.84 | $ 2,103,059.57 | $ 175,254.96 |
| Lease Year 5 | $ 5.95 | $ 2,145,120.76 | $ 178,760.06 |
| Lease Year 6 | $ 6.07 | $ 2,188,023.17 | $ 182,335.26 |
| Lease Year 7 | $ 6.19 | $ 2,231,783.64 | $ 185,981.97 |
| Lease Year 8 | $ 6.32 | $ 2,276,419.31 | $ 189,701.61 |
| Lease Year 9 | $ 6.44 | $ 2,321,947.69 | $ 193,495.64 |
| Lease Year 10 | $ 6.57 | $ 2,368,386.65 | $ 197,365.55 |
| Lease Year 11 | $ 6.70 | $ 2,415,754.38 | $ 201,312.87 |
| Lease Year 12 | $ 6.84 | $ 2,464,069.47 | $ 205,339.12 |
| Lease Year 13 | $ 6.98 | $ 2,513,350.86 | $ 209,445.90 |

*(Plus the prorated amount for any Fractional Month, if applicable.)

| | | |
|---|---|---|
| (e) | **"Lease Commencement Date"** | The date on which Landlord achieves Substantial Completion (as defined in Section 6 of EXHIBIT E hereto) of Landlord's Work (including the Tenant's Improvements) both as defined in EXHIBIT E, which is estimated to be January 1, 2023 (estimated), or any earlier date that Tenant commences business operations from the Premises. |
| (f) | **"Base Rent Commencement Date"** | Three (3) months after the Lease Commencement Date, but in no event earlier than April 1, 2023 (even if the Lease Commencement Date occurs prior to January 1, 2023). |
| (g) | **"Expiration Date"** | The earlier of (1) the last day of the 144th full calendar month after the Base Rent Commencement Date, as expressly may be extended pursuant to Special Stipulation 1 of EXHIBIT C, and (2) the termination of this Lease pursuant to this Lease. |
| (h) | **"Primary Term"** | As defined in Section 3. |
| (i) | **"Tenant's Percentage Share"** | 100% |
| (j) | **"Security Deposit"** | Two (2) month's Monthly Base Rent Installment ($330,888.34) |
| (k) | **"Permitted Use"** | Storage, warehousing and distribution of health and wellness products, and office uses reasonably ancillary thereto, all in accordance with the other provisions of this Lease, in accordance with all applicable Governmental Requirements, and in accordance with all Restrictions affecting the Project or Building. |
| (l) | **Addresses for notice** | Rent shall be paid by wire transfer or ACH pursuant to instructions provided by Landlord to Tenant.<br><br>If wire or ACH instructions are not provided by Landlord, then Rent shall be mailed to the following address:<br><br>Landlord: SFG Charleston Omni, LLC<br>c/o Stonemont Financial Group<br>3280 Peachtree Road NE, Suite 2770<br>Atlanta, Georgia 30305<br>Attn: Mike Patel<br>Email: mike.patel@stonemontfinancial.com<br><br>with a copy to:<br><br>SFG Charleston Omni, LLC<br>c/o Stonemont Financial Group<br>3280 Peachtree Road NE, Suite 2770<br>Atlanta, Georgia 30305<br>Attn: Barry Howell<br>Email: barry.howell@stonemontfinancial.com<br><br>with a copy to:<br><br>Clarius Partners, LLC<br>200 W. Madison Street, Suite 1625<br>Chicago, Illinois 60606<br>Attn: Kevin Matzke<br>Email: kmatzke@clariuspartners.com<br><br>and with a copy to: |

Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
Attn: Mark C. Rusche, Esq.
Email: mark.rusche@alston.com

Tenant: Thorne Research, Inc.
620 Omni Industrial Boulevard
Summerville, South Carolina 29486
Attn: Kim Pearson, Counsel
Email: kpearson@thorne.com

(m) **Address for rental payments** SFG Charleston Omni, LLC.
c/o Stonemont Financial Group
3280 Peachtree Road NE, Suite 2770
Atlanta, Georgia 30305
Attn: Barry Howell
Email: barry.howell@stonemontfinancial.com

(n) **"Broker(s)"** _____, on behalf of Landlord and Cresa, on behalf of Tenant

2. **Premises**.

(a) Lease of Premises. In consideration of the rent and the mutual covenants contained herein, Landlord leases to Tenant, and Tenant leases and accepts from Landlord, that certain parcel of real property more particularly described in EXHIBIT A-1 attached hereto and by this reference made a part hereof (the "**Land**") located in Berkeley County, South Carolina, together with and including all buildings, structures, driveways, parking lots, walkways, landscaping and other appurtenances thereto and all other improvements, at any time during the term of this Lease erected or situated thereon, including specifically, but, without limitation, the Building and other improvements constructed as part of Landlord's Work in accordance with the provisions of the Construction Addendum (the Building and such improvements being collectively referred to as the "**Improvements**") (the Land and Improvements are collectively referred to as the "**Premises**"), upon all the terms and provisions of this Lease. Tenant, its permitted subtenants and their employees, licensees and guests, shall have access to the Premises at all times, twenty-four (24) hours per day, every day of the year, subject to such after-normal business hour security procedures as Landlord may require.

(b) Size of Building. Upon Substantial Completion of the Building Shell, Landlord shall cause Architect to measure the Building and to issue a written confirmation of the actual square footage (the "**Building Square Footage**") to both Landlord and Tenant (the "**Measurement Confirmation**"). If the Building Square Footage is less than the Presumed Square Footage, then Base Rent may be adjusted as provided below. Notwithstanding the foregoing, the Measurement Confirmation process and any adjustment of Base Rent is subject to the following terms and conditions:

i.) *Standard*. The standard for use of measurement of the Building Square Footage shall be BOMA, based on a "drip-line" measurement from the outside of the exterior walls of the Building Shell.

ii.) *Adjustment*. If the Measurement Confirmation discloses that the Building Square Footage is less than the Presumed Square Footage by less than 9,000 square feet (a "**Minor Deviation**"), then the Base Rent amounts set forth in Section 1(d) (the "**Rent Chart**") will be revised to equal the product of the Building Square Footage times the Initial PSF Rate ("**Deviation Adjustment**"). The Deviation Adjustment shall serve as Tenant's sole remedy for the Minor Deviation (and the Deviation Adjustment will be deemed to constitute the cure of any associated claim by Tenant under Landlord's Warranty). There will be no Deviation Adjustment if the Measurement Confirmation discloses that the Building Square Footage is greater than the Presumed Square Footage. If the Measurement Confirmation discloses that the Building Square Footage is less than the Presumed Square Footage by

more than 9,000 square feet (a "**Major Deviation**"), Tenant shall be entitled to a Deviation Adjustment and to pursue an action for any damages Tenant proves are the result of such Major Deviation, except that, in no event shall Tenant be entitled to terminate this Lease. Notwithstanding anything to the contrary set forth above, if the Building Square Footage is less than the Presumed Square Footage as a result of modifications to the current concept plan required by applicable governmental authorities as part of the plan approval process, the shortfall will not be considered a Minor Deviation or a Major Deviation and the foregoing provisions of this Section 2(b)(ii) will not apply, but the Base Rent will be adjusted, as provided in this Section 2.

(c) Building Common Areas. During the Term, Tenant shall have the exclusive right to use the parking areas within the Building Common Area during the Term; provided however, Landlord hereby reserves the right to grant or establish easements along the property lines of the Land and/or under the Building Common Area to the extent such easements do not materially and adversely affect Tenant's egress or use of the Premises.

3. **Term**.

(a) Primary Term. The lease of the Premises by Landlord to Tenant will be for a primary term (the "**Primary Term**") commencing on the Lease Commencement Date and ending on the Expiration Date, as such dates may be revised pursuant to this Lease (the Primary Term, together with all renewals and extensions thereof, if any, is sometimes referred to as the "**Term**").

(b) Lease Year. The term "**Lease Year**" means the 12-month period commencing on the Lease Commencement Date, and each 12-month period thereafter during the Term; provided, however, that if the Lease Commencement Date is a day other than the first day of a calendar month, the first Lease Year will include the resulting period from and including the Lease Commencement Date to and including the last day of the calendar month in which the Lease Commencement Date occurs (the "**Fractional Month**") and will extend through the end of the twelfth full calendar month following the Lease Commencement Date.

4. **Rent**.

(a) Base Rent.

i.) *Payment of Base Rent*. Tenant will pay to Landlord the Annual Base Rent in the Monthly Base Rent Installments commencing on the Lease Commencement Date, payable in advance, without demand, on the first day of each calendar month during the Term; provided, that the first month's Base Rent after the expiration of the Abatement Period must be paid upon execution of this Lease.

(ii.) *Abatement of Base Rent.* Provided no Event of Default occurs during the Abatement Period, the Base Rent will be abated in full for the entire Abatement Period. If an Event of Default occurs during the Abatement Period, Tenant will be obligated to pay Landlord, on demand, for all Base Rent attributable to the Abatement Period.

iii.) *Fractional Month*. If the Lease Commencement Date falls on a day other than the first day of a calendar month, the Base Rent for the month in which the Abatement Period expires will be apportioned pro rata for the resulting Fractional Month.

(b) Additional Rent. Tenant's obligation to pay Additional Rent will begin to accrue on the Lease Commencement Date regardless of the Abatement Period.

(c) No Abatement. Tenant will pay Rent without any abatement (except as set forth in Section 4(a)(ii) and in Section 18, Section 19, and Section 20(f)), reduction, set-off, counterclaim, defense or deduction whatsoever.

5. **Security Deposit**.

(a) Payment of Security Deposit. Tenant will pay one-half of the Security Deposit to Landlord within thirty (30) days following execution of this Lease and Tenant will pay the other one-half of the Security Deposit to Landlord within sixty (60) days following the execution of this Lease, all as security for the performance by Tenant of the terms, covenants and conditions of this Lease. The failure of Tenant to pay either or both of the installments on or before the applicable dates due will be an Event of Default which entitles Landlord to pursue any and all remedies set forth in Section 20(b) below.

(b) Commingled Funds. Any Security Deposit may be commingled with Landlord's other funds and will not bear interest.

(c) Event of Default. If an Event of Default occurs, Landlord may apply the Security Deposit to any sum due Landlord or which Landlord may expend by reason of the Event of Default

(d) Replenishment of Security Deposit. If all or any portion of the Security Deposit is so applied by Landlord, Tenant will, within 5 days after written demand from Landlord, replenish the Security Deposit in full.

(e) Return of Security Deposit. If Tenant complies with all of the terms of this Lease, the Security Deposit will be returned to Tenant no more than 30 days after the later of: (i) the Expiration Date; and (ii) the date that Tenant delivers possession of the Premises to Landlord.

(f) Transfer and Assignment of Security Deposit. Upon a sale of the Premises, Landlord will transfer (or credit) the Security Deposit to the purchaser and, upon any such transfer or credit, Landlord will be released from all liability for the return of the Security Deposit. Tenant will not assign or encumber the Security Deposit.

(g) Letter of Credit. If the Security Deposit is in the form of a letter of credit (the "**Letter of Credit**"): (i) it will be an irrevocable letter of credit and in a form and from a financial institution acceptable to Landlord; and (ii) Tenant will, upon demand, pay directly or reimburse Landlord for all reasonable expenses incurred by Landlord in connection with the Letter of Credit, including, but not limited to, any transfer fee due upon the transfer of the Letter of Credit upon a sale of the Building by Landlord.

6. **Operating Expenses and Additional Rent**.

(a) Operating Expenses.

i.) *Agreement to Pay Operating Expenses.* Tenant will pay, as Additional Rent, Tenant's Percentage Share of Operating Expenses (i.e., 100%) in the manner described in this Section 6.

ii.) *Operating Expenses*. "**Operating Expenses**" means all reasonable expenses for operation, repair, maintenance and replacement as necessary to keep the Building and the Building Common Area fully operational and in good order, condition and repair, including, but not limited to:

A. Utilities: the cost of any Utilities, to the extent not paid (or required to be paid) by Tenant pursuant to Section 7 below;

B. Vehicular and Pedestrian Ways: expenses associated with the driveways and parking areas (including sealing and restriping, and trash, and, if applicable, snow and ice removal), truck ramps, walkways and curbs;

C. Roof: expenses associated with the maintenance, replacement and repair of the roof, roof membrane, and roof drainage system of the Building (but not the expense of Roof Replacements);

D. Exterior Walls: expenses associated with the periodic maintenance of the exterior walls of the Building, including, without limitation, caulking and painting;

E. Systems: expenses associated with security systems, fire detection and prevention systems and lighting facilities that were installed by Landlord;

F. Landscaping; Signage, Drainage and Sewer: expenses associated with landscaped areas, directional signage, drainage lines and facilities and sewer lines;

G. Declarations: all charges assessed against or attributed to the Premises pursuant to any applicable easements, covenants, restrictions, agreements, declaration of protective covenants or development standards (including, without limitation, assessments charged by owners' associations);

H. Property Management Fees: a property management fee in the amount not to exceed 3% of the Base Rent;

I. Insurance: all costs of insurance paid by Landlord with respect to the Premises (including, without limitation, commercially reasonable deductibles);

J. Taxes: all real property taxes, fees-in-lieu of taxes payments ("**FILOT**") (fully taking into account any and all applicable Special Source Revenue Credits), special assessments and similar charges imposed upon the Premises "**Premises Taxes**");

K. Energy Efficiency or Conservation Expenditures: carbon offset costs; costs to comply with Governmental Requirements as they relate to, or are part of, then-current sustainability guidelines or mandates, and other expenditures, including but not limited to capital expenditures, that Landlord reasonably believes (1) will reduce the Building's consumption of electricity, oil, natural gas, steam, water or other Utilities, (2) will allow the Building to utilize renewable energy sources, (3) will divert materials from the waste stream or (4) will reduce greenhouse gas emissions, improve operational efficiency and sustainability, and/or obtain or maintain certification under any sustainability guidelines; provided, however, that, to the extent any such costs are capital expenditures, then the costs shall be amortized using a commercially reasonable interest rate over the time period reasonably estimated by Landlord to recover the costs thereof taking into consideration the estimated cost savings, as determined by Landlord using its good faith, commercially reasonably judgment.

(b) Opex Exclusions. Notwithstanding the generality of Section 6(a), Operating Expenses will expressly exclude the following ("**Opex Exclusions**"):

A. Certain Repairs: the costs of any maintenance, repair, or replacement expressly required to be performed by Landlord at its own expense under Section 8 and costs of repairs or restoration to the extent Landlord actually receives reimbursement for such costs from (1) insurance proceeds, (2) condemnation awards, (3) warranties, or (4) third parties (reasonable expenses incurred by Landlord in order to collect such costs may be included as Operating Expenses);

B. Late Payment of Premises Taxes: any fines, penalties or interest incurred in connection with the late payment of Premises Taxes by Landlord;

C. Certain Taxes: income, franchise, transfer, inheritance and capital stock taxes;

D. Financing: principal payments of mortgage and other non-operating debts of Landlord, financing or refinancing costs of the Premises and interest, points and fees incurred therewith;

E. Depreciation: deductions for depreciation or amortization (except as expressly allowed under the Lease);

F. Ground Lease: ground rent or similar payments to a ground lessor and the cost of consummating any ground lease;

G. Brokerage: brokerage commissions;

H. Certain Employee Costs: salaries and benefits and other compensation for any executive more senior than the facility manager for the Premises;

I. Entity Expenses: organizational expenses associated with the creation and operation of the entity which constitutes Landlord and all general corporate overhead and general administrative expenses not related to the operation of the Premises;

J. Certain Landlord Affiliate Expenses: overhead and profit increment paid to subsidiaries or other affiliates of Landlord for goods and services on or to the Premises to the extent only that such overhead and profit increments exceeds the costs of comparable goods and/or services delivered or rendered by unaffiliated third parties or entities of similar skill, competence, stature and experience to Landlord, on a competitive basis;

K. Contributions; Donations: the cost of any political or charitable contribution or donation; and

L. Advertising and Promotional Expenses: advertising and promotional expenses and dues paid to trade associations.

M. Capital Improvements. Capital Improvements other than Section 6(a)(ii)(K) above (and except for Landlord's rights to recoup costs from Tenant pursuant to Section 14(b) below)..

N. Defects. The cost of correcting defects in the construction of the Building or in the Building Systems, or as a result of Landlord's failure to deliver the Premises to Tenant in accordance with the Final Plans and Specifications.

O. Hazardous Substances. Any costs associated with the remediation or similar activities with respect to Hazardous Substances (except for remediation or similar activities with respect to Hazardous Substances that are discovered on the Premises and for which neither Landlord nor Tenant are responsible pursuant to Section 15 below).

P. Other Properties. Any costs, fees, or expenses incurred in connection with any other parcels of real property in the Project or otherwise, other than the Premises.

To avoid ambiguity: the fact that a cost or expense is considered an Opex Exclusion does not affect (i) Landlord's right to include insurance costs as Operating Expenses, even if an insurance claim is related to an Opex Exclusion, (ii) Landlord's right to include any such costs as "Landlord Work Costs" for purposes of determining the obligations of Landlord and Tenant under the Construction Addendum, if applicable, or (iii) Tenant's obligation to separately reimburse Landlord for the cost or expense outside of Operating Expenses, if required by another provision of this Lease.

(c) Payment of Other Taxes. Tenant will pay and be liable for all margin taxes and rental, sales, use and inventory taxes or other similar taxes, if any, on the amounts payable by Tenant hereunder. Tenant will make such payment directly to such taxing authority if billed directly to Tenant, or if billed to Landlord, such payment will be paid concurrently with the payment of the Base Rent, Additional Rent, or such other charge upon which the tax is based, all as set forth herein.

(d) Billing and Payment Process.

i.) *Estimate*. Not more than thirty (30) days prior to the beginning of each calendar year during the Term, Landlord will estimate the total amount of Operating Expenses to be paid by Tenant for the forthcoming calendar year and Tenant will pay to Landlord one-twelfth of such sum on the first day of each calendar month during such calendar year.

ii.) *Statement of Actual Amount*. Within a reasonable time after the end of each calendar year, Landlord will submit to Tenant a statement of the actual amount of Operating Expenses for such calendar year, and the actual amount owed by Tenant, and within 30 days after receipt of such statement, Tenant will pay any deficiency between the actual amount owed and the estimates paid by Tenant during such calendar year.

iii.) *Overpayment*. In the event of overpayment, Landlord will credit the amount of such overpayment toward the next installment of Operating Expenses owed by Tenant or, if the Term has expired and no Event of Default has occurred hereunder, pay such amount to Tenant.

iv.) *Survival*. The obligations in Section 6(d)(ii) and (iii) will survive the Expiration Date.

(e) Partial Calendar Year. Operating Expenses payable by Tenant for a Fractional Month, if applicable, will be apportioned prorata.

(f) Tenant Audit Rights.

i.) *Landlord's Books and Records*. Landlord's books and records pertaining to the calculation of Operating Expenses for any calendar year within the Term may be inspected and audited by Tenant (the "**Audit Right**").

ii.) *Timing*. Tenant may exercise the Audit Right at any reasonable time within 3 months after Tenant's receipt of Landlord's statement for Operating Expenses. Tenant will give Landlord not less than 15 days' prior written notice of any such request to audit.

iii.) *Adjustment*. If Landlord and Tenant agree that Landlord's calculation of Operating Expenses for the inspected calendar year was incorrect, the parties will enter into a written agreement confirming such error and then, and only then, Tenant will be entitled to a credit (in the amount of the overpayment) against the next payable installment of Base Rent (or a refund of any overpayment if the Term has expired) or Tenant will pay to Landlord, within 10 business days of the agreement, the amount of any underpayment, as the case may be. If the parties are unable to reach agreement on the final, correct amount of the Operating Expenses for the applicable calendar year, the dispute will be submitted to a mutually agreed-upon independent certified public accountant selected by Tenant which is reasonably acceptable to Landlord, and who shall not be compensated on a contingency basis (the "**Auditor**"), for final, binding resolution.

iv.) *Payment of Fees*. Tenant will be responsible for all fees and expenses in connection with its exercise of the Audit Right. Notwithstanding the foregoing, if Landlord agrees that Tenant's inspection proves (or the Auditor determines) that Landlord's calculation of Tenant's share of Operating Expenses for the inspected calendar year resulted in an overpayment by more than 5% of Tenant's share, Landlord will also pay the actual, documented, reasonable fees and expenses of the Auditor, not to exceed $2,500.00.

v.) *Confidential Information*. All of the information obtained through Tenant's inspection with respect to financial matters from the Audit (including, without limitation, costs, expenses, income) and any other matters pertaining to Landlord, the Premises, and/or the Project as well as any compromise, settlement, or adjustment reached between Landlord and Tenant relative to the results of the inspection will be held in strict confidence by Tenant; and Tenant will cause the Auditor and any Tenant Affiliates to be similarly bound. The obligations within this Section 6(f)(vi) will survive the Expiration Date.

7. **Utilities**.

(a) Separately Metered Utilities. All Utilities will be separately metered for the Premises and billed directly to Tenant by the Utility provider.

(b) Commencement of Payment Obligation. Tenant's obligation for payment of all Utilities will commence on the earlier of: (i) the Lease Commencement Date; or (ii) the date Tenant enters the Premises to install furniture, fixtures or equipment in any portion of the Premises. Tenant will establish an account with the Utility provider for each Utility and pay all charges for such Utilities prior to delinquency.

(c) Utilities Interruption. If: (i) any Utilities are interrupted; (ii) Tenant notifies Landlord of such interruption in writing (the "**Interruption Notice**"); (iii) such interruption does not arise in whole or in part as a result of an act or omission of Tenant or any of Tenant's Affiliates; (iv) such interruption is not caused by a fire or other casualty; (v) the repair or restoration of such service is reasonably within the control of Landlord; and (vi) as a result

of such interruption, the Premises or a material portion thereof, is rendered untenantable (meaning that Tenant is unable to use the Premises in the normal course of it business) and Tenant in fact ceases to use the Premises, or material portion thereof, then, Tenant's sole remedy for such interruption shall be as follows: on the tenth (10th) consecutive business day following the later to occur of the date the Premises (or material portion thereof) becomes untenantable, the date Tenant ceases to use such space and the date Tenant provides Landlord with an Interruption Notice, the Rent payable hereunder shall be abated on a per diem basis for each day after such ten (10) business day period based upon the percentage of the Premises so rendered untenantable and not used by Tenant, and such abatement shall continue until the date the Premises become tenantable again.

8. **Maintenance and Repairs**.

(a) Allocation of Responsibility and Cost Generally. Tenant and Landlord shall repair, maintain and, as necessary, replace (as the context permits or requires, "**Maintain**" or "**Maintenance**") the Premises, Building and Building Common Area in a manner required to Maintain each item in good condition and repair, and the costs for such Maintenance shall be allocated among the parties, in accordance with the following table:

| Maintenance/Repair/Replacement Item | Party Responsible for Performing the Maintenance, Repair, or Replacement | Party Responsible for Costs Relating to the Maintenance, Repair, or Replacement |
|---|---|---|
| Maintenance and Repair of all portions of the interior of the Building and associated dock areas (which otherwise are not Landlord's obligation to Maintain under this Section 8), including without limitation: HVAC Systems, glass, windows and doors, sprinkler system, all plumbing and sewage systems, fixtures, interior walls, floors (including floor slab), ceilings, storefronts, plate glass, skylights, Dock Equipment, dock seals, dock lighting, dock ramps, dock stairs, all electrical facilities and equipment (including lighting fixtures, lamps, fans and any exhaust equipment and systems and electrical motors), and all other appliances and equipment | Tenant | Tenant |
| Maintenance, Repair, and Replacement of the foundation (beneath the floor slab) of the Building | Landlord | Landlord |
| Maintenance, Repair or Replacement of the Structural frame and roof structure of the Building (i.e. steel columns, bar joists and girders, and concrete wall panels (excluding painting and caulking)) | Landlord | Landlord |
| Roof Maintenance and Repair | Landlord | Tenant |
| Roof Replacement | Landlord | Landlord |
| Building Systems (including HVAC) Maintenance and Repair | Landlord | Tenant |
| Building Systems (including HVAC) Replacement | Landlord | Tenant |
| Parking and interior roadways Maintenance and Repair | Landlord | Tenant |
| Parking and interior roadways Replacement | Landlord | Tenant |
| Areas of Building Common Area and Building described in Section 6(a)(ii) which are not both a Landlord Maintenance item and Landlord cost item as provided above (i.e. Maintenance item costs which are subject to pass-through as Operating Expenses) | Landlord | Tenant (as and to the extent provided in Section 6) |
| All items which are Opex Exclusions as set forth in Section 6(b) | Landlord | Landlord |

For purposes hereof, with respect to any repair or replacement items that are properly classified as capital costs under GAAP, Tenant shall be responsible for only its share of the amortized portion of such capital cost items that are allocated to Tenant above, consistent with the amortization provisions of Section 14(b)(ii)(A) below.

(b) Specific Tenant Maintenance Requirements for HVAC. In connection with Tenant's Maintenance of the HVAC Systems:

i.) *Preventative Maintenance Contracts*. During the Term, Tenant will, at its expense, maintain in full force and effect a service contract for the maintenance of the HVAC Systems and the Dock Equipment; each with an entity reasonably acceptable to Landlord (the "**Preventative Maintenance Contracts**"); provided however, that for new equipment, the Preventative Maintenance Contract must be maintained with the contractor that installed it for at least 5 years after the date of installation or such longer period as may be required by Landlord. The Preventative Maintenance Contract for the Dock Equipment must provide for at least 1 preventative maintenance service call per year and the Preventative Maintenance Contract for the HVAC Systems must provide for at least 2 preventative maintenance service calls per year. Tenant shall deliver copies of such Preventive Maintenance Contracts to Landlord upon initial execution and upon renewal. If Tenant elects to terminate a Preventative Maintenance Contract (or to allow it to expire by its terms), Tenant will deliver to Landlord a copy of the replacement Preventative Maintenance Contract at least 30 days prior to the termination of the existing Preventative Maintenance Contract.

ii.) *Failure to Carry Preventative Maintenance Contracts*. If Tenant fails to comply with its obligations in subsection (i) above, Landlord shall have the right to enter into the applicable Preventative Maintenance Contract on Tenant's behalf, and Tenant will reimburse Landlord, as Additional Rent, 110% of Landlord's reasonable costs incurred in connection entering into and maintaining such Preventative Maintenance Contract; and (2) 110% of Landlord's actual costs of repair and maintenance of the HVAC Systems. An exercise by Landlord of its rights under this subsection (ii) will not be deemed to be in lieu of its other remedies for the associated default by Tenant, or to otherwise relieve Tenant of its obligations to keep the HVAC Systems and Dock Equipment in good condition and repair.

(c) Exceptions to Maintenance Standard. Notwithstanding the provisions of Section 8(a) and Section 8(b) to the contrary: (i) Tenant's Maintenance obligations will exclude any Maintenance required because of the negligence or willful misconduct of Landlord or Landlord's Affiliates; and (ii) Landlord's Maintenance obligations will exclude the cost of any Maintenance required because of the negligence or willful misconduct of Tenant or Tenant's Affiliates, which cost shall be reimbursed to Landlord by Tenant.

(d) Landlord Limitation of Responsibility and Liability.

i.) *No Services*. Except as required by Section 8(a) or as otherwise specifically provided for in this Lease, Landlord will be responsible for no other services whatsoever.

ii.) *Tenant Alterations*. Landlord will never have any obligation to repair, maintain or replace any Tenant Alteration.

iii.) *No Obligation of Landlord.* Nothing herein implies any duty of Landlord to do any work required of Tenant under this Lease, but the performance of any such work by Landlord will not constitute a waiver of Tenant's default in failing to perform it.

iv.) *No Liability of Landlord*. Except for Landlord's or Landlord's Affiliates' negligence or willful misconduct, Landlord will not be liable for inconvenience, annoyance, disturbance or other damage to Tenant by reason of Landlord making any repairs or the performance of work at the Premises or on account of bringing materials, supplies and equipment into or through the Premises during the course thereof, and the obligations of Tenant under this Lease will not thereby be affected; provided, however, that Landlord will use reasonable efforts not to disturb or otherwise interfere with Tenant's operations at the Premises in making such repairs or performing such work.

v.) *Limitation of Liability*. Unless the same is caused solely by the negligence or willful misconduct of Landlord or Landlord's Affiliates or Landlord's breach of its Maintenance obligations under this Lease (and is not a Tenant Insured Issue), Landlord will not be liable to Tenant or to any other person for any damage: (A) occasioned by bursting or leaking of any vessel or pipe in or about the Premises; or (B) occasioned by water coming onto the Premises or into the Building; or (C) arising from the acts or negligence of occupants of adjacent property or the public.

9. **Use of Premises**.

(a) Permitted Use. Tenant will use the Premises: (i) solely for the Permitted Use and not for any other purpose and (ii) in compliance with applicable Governmental Requirements.

(b) Tenant's Specific Use. Landlord makes no representation or warranty that Tenant's use of the Premises is permitted by Governmental Requirements, including applicable zoning ordinances.

(c) No Liens. Tenant will not permit liens of any nature to attach or exist against the Premises (to the extent such liens arise by, through or under Tenant).

(d) No Nuisance or Trespass. Tenant will not allow or permit any vibration, noise, odor, light or other effect to occur within or around the Premises that could constitute a nuisance or trespass with respect to any adjoining property or building or its owners or users.

10. **Insurance**.

(a) Insurance Coverages Maintained by Tenant. From and after the earlier of: (i) the Lease Commencement Date; or (ii) Tenant's entry onto, or actual occupancy of, any portion of the Premises, Tenant will carry and maintain (or cause to be maintained), at its sole cost and expense, the following insurance coverages:

| Policy | Minimum Coverage Limits | Terms |
|---|---|---|
| Commercial General Liability | Primary: $1,000,000 per occurrence, $5,000,000 aggregate. | • Must be written on an occurrence (not claims made) basis.<br>• Includes Broad Form Contractual Liability coverage or reasonable equivalent thereto.<br>• Must cover Premises and Tenant's use thereof.<br>• Extends to liability of Tenant arising out of indemnities by Tenant in Section 11. |
| Commercial Auto Liability | $3,000,000 combined single limit. | • Must cover operations of all owned, hired and non-owned vehicles. |
| Workers Compensation | As required by statute in state where Premises is located. | • Must include a waiver of subrogation provision in favor of Landlord, any lender of Landlord, and any property manager designated by Landlord. |
| Employer's Liability | $3,000,000 per accident, per employee and policy limit. | • Must include a waiver of subrogation provision in favor of Landlord, any lender of Landlord, and any property manager designated by Landlord. |
| "Following Form" Excess Liability | $10,000,000 per occurrence,<br>$10,000,000 aggregate, per policy year. | |

| Policy | Minimum Coverage Limits | Terms |
|---|---|---|
| Special Form Property Insurance | Trade Fixtures and Personal Property:<br><br>100% of the full replacement value from time to time during the Term.<br><br>Tenant-Initiated Improvements:<br><br>Until completion, builder's risk insurance for 100% of the full replacement value; at the option of Tenant, the builder's risk may be provided by Tenant or by the contractor performing the applicable work for the benefit of Tenant.<br><br>Upon completion and until Tenant provides to Landlord the schedule of values for same in accordance with Section 10(e)(iii), 100% of the full replacement value from time to time during the Term ("**Placeholder Insurance**"). | • Must include terrorism coverage and coverage for the perils of earthquake and flood, regardless of quake or flood zone.<br><br>• Deductible must not exceed $50,000/occurrence.<br><br>• With respect to Placeholder Insurance, Landlord shall be named loss-payee. |

Landlord reserves the right to require Tenant to procure insurance in amounts and against such other risks as may be customarily insured from time to time during the Term by prudent owners of similar properties.

(b) Insurance Requirements. All policies of the insurance provided for in Section 10(a) must be issued in form reasonably acceptable to Landlord and must:

i.) *Insurance Rating*: be issued by insurance companies: (1) with a rating of not less than "A"; (2) having a financial size of not less than Class X in the most current available "Best's Insurance Reports"; and (3) licensed to do business in the state in which the Building is located.

ii.) *Additional Insureds*: name Landlord, Landlord's property manager, Lender and any other party reasonably designated by Landlord, as an additional insured on a primary and non-contributory basis, with the exception of Worker's Compensation, Employer's Liability and Special Form Property Insurance on Trade Fixtures and Personal Property.

iii.) *Certificate of Insurance*: be delivered to Landlord through a certificate of insurance on an Acord form 25, 27, or 28, as applicable, evidencing the required lines of coverage, insurance limits and coverage endorsements set forth in this Lease, and otherwise in a form acceptable to Landlord, prior to the Lease Commencement Date or any earlier entry into the Premises by Tenant or Tenant's Affiliates and thereafter at least 30 days prior to the expiration of each such policy, and, as often as any such policy expires. Renewal or additional policies must be procured and maintained by Tenant in like manner and to like extent.

iv.) *Notice of Cancellation*: contain a provision that the insurer will give to the first named insured at least 30 days advance written notice of policy cancellation for reasons other than non-payment of premium and 10 days advance written notice of policy cancellation for non-payment of premium. Furthermore: (1) if Tenant intends to provide substitute coverage or change its insurance carrier, Tenant will give to Landlord at least 30 days advance written notice of any such substitution or change; and (2) Tenant will provide to Landlord, within 3 days after receipt, a copy of any notice of cancellation or change of coverage sent to Tenant by any carrier providing any of the insurance policies provided by Tenant pursuant to this Section 10.

(c) Failure to Maintain Insurance. If Tenant fails to maintain the insurance coverage required by this Section 10, Landlord may, upon 7 days advance written notice to Tenant (unless such coverage will lapse, in which event no such notice will be necessary), procure such policies of insurance and Tenant will promptly pay Landlord 110% of the cost of such policies.

(d) Mutual Release; Waiver of Subrogation.

i.) *Mutual Release*. Notwithstanding anything to the contrary contained in this Lease, Landlord hereby releases Tenant, and Tenant hereby releases Landlord, Lender and their respective partners, principals, members, officers, shareholders, directors, agents, employees and affiliates from any and all liability for loss, damage or injury to the property of the other, whether located in or about the Premises or elsewhere, including any loss or damage caused or alleged to be caused by the negligence of the party against whom claims are waived, which results from an event which is covered by insurance actually carried and in force at the time of the loss (or which would have been covered but for a failure to maintain insurance coverage that was required to be maintained under this Lease) by the party sustaining such loss.

ii.) *Waiver of Subrogation*. Each of Landlord and Tenant hereby waives all rights of subrogation of its insurers and will cause its insurance policies to be endorsed such that said waiver of subrogation does not affect the right of the insured to recover thereunder.

(e) Landlord's Insurance.

i.) *Landlord's Insurance Coverage Generally*: Landlord will maintain commercial general liability insurance with limits at least equal to the amount as Tenant is required to maintain pursuant to Section 10(a), commercial property insurance on the "Special Form" or equivalent form on a Replacement Cost Basis against loss or damage to the Building, and such other insurance in such amounts and covering such liability or hazards as deemed appropriate by Landlord in its sole discretion.

ii.) *Property Insurance Specifically*: Landlord's property insurance shall be in the amount of 100% of the replacement value of the Building (exclusive of the cost of footings and foundation), and shall include coverage for the Improvements (specifically excluding Trade Fixtures, Personal Property and any other property required to be insured by Tenant under this Lease).

iii.) *Coverage for Tenant-Initiated Improvements*: Tenant will provide a complete and accurate schedule of values for any Tenant-Initiated Improvements promptly following completion. Without limiting Tenant's obligation in the prior sentence, it is acknowledged that Landlord shall only be obligated to insure Tenant-Initiated Improvements upon the completion of same and only to the extent Tenant furnishes the schedule of values related to such Tenant-Initiated Improvements for Landlord's insurer. Tenant shall maintain Placeholder Insurance coverage on the Tenant-Initiated Improvements until such time as Tenant has provided the information described in this subsection, and Landlord has confirmed to Tenant that the Tenant-Initiated Improvements have been added to Landlord's policy.

iv.) *Amount and Scope of Coverage/Operating Expense Pass-Through:* The amount and scope of coverage of Landlord's insurance, except as otherwise required to be carried by this Section 10(e), will be determined by Landlord from time to time in its sole discretion and will be subject to such deductible amounts as Landlord may elect. Premiums and deductibles for any such insurance will be an Operating Expense, as provided in Section 6.

11. **Indemnity**.

(a) Intentionally Deleted.

(b) Indemnity by Tenant. To the fullest extent allowed by law, Tenant will be solely liable for, and agrees to indemnify and defend Landlord against and hold Landlord harmless from, all claims, demands, liabilities, damages, losses, costs and expenses, including Legal Costs, arising from or related to:

i.) *Tenant's Use or Responsibility*: Tenant's use or occupancy of any portion of the Premises in a manner that is not allowed by the terms of this Lease or Tenant's breach of its obligations under this Lease; or

ii.) *Personal Property Damage or Personal Injury*: any damage to any Personal Property or any bodily or personal injury, illness or death of any person (including, without limitation, Tenant's Affiliates) occurring in, on or about the Premises unless caused by the negligence or willful misconduct of Landlord or Landlord's Affiliates.

(c) Indemnity by Landlord. Landlord will be solely liable for, and agrees to indemnify and defend Tenant against and hold Tenant harmless from, all claims, demands, liabilities, damages, losses, costs and expenses, including Legal Costs, arising from or related to:

i.) *Landlord's Use or Responsibility*: Landlord's use or occupancy of the Premises in a manner that is not allowed by the terms of this Lease or Landlord's breach of its obligations under this Lease; or

ii.) *Personal Property Damage or Personal Injury*: any damage to property or bodily or personal injury, illness or death of any person (including, without limitation, Landlord's Affiliates) caused by the negligence or willful misconduct of Landlord or Landlord's Affiliates.

(d) Exceptions from Indemnities. Notwithstanding the foregoing, neither party will be liable to the other under its respective indemnity in this Section 11 to the extent:

i.) *Negligence/Willful Misconduct*: the underlying claim is the result of the other party's (or its respective Affiliates') own negligence or willful misconduct; or

ii.) *Insured Issue*: the underlying claim is the other party's Insured Issue.

(e) Survival. This Section 11 will survive the Expiration Date with respect to any damage, bodily or personal injury, illness or death occurring prior to the Expiration Date.

(f) Exculpation and Indemnification. The provisions of this Section 11 are intended to exculpate and indemnify Landlord from and against any liability of Landlord based on any applicable doctrine of strict liability.

(g) Relationship with Mutual Waivers/Release. Nothing in this Section 11 is intended to override the mutual release and waivers in Section 10(d).

12. **Tenant's Trade Fixtures**.

(a) Installation. Tenant may install trade fixtures within the Building; provided that the installation of such trade fixtures is subject to the prior written approval of Landlord, which will not be unreasonably withheld, delayed or conditioned.

(b) Removal. Tenant, at its expense, will remove all of its trade fixtures from the Premises by the Expiration Date; provided, however, that Tenant will comply with the Rules and Regulations in performing such removal and will repair any damage caused by the installation or removal of all trade fixtures.

13. **Signs**.

(a) Exterior Walls. No sign, advertisement or notice will be installed or displayed on the windows or exterior walls of the Building or on any exterior portion of the Premises, without the prior written approval of Landlord.

(b) Removal of Signs. Tenant, at its expense, will remove all of its signs from the Premises by the Expiration Date; provided, however, that Tenant will comply with the Rules and Regulations in performing such removal and will repair any damage caused by the installation or removal of its signs.

14. **Governmental Requirements**.

(a) Compliance with Governmental Requirements. Tenant, at Tenant's expense, will promptly comply with all Governmental Requirements relating to the Premises and/or Tenant's use of all portions thereof.

(b) Code Modifications.

i.) *Tenant Code Modifications*. If a Code Modification is required as a result of a Tenant Alteration or the specific use by Tenant of the Premises or is otherwise a Tenant-Specific Requirement (a "**Tenant Code Modification**"), then such Code Modification will be promptly performed by Tenant at its expense and in accordance with the applicable Governmental Requirement and with Section 17.

ii.) *Generally Required Code Modifications*. If a Code Modification is required which is not a Tenant Code Modification (any other Code Modification being referred to as a "**General Code Modification**"), then Landlord will perform the Code Modification at its expense and Tenant will reimburse Landlord for the cost within 30 days after receipt of invoice by Landlord). Notwithstanding the foregoing, for any General Code Modification that is a Capital Expenditure, Tenant will reimburse Landlord as follows:

A. Cost Amortized. The cost of such General Code Modification will be amortized in equal monthly installments at an interest rate, and over the useful life of the item in question, all as reasonably determined by Landlord; and

B. Tenant's Share. Tenant will be obligated to pay Landlord monthly, as Additional Rent, for the portion of such amortized costs attributable to the remainder of the Term, including any extensions thereof.

iii.) *Notices*. Tenant will promptly send to Landlord a copy of any written notice received by Tenant requiring a Code Modification.

15. **Environmental Matters**.

(a) Compliance with Laws. Tenant will conduct all the activities of Tenant and Tenant's Affiliates, at the Project in compliance with Environmental Laws.

(b) Permits. Tenant covenants that it will obtain prior to the Lease Commencement Date, all permits, licenses or approvals required by any applicable Environmental Laws necessary for Tenant's operation of its business at the Premises.

(c) Use of Hazardous Substances. Tenant will not cause or permit any Hazardous Substances to be brought upon, kept or used at the Project without the prior written approval of Landlord; provided that the approval of Landlord will not be required for the use of cleaning supplies, toner for photocopying machines and other similar materials, in containers and quantities reasonably necessary for and consistent with ordinary office use or routine janitorial service.

(d) Release of Hazardous Substances. Tenant will not cause or permit the release of any Hazardous Substances by Tenant or Tenant's Affiliates into the air, water or land, or into the Premises or the Project in any manner that violates any Environmental Laws.

(e) Remediation. If such release of any Hazardous Substances occurs, Tenant will do the following:

i.) *Contain and Control*: take all steps reasonably necessary to contain and control such release and any associated Contamination;

ii.) *Investigate and Clean-Up*: investigate and clean up or otherwise remedy such release and any associated Contamination to the extent required by, and take any and all other actions required under, applicable Environmental Laws; and

iii.) *Notify*: notify and keep Landlord reasonably informed of such release and response.

(f) Hazardous Activities. Tenant will not cause or permit the following:

i.) *Regulated Facility*: any activity which would cause the Premises to become subject to regulation as a hazardous waste treatment, storage or disposal facility under applicable Environmental Laws (including, without limitation, RCRA);

ii.) *Storm Sewer*: the discharge of Hazardous Substances into the storm sewer system serving the Premises or the Project; or

iii.) *UST*: the installation of any underground storage tank or underground piping on or under the Premises.

(g) Environmental Indemnity.

i.) *General Indemnification*. Tenant will indemnify Landlord and hold Landlord harmless from and against any and all expense, loss, and liability suffered by Landlord by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Substances by Tenant or Tenant's Affiliates or by reason of Tenant's breach of any of the provisions of this Section 15. The foregoing indemnity shall not include any Hazardous Substances that were located at the Premises or the Project on the Lease Commencement Date, any Hazardous Materials placed on the Premises or Project by Landlord or any of Landlord's Affiliates, and or any Hazardous Substances on the Premises or the Project resulting from any of Landlord's or Landlord's Affiliates negligence or willful misconduct. Landlord will indemnify Tenant and hold Tenant harmless from and against any and all expense, loss, and liability suffered by Tenant by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Substances by Landlord or Landlord's Affiliates or by reason of Landlord's negligence or willful misconduct or any Hazardous Substances that were located at the Premises or the Project on the Lease Commencement Date.

ii.) *Expenses, Losses and Liabilities*. Expenses, losses and liabilities, as referenced in Section 15(g)(i), will include, without limitation, the following:

A. Compliance: Landlord or Tenant, as applicable, expenses to comply with any Environmental Laws;

B. Studying or Removing: costs that Landlord or Tenant, as applicable, may incur in studying, remedying, removing, disposing or otherwise addressing any Contamination or Hazardous Substances at or arising from the Premises or the Project;

C. Penalties: fines, penalties or other sanctions and any liens or claims, including but not limited to natural resource damages claims, assessed upon Landlord or Tenant, as applicable; and

D. Professional Fees: legal and professional fees and costs incurred by Landlord or Tenant, as applicable, in connection with the foregoing.

iii.) *Survival*. The indemnity contained in this Section 15(g) will survive the Expiration Date.

(h) Landlord, at its sole cost and expense shall provide Tenant with a copy of the Phase I Environmental Site Assessment obtained by Landlord (the "**Assessment**"). To the best knowledge of Landlord, and except as set forth in the Assessment, Landlord represents and warrants that there has not been any use, storage, treatment, disposal or transportation of Hazardous Substances which has occurred upon the Premises prior to the date hereof. To the best knowledge of Landlord, and except as set forth in the Assessment, Landlord additionally represents and warrants that no release, leak, discharge, spill, disposal or emission of Hazardous Substances has occurred upon or under the Premises and that the Premises are free of Hazardous Substances as of the date hereof.

16. **Landlord's Work**. Landlord will perform Landlord's Work in accordance with EXHIBIT E attached hereto.

17. **Tenant Alterations**.

(a) Alteration Process.

i.) *Approval Required*. Tenant will not make or allow any alterations to any part of the Premises (each a "**Tenant Alteration**"), without first obtaining on each occasion Landlord's prior written approval. As part of its approval process, Landlord may require that Tenant submit plans and specifications and provide a schedule of values related to the proposed Tenant Alteration. Landlord shall have the right to charge a fee (payable to either Landlord or its designee), not to exceed 1% of the costs of the Tenant Alteration, to account for its internal costs of reviewing plans and/or any oversight or monitoring of Tenant's activities that Landlord elects to undertake (the "**Tenant Alteration Monitoring Charge**"). Promptly after completion of any Tenant Alterations other than Non-Approval Tenant Alterations (defined below), Tenant will deliver Landlord the as-built construction drawings for the Tenant Alterations to Landlord in the format requested by Landlord.

ii.) *No Approval Required*. Notwithstanding the foregoing, Landlord's prior written approval shall not be required for Tenant Alterations that ("**Non-Approval Tenant Alterations**"):

(1) are non-structural and do not penetrate exterior walls or the roof,

(2) do not affect the floor (including, but not limited to, removal of any portion of the floor for example, to dig a pit),

(3) do not affect the mechanical, plumbing, HVAC, electrical or safety systems serving the Building or Premises and do not require the filing of plans and specifications with any governmental or quasi-governmental agency or authority or require a building permit,

(4) do not reduce the value or utility of the Building, and

(5) unless the alterations are purely decorative in nature (for example, painting or installation of floor and wall covering) do not cost more than $50,000.00 for any one such alteration, or more than $150,000.00 for all such alterations in the aggregate. If Landlord's approval is not required to be obtained, Tenant shall, not be required remove any of such alterations or restore the Premises to its condition as of the Lease Commencement Date and prior to such Tenant Alteration.

iii.) *Standard for Tenant Alterations*. All Tenant Alterations will be performed in accordance with all applicable Governmental Requirements and in a good and workmanlike manner with first-class materials.

iv.) *Tenant Insurance*. Tenant will maintain (and will require its contractors to maintain) insurance reasonably satisfactory to Landlord during the construction of all Tenant Alterations and Landlord will be named as an additional insured on such insurance policy.

v.) *Removal of Tenant Alterations*. At the time Landlord reviews and approves any Tenant Alterations requested, Landlord will notify Tenant whether or not the applicable Tenant Alterations must be removed. Tenant will, at its sole cost and expense and by the Expiration Date, unless otherwise instructed by Landlord at that time, remove any and all Tenant Alterations so designated by Landlord and restore the Premises to its condition prior to such Tenant Alterations.

vi.) *Surrender of Tenant Alterations*. Except as otherwise provided in Section 12 and in this Section 17, all Tenant Alterations not designated by Landlord for removal, and all other property installed on the Premises by or on behalf of Tenant will immediately upon installation become the property of Landlord and will be surrendered to Landlord on the Expiration Date.

(b) No Liens.

i.) *General Prohibition.* Tenant will not permit any lien on account of labor, material or services furnished to Tenant or Tenant Affiliates or claimed to have been furnished to Tenant or Tenant Affiliates in connection with work of any character performed or claimed to have been performed at the Premises by, or at the direction or sufferance of, Tenant or Tenant Affiliates to be placed upon the Premises for failure to pay the same.

ii.) *Discharge of Liens.* If any lien is filed against the Premises, Tenant will discharge such lien by payment or bonding within 20 days after Tenant has actual knowledge of the existence of the lien.

iii.) *Landlord Cure Right.* If Tenant fails to timely discharge such lien, Landlord may, without investigation of the validity of the lien claim (and in addition to any other rights and remedies), discharge such lien and Tenant will reimburse Landlord upon demand for all reasonable charges, costs and expenses incurred by Landlord in connection therewith, including, without limitation, Legal Costs.

iv.) *No Implied Consent.* Nothing contained in this Lease will be construed as a consent or authorization by Landlord to allow any person claiming through or under Tenant to file or otherwise subject the Premises to any lien or claim of any nature under any law.

(c) General Indemnification. Tenant will indemnify Landlord against, hold Landlord harmless from, and defend Landlord and the Premises against (with legal counsel acceptable to Landlord) all expenses, charges, liens, claims, liabilities and costs which may arise out of any Tenant Alterations including, without limitation, bond premiums for release of liens and Legal Costs and/or the filing of any liens, judgments, or encumbrances in connection therewith, or a failure by Tenant to meet its obligations under this Section 17.

18. **Fire and Other Casualty**.

(a) Insured Casualty. Subject to the other provisions of this Section 18, if the Improvements are damaged by fire or other casualty, Landlord will restore the Improvements promptly at Landlord's expense, including the Improvements insured by Landlord or Tenant hereunder (but only to the extent Landlord receives insurance proceeds therefor, including the proceeds from the insurance required to be (or actually) carried by Tenant on the Improvements).

(b) Tenant Insurance. With respect to a casualty that is the subject of insurance to be carried by Tenant under this Lease, Tenant will cause its insurer to pay the associated insurance proceeds to Landlord as soon as reasonably practicable, and will deliver any associated deductible to Landlord within 30 days of the casualty. The obligations of Tenant under this subsection will survive the Expiration Date.

(c) Notice of Right to Terminate. Notwithstanding anything to the contrary contained in this Section 18(c), if (i) the Improvements are, in the reasonable opinion of Landlord, so destroyed that they cannot be repaired or rebuilt within 270 days after the later of: (A) the date of such damage; and (B) the date Tenant vacates the necessary portions of the Premises to allow Landlord to commence said repair; (ii) the Improvements are destroyed by a casualty which is not covered by Landlord's or Tenant's insurance; or (iii) if such casualty is covered by Landlord's insurance but Lender or other party entitled to insurance proceeds fails to make such proceeds available to Landlord in an amount sufficient for restoration of the Improvements, then Landlord will give written notice to Tenant of such determination (the "**Notice of Right to Terminate**") within 60 days after such casualty.

(d) Termination Right. If Landlord issues the Notice of Right to Terminate, either Landlord or Tenant may terminate this Lease by giving written notice to the other within 20 days after Landlord's delivery of the Notice of Right to Terminate. In such event, all obligations hereunder which would accrue during the period from and after delivery of such termination notice will thereupon terminate; provided that the obligations of Tenant set forth in Section 18(b) will expressly survive any such termination.

(e) Restoration. If no such termination notice is timely given, Landlord will, to the extent of the available insurance proceeds, repair and restore the Improvements to substantially the condition existing immediately prior to such casualty, promptly and in such manner as not to interfere unreasonably with Tenant's use and occupancy of the Premises (if Tenant is still occupying the Premises). If Landlord fails to complete repairs to the Premises within 270 days after the later of: (A) the date of such damage; and (B) the date Tenant vacates the necessary portions of the Premises to allow Landlord to commence said repair, subject to Force Majeure delays, then Tenant shall have the right to terminate the Lease upon written notice delivered to Landlord at any time after such 270 day period and prior to Landlord's Substantial Completion of such repairs; provided, however, if Landlord achieves Substantial Completion of such repairs within 30 days of the date of Tenant's notice, Tenant's notice of termination shall not be effective and this Lease shall remain in full force and effect, unless Tenant has entered into a new lease for substitute space prior to such thirty (30) day period.

(f) Rent Abatement. Rent will abate and not be payable during the time that the Building or any part thereof is unusable, by reason of any casualty damage, in proportion to the loss of use thereof actually suffered by Tenant, except to the extent the failure to restore is due to the failure by Tenant to fulfill its obligations set forth in Section 18(b).

19. **Condemnation**.

(a) Total Condemnation.

i.) *Termination of Lease*. If a material portion of the Building is Condemned and the remaining portion thereof is not usable by Tenant on a commercially reasonable basis for the Permitted Use, or if all of the Premises is Condemned, this Lease will terminate as of the earlier of the date (the "**Condemnation Date**") that: (A) title to the condemned real estate vests in the condemnor; and (B) Tenant is deprived of possession of the Premises as a result of the Condemnation.

ii.) *Apportionment of Rent.* In such event: (A) the Rent will be apportioned and paid in full by Tenant through the Condemnation Date; (B) all Rent prepaid for periods beyond the Condemnation Date will be repaid by Landlord to Tenant; and (C) neither party will have any liability hereunder after the Condemnation Date, except that any obligation or liability of either party, actual or contingent, under this Lease which has accrued on or prior to such Condemnation Date will survive.

(b) Partial Condemnation.

i.) *Restoration of Premises*. If only part of the Premises is Condemned and this Lease does not terminate pursuant to Section 19(a), Landlord will, to the extent of the award it receives, restore the affected Improvements to a condition as nearly comparable as reasonably practicable to the condition thereof immediately prior to the Condemnation.

ii.) *Rent Adjustment*. There will be an equitable adjustment to the Rent based on the actual loss of use of the Building and/or any then-constructed parking areas suffered by Tenant from a partial Condemnation described in Section 19(b)(i).

(c) Award.

i.) *Award for Taking*. Landlord will receive the entire award in any proceeding with respect to any Condemnation, without deduction therefrom for any estate vested in Tenant by this Lease, and Tenant will receive no part of such award.

ii.) *Tenant Claim*. Nothing contained herein will be deemed to prohibit Tenant from making a separate claim against the condemnor, to the extent permitted by law, for the value of Tenant's moveable trade fixtures, machinery and moving expenses, and loss of business, provided that the making of such claim does not diminish Landlord's award.

20. **Default**.

(a) Event of Default. The occurrence of any of the events listed below will constitute an "**Event of Default**" of Tenant under this Lease.

i.) *Failure to Pay Rent*. Tenant fails to pay Base Rent or any Additional Rent when due, and such failure continues for more than 5 days after the due date thereof;

ii.) *Repeated Failure to Pay Rent*. Tenant fails to pay Base Rent or any Additional Rent when due more than 3 times in any period of 12 months, notwithstanding that such payments have been made within the applicable cure period;

iii.) *Failure to Discharge Lien*. Tenant fails to discharge any lien against the Premises in accordance with Section 17(b);

iv.) *Failure to Maintain Insurance*. Tenant fails to maintain in force all policies of insurance required by this Lease or fails to provide Landlord with evidence of such insurance, and either of such failures continues for more than 7 days after Landlord gives Tenant written notice of such failure;

v.) *Bankruptcy*. (A) Tenant or any guarantor of this Lease is bankrupt (which, in the case of an involuntary proceeding, is not permanently discharged, dismissed, stayed, or vacated, as the case may be, within 60 days of commencement); (B) a receiver, custodian, or trustee is appointed for the Premises or for all or substantially all of the assets of Tenant or of any guarantor of this Lease, which appointment is not vacated within 60 days following the date of such appointment; or (C) Tenant or any guarantor of this Lease becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors.

vi.) *Holdover*. Tenant fails to vacate the Premises by the Expiration Date, in accordance with Section 28(b);

vii.) *Security Deposit*. Tenant fails to pay either or both of the installment(s) of the Security Deposit on or before the dates due, as described in Section 5(a) above; or

viii.) *Other Default*. Tenant fails to perform or observe any other term of this Lease and such failure continues for more than 30 days after Landlord gives Tenant written notice of such failure, or, if such failure cannot be corrected within such 30 day period, if Tenant does not commence to correct such default within said 30 day period and thereafter diligently prosecute the correction to completion within a reasonable time (but in no event later than 90 days after Landlord's notice of default).

(b) Landlord's Remedies. Upon the occurrence of any Event of Default, Landlord may, at Landlord's option, without any demand or notice whatsoever (except as expressly required in this Section 20):

i.) *Termination of Lease*: give Tenant notice of termination, in which event this Lease will terminate on the date specified in such notice and all rights of Tenant under this Lease and to the Premises will terminate, and:

A. Tenant Remains Liable: Tenant will remain liable for all obligations under this Lease arising up to the date of such termination.

B. Surrender of Premises: Tenant will surrender the Premises to Landlord on the date specified in such notice.

ii.) *Termination of Lease with Recovery of Damages*:

A. Termination Right; Calculation of Damages: Terminate this Lease as provided in Section 20(b)(i) and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including, without limitation, an amount which, at the date of such termination, is calculated as follows (and which will be immediately due and payable):

1. Lost Rental Value: the positive difference, if any, of: (a) the Base Rent, Additional Rent and all other sums which would have been payable hereunder by Tenant for the period commencing with the day following the date of such termination and ending with the scheduled Expiration Date had this Lease not been terminated (the "**Remaining Term**"), minus (b) the aggregate reasonable rental value of the Premises for the Remaining Term (which positive difference, if any will be discounted to present value at the Treasury Yield for the Remaining Term); plus

2. Landlord Expenses: the costs of recovering possession of the Premises and all other expenses incurred by Landlord due to Tenant's default, including, without limitation, Legal Costs; plus

3. Unpaid Rent: the unpaid Base Rent and Additional Rent owed as of the date of termination plus any interest and late fees due hereunder, plus other amounts owing on the date of termination by Tenant to Landlord under this Lease or in connection with the Premises.

iii.) *Repossession of Premises*.

A. Landlord Repossession of Premises. Without terminating this Lease, in its own name but as agent for Tenant, enter into and upon and take possession of the Premises or any part thereof.

B. Removal of Tenant Property. Any property remaining in the Premises may be removed and stored at the cost of, and for the account of, Tenant without Landlord becoming liable for any loss or damage which may be occasioned thereby unless caused by Landlord's gross negligence.

C. Right to Relet. Thereafter, Landlord may, but shall not be obligated to, lease to a third party the Premises or any portion thereof upon such terms and conditions as Landlord may deem or desirable in order to relet the Premises, but without relieving Tenant of its liability.

D. Rentals from Reletting. The remainder of any rentals received by Landlord from such reletting (after the payment of any indebtedness due hereunder from Tenant to Landlord, and the payment of any costs and expenses of such reletting), will be held by Landlord to the extent of and for application in payment of future rent owed by Tenant, if any, as the same may become due and payable hereunder.

E. Deficiency. If the rentals received from such reletting will at any time be less than sufficient to pay to Landlord the entire sums then due from Tenant hereunder, Tenant will pay any such deficiency to Landlord upon demand.

F. Right to Terminate. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for any such previous default, provided same has not been cured.

iv.) *Other Remedies*: Pursue such other remedies as are available at law or equity.

(c) Application of Funds. If this Lease terminates as a result of, or while there exists, an Event of Default, any funds of Tenant held by Landlord may be applied by Landlord to any damages payable by Tenant (whether provided for herein or by law) as a result of such termination or Event of Default.

(d) No Waiver.

i.) *No Implied Acceptance or Surrender.* No agreement to accept a surrender of the Premises and no act or omission by Landlord or Landlord's agents during the Term will constitute an acceptance or surrender of the Premises unless made in writing by Landlord.

ii.) *No Implied Termination*. No re-entry or taking possession of the Premises by Landlord will constitute an election by Landlord to terminate this Lease unless a written notice of such intention is given to Tenant.

iii.) *No Implied Waiver*. Landlord's acceptance of Base Rent or Additional Rent in full or in part following an Event of Default hereunder will not be construed as a waiver of such Event of Default.

(e) Application of Rent. Whenever an Event of Default has occurred, any payment of Rent by Tenant, any other payment of any nature tendered by Tenant to Landlord and any other amount of money collected or received by Landlord from any reletting of the Premises pursuant to this Section 20 will be applied in such order as Landlord may elect toward payment of all amounts due from Tenant to Landlord pursuant to this Lease.

(f) Landlord Default. If Landlord fails in the performance of any of Landlord's obligations under this Lease and such failure continues for thirty (30) days after Landlord's receipt of written notice thereof from Tenant (and an additional reasonable time after such receipt if (A) such failure cannot be cured within such thirty (30) day period, and (B) Landlord commences curing such failure within such thirty (30) day period and thereafter diligently pursues the curing of such failure), then Tenant shall be entitled to exercise any remedies that Tenant may have at law or in equity, and in addition, Tenant may exercise self-help remedies to cure the same, and all costs with respect thereto shall be payable by Landlord to Tenant upon demand, together with the presentation of an invoice therefor; if Landlord fails to reimburse Tenant for the same within thirty (30) days of Tenant's request for payment, then Tenant may deduct from or offset from its next payment(s) of Rent all costs so incurred. Notwithstanding the foregoing, if Tenant notifies Landlord that Tenant will exercise such self-help rights, Tenant's notice must include a detailed description of Landlord's alleged default, the actions Tenant intends to take to cure Landlord's alleged default and the reasonably estimated cost of such cure actions. Landlord may notify Tenant within fifteen (15) days of Landlord's receipt of Tenant's notice that Landlord disputes the occurrence of the default and/or the self-help measures Tenant intends to take and/or the costs Tenant estimates will be incurred and intends to offset. If Landlord so notifies Tenant the parties will meet and attempt, in good faith, to resolve the dispute. However, if the parties are unable to resolve the dispute within fifteen (15) days of Landlord's notice, the dispute shall be submitted for binding resolution to the Charleston, South Carolina office of the American Arbitration Association (the "AAA") in accordance with the South Carolina Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., as amended from time to time (the "SC Arbitration Act") and the Commercial Arbitration Rules published by the AAA, as amended and in effect on the date of service of the demand for arbitration. In the event of a conflict between the SC Arbitration Act and the terms of this Agreement, this Agreement shall govern. If Landlord notifies Tenant of such dispute, Tenant shall not be entitled to any offset of any amount until the dispute is resolved by the arbitration proceeding and the offset shall only be in the amount, if any, determined by the arbitration panel to be appropriate.

Unless Landlord and Tenant otherwise agree in writing, the arbitration shall be conducted before one (1) arbitrator under the rules providing for an expedited proceeding and procedure for smaller cases of the American Arbitration Association. In any arbitration, the arbitrator shall be appointed under the Commercial Arbitration Rules of the AAA; and the arbitrator shall be a certified property manager in good standing with at least ten (10) years recent experience in industrial buildings in the county in which the Premises are located and shall be independent (i.e., shall not have been directly or indirectly employed or retained to perform professional services for either party).

The hearing shall be set for a date within thirty (30) days of appointing the arbitrator. Written submittals shall be presented and exchanged by both Landlord and Tenant at least ten (10) days before the hearing date, including reports prepared by experts upon whom either party intends to rely. Concurrently therewith, the parties will also exchange copies of all documentary evidence upon which they will rely at the arbitration hearing and a list of the witnesses whom they intend to call to testify at the hearing. The hearing shall be concluded no later than two (2) full business days after the initial hearing date (or five (5) full business days if the item or items in dispute have an aggregate value exceeding $100,000). The arbitrator shall make its award within seven (7) days after the conclusion of the hearing.

There shall be no dispositive motion practice (such as motions of summary judgment or to dismiss or the like). The parties may exchange written discovery and depositions may be taken as allowed by the arbitrator, who shall reasonably limit the number and duration of said depositions in order to avoid excessive expense and delay. The arbitrator shall not be bound by rules of evidence or civil procedure which would otherwise be applicable under applicable Law, but rather may consider such writings and oral presentations as reasonable businesspeople would use

in the conduct of their day-to-day affairs, and may require the parties to submit some or all of their presentation as the arbitrator may deem appropriate. Live testimony and cross-examination shall be limited to that necessary to insure a fair hearing. Landlord and Tenant have included the foregoing provisions limiting the scope and extent of the arbitration with the intention of providing for prompt, economic and fair resolution of the dispute submitted to arbitration.

The arbitrator shall make its decision in accordance with applicable law of the state in which the Premises are located and based on the evidence presented by the parties; and at the request of either party as of the start of the arbitration, the arbitrator shall include in its findings of fact and conclusions of law supporting the decision. The arbitrator's decision shall be conclusive and binding, and it may be confirmed thereafter as a judgment by the courts of the state in which the Premises are located. The validity and enforceability of the arbitrator's decision is to be determined exclusively by the courts of the state in which the Premises are located pursuant to the provisions of this Section.

Each party shall bear their own attorneys' fees and costs, and each party shall bear one-half of the cost of the arbitration proceeding and the arbitrator's fees. The arbitrator shall have discretion to allocate in its decision the costs of the arbitration, arbitrator's fees or the attorneys' fees and costs in connection with a decision.

The arbitration pursuant to this Section shall be conducted in county in which the Premises are located. Any party may be represented by counsel or other authorized representative.

21. **Landlord's Right of Entry**. Tenant will permit Landlord and the authorized representatives of Landlord and Lender to enter the Building and other portions of the Premises at all reasonable times for the purposes of: (i) inspecting the Premises; (ii) assessing Tenant's compliance with this Lease and performing Landlord's obligations under this Lease; (iii) performing any of Landlord's construction or maintenance and repair responsibilities; and (iv) exhibit the Premises to any Lender, any prospective purchaser, investor or lender, and during the last 6 months of the Term, any prospective tenant; provided that, except in the case of an emergency, Landlord will give Tenant reasonable (no less than 48 hours') prior notice of Landlord's intended entry into the Building, and provided further the exercise of such rights by Landlord (i) shall not unreasonably interfere with Tenant's occupancy of the Premises or the conduct of its operations therein, (ii) Tenant shall have the right to have a representative of Tenant accompany Landlord's agents and representatives during such entry into the Premises, and (iii) shall be in compliance with all other safety protocols implemented by Tenant including without limitation the requirement of all persons to wear masks ((i) – (iii), collectively, "**Tenant's Safety Protocols**").

22. **Lender's Rights**.

(a) Subordination and Attornment.

i.) *Subordination*: Subject to the terms of a SNDA as provided in item (iii) below, this Lease and all rights of Tenant hereunder are subordinate to any Mortgage and foreclosure of any Mortgage.

ii.) *Attornment*. If, in connection with foreclosure of a Mortgage or other taking of possession of the Premises pursuant to a Mortgage, a Lender (or a nominee of the Lender or other purchaser at foreclosure) elects to succeed to the rights of Landlord under this Lease, Tenant will attorn to such successor as landlord under this Lease, without change in the terms and provisions of this Lease, and in accordance with the terms and conditions of the SNDA.

iii). *SNDA*. Notwithstanding the provisions of items (i) and (ii) above, the subordination and attornment requirements shall be subject to the Lender entering into a customary Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") with Tenant on Lender's form, subject to reasonable modifications of such form requested by Tenant.

iv.) *Execution of Instruments*. Tenant will, in confirmation of the subordination and attornment set forth in this Section 22 upon written demand by Landlord enter into the Lender's form of SNDA to evidence such subordination and attornment, subject to subject to reasonable modifications of such form requested by Tenant.

v.) *No Change to Lease*. Notwithstanding any of the foregoing terms or conditions of this Section 22(a), Tenant shall not be obligated to execute any document which alters any material provision of the Lease.

(b) Lease Superior Upon Request. At any time during the Term, any Lender may, by written notice to Tenant, make this Lease superior to the lien/security title of its Mortgage. If requested by Lender, Tenant will, upon demand, at any time or times, execute, acknowledge and deliver to Lender, any and all instruments that may be necessary to make this Lease superior to the lien/security title of any Mortgage.

23. **Estoppel Certificate and Financial Statement**.

(a) Estoppel Certificates. During the Term, each of Landlord and Tenant and any Guarantor agrees to execute and deliver within 15 days after written request from the other (including in connection with any modifications by Landlord to the FILOT program for the Project), a statement to the requesting party and/or its designee certifying as follows:

i.) *In Effect*: This Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect, as modified);

ii.) *Rent Payment*. The amount of the Security Deposit and the amount and dates to which Base Rent and Additional Rent have been paid;

iii.) *Default*. Whether or not, to its knowledge, there exists any failure by the requesting party to perform any term, covenant or condition contained in this Lease, and, if so, specifying each such failure;

iv.) *Acceptance of Premises*. If such be the case, Tenant has unconditionally accepted the Premises and is conducting its business therein;

v.) *Unperformed Obligations*. If such be the case, whether Landlord has performed all obligations under Lease, including, but not limited to, constructing any tenant improvements and/or paying any tenant allowances; and

vi.) *Other Matters*. As to such additional factual matters relating to this Lease as may be reasonably requested, it being intended that any such statement delivered pursuant hereto may be relied upon by the requesting party and by any party that has, or is contemplating having, a direct or indirect interest in Landlord or the Premises.

(b) Financial Statements. If Landlord desires to finance, refinance, or sell the Premises, Tenant will, within 15 days after written request, deliver Tenant's financial statements for the past 2 years, certified by Tenant in writing as being true and accurate, to Landlord and any prospective Lender or purchaser designated by Landlord. All such financial statements will be received by Landlord and such Lender or purchaser in confidence and will be used only for the purposes herein set forth. Tenant will not be required to deliver the financial statements required under this subsection (b) if it is a publicly traded company required to make its financial statements available to the public. Landlord will not disclose any aspect of Tenant's financial statements that Tenant designates to Landlord as confidential except: (1) to Landlord's mortgagee or prospective mortgagees or purchasers of the Building (and in such event, such parties shall abide by the same confidentiality requirements of Landlord), and upon the request of Tenant, Landlord and such parties to which the financial statements are disclosed shall sign a non-disclosure agreement in form and substance reasonably acceptable to Tenant and such parties; or (2) if required by court order. Tenant shall not be required to deliver the financial statements required under this Section 23(b) more than once in any twelve (12) month period or an Event of Default occurs, but in any event, unless an Event of Default has occurred, no more than two (2) times per twelve (12) month period.

(c) Remedy. In addition to all other remedies available to Landlord, if Tenant fails to comply with the terms of this Section 23, Tenant shall pay to Landlord $500 per day for every day after the required delivery date until Tenant complies with this Section 23, and Tenant shall have no right to notice and cure from Landlord before said penalty payment begins to accrue.

24. **Landlord Liability**.

(a) No Continuing Liability. No owner of the Premises, whether or not named herein, will have liability hereunder after it ceases to hold title to the Premises, so long as the succeeding owner of the Premises assumes all obligations hereunder.

(b) No Personal Liability. Neither Landlord nor any employee, representative, officer, director, security holder, manager, equity holder, trustee, partner or principal of Landlord, whether disclosed or undisclosed, will have any personal liability with respect to any of the provisions of this Lease.

(c) Limitation of Landlord Liability. In the event Landlord is in breach or default with respect to Landlord's obligations or otherwise under this Lease, Tenant will look solely to the equity of Landlord in the Premises for the satisfaction of Tenant's remedies. Landlord's liability under the terms, covenants, conditions, warranties and obligations of this Lease will in no event exceed Landlord's equity interest in the Premises.

25. **Notices**.

(a) Delivery Methods. Any notice required or permitted by the provisions of this Lease must be in writing and delivered to the email addresses set forth in Section 1(l), with a hard copy sent within 1 business day thereafter by nationally recognized overnight delivery service providing proof of delivery, to the appropriate mailing address set forth in Section 1(l). Email addresses and mailing addresses may be changed by the affected party to any other address in the continental United States by giving written notice at least 10 business days in advance of the effective date of the change.

(b) Notice Date. Notice will be deemed to have been given on the date of email transmission. If a notice that is properly addressed per Section 25(a) is rejected as undeliverable for any reason, the notice will be deemed delivered at the time delivery was attempted.

26. **Broker Indemnification**. Landlord and Tenant hereby indemnify the other against and from any claims for any brokerage commissions arising through such party (except those payable to the Brokers, which are payable by Landlord pursuant to a separate agreement) and all costs, expenses and liabilities in connection therewith, including, without limitation, Legal Costs.

27. **Assignment and Subleasing**.

(a) Transfer.

i.) *Consent Required.* Except as otherwise expressly permitted in Section 27(d) below, no Transfer will be permitted without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold, condition or delay.

ii.) *General Notice Requirements*. If Tenant desires to Transfer this Lease, Tenant will give Landlord written notice no later than 30 days in advance of the proposed effective date of the proposed Transfer including:

A. Name and Business: the name and business of the other party to the proposed transaction;

B. Effective Date: the proposed effective date and duration of the Transfer;

C. Rent: the proposed rent or consideration to be paid to Tenant by the other party to the proposed transaction;

D. Space: in the event that a proposed Transfer is a sublease or any other proposed agreement to Transfer less than Tenant's entire interest in the Premises, the amount and location of the space within the Premises that is the subject of the proposed transaction; and

E. Additional Information: financial statements and other information as Landlord may reasonably request to evaluate any Transfer.

(b) Transfer Process.

i.) *Landlord's Decision*. For all Transfers, Landlord will have a period of 15 days following Landlord's receipt of the notice and information from Tenant required above within which to notify Tenant in writing that Landlord elects one of the following:

A. Permit Transfer. To permit the Transfer, either with or without reasonable conditions specified by Landlord; or

B. Refuse Transfer. To refuse, in Landlord's reasonable discretion (taking into account all relevant factors, including the factors set forth below), to approve the Transfer and to continue this Lease in full force and effect as to the entire Premises.

C. Deemed Approval. Landlord's failure to respond within such 15 day period and following a second notice (which notice shall have a heading in at least 12-point type, bold and all caps "FAILURE TO RESPOND SHALL RESULT IN A DEEMED CONSENT BY LANDLORD TO A REQUEST FOR ASSIGNMENT") and Landlord's failure to respond within five (5) days after receipt of such second notice, shall be deemed Landlord's consent to Tenant's request for assignment.

ii.) *Landlord Refusal*. For purposes of this Section 27, by way of example and not limitation, Landlord will be deemed to have reasonably withheld consent if:

A. Creditworthiness: the creditworthiness of the prospective transferee will not equal or exceed the greater creditworthiness of Tenant as of: (1) the Lease Date or (2) the date immediately prior to the proposed Transfer;

B. Increased Risk of Use: the proposed use of the Premises by such prospective transferee, when compared to Tenant's use, will: (1) increase the risk of Contamination; (2) increase wear and tear on the Premises or the Improvements; (3) necessitate any modifications of any part of the Premises or the Improvements; (4) increase the cost of, or risk exposure under, insurance; or (5) otherwise negatively affect the value or marketability of the Premises; or

C. Current or Prospective Tenant: in the instance of any Transfer, the prospective transferee is a current tenant in the Project or is a bona-fide third-party prospective tenant.

(c) Miscellaneous Transfer Provisions.

i.) *Reimbursement*. Tenant agrees to reimburse Landlord for reasonable legal fees and any other reasonable costs incurred by Landlord in connection with any requested Transfer.

ii.) *Delivery of Transfer Documents*. Tenant will deliver to Landlord copies of all transfer documents executed by Tenant and the transferee.

iii.) *Excess Rent*. If the transferee is to pay rent or other consideration to Tenant, and the rent rate (and any other consideration) agreed upon between Tenant and its proposed transferee is greater than the rent rate that Tenant must pay Landlord hereunder for the Premises (or the applicable portion thereof), then 50% of such excess rent and consideration (after payment of brokerage commissions, Legal Costs and other disbursements reasonably incurred by Tenant for such Transfer) will be considered Additional Rent to be paid to Landlord by Tenant as and when received by Tenant.

iv.) *No Implied Consent*. No acceptance by Landlord of any rent or any other sum of money from any assignee, sublessee or other category of transferee will be deemed to constitute Landlord's consent to any Transfer.

v.) *Liability of Transferees*. Permitted subtenants, assignees or other transferees will be liable directly to Landlord for all obligations of Tenant hereunder, without, however, relieving Tenant (or any guarantor) of any liability hereunder.

vi.) *Tenant Remains Liable*. No Transfer (including any Permitted Transfer) will result in a release Tenant from any of its duties, liabilities or obligations under this Lease whether arising before or after the date of the Transfer.

vii.) *Subsequent Transfers*. Any Transfer consented to by Landlord will not relieve Tenant (or its transferee) from obtaining Landlord's consent to any subsequent Transfer.

(d) Permitted Transfers. Notwithstanding anything in this Section 27 to the contrary, Tenant may Transfer all or part of its interest in this Lease or all or part of the Premises (a "**Permitted Transfer**") to the following types of entities (a "**Permitted Transferee**") without the written consent of Landlord:

(1) an Affiliate of Tenant;

(2) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as (A) Tenant's obligations hereunder are assumed by the entity surviving such merger or created by such consolidation; and (B) the Tangible Net Worth of the surviving or created entity is not less than the Tangible Net Worth of Tenant as of the date of execution of this Lease;

(3) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Tenant's assets so long as such entity's Tangible Net Worth after such acquisition is not less than the Tangible Net Worth of Tenant as of the date of execution of this Lease;

(4) the transfer of any direct or indirect interests in Tenant as part of an initial public offering (or subsequent follow-on offering) of shares of stock in Tenant or a nationally or internationally recognized stock exchange; or

(5) the transfer of any direct or indirect interests in Tenant which are publicly traded.

Tenant shall promptly notify Landlord of any such Permitted Transfer. Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder, or if Tenant no longer exists because of a merger, consolidation, or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder. Additionally, the Permitted Transferee shall comply with all of the terms and conditions of this Lease, including the Permitted Use. No later than five (5) business days after the effective date of any Permitted Transfer, Tenant agrees to furnish Landlord with (A) copies of the instrument effecting any of the foregoing Transfers, (B) documentation establishing Tenant's satisfaction of the requirements set forth above applicable to any such Transfer, and (C) evidence of insurance as required under this Lease with respect to the Permitted Transferee. The occurrence of a Permitted Transfer shall not waive Landlord's rights as to any subsequent Transfers. "**Tangible Net Worth**" means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied ("**GAAP**"), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises. Any subsequent Transfer by a Permitted Transferee shall be subject to the terms of this Section 27. The term "**Affiliate**" as used in this Section 27 means any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Tenant.

28. **Termination or Expiration; Holdover**.

(a) Right to Collect Rent. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, will affect Landlord's right to collect Rent for the period prior to termination.

(b) Surrender. By the Expiration Date, Tenant will surrender to Landlord: (i) the Premises (including the Improvements, but not including any trade fixtures, signage or Tenant Alteration which Tenant is obligated to remove pursuant to Section 12, Section 13 and Section 17, respectively) clean and neat, in compliance with the Rules and Regulations and otherwise in the same condition as when delivered to Tenant pursuant to this Lease, excepting only normal wear and tear, condemnation and casualty (other than casualty required by this Lease to be insured against by Tenant) and (ii) all keys to the Building.

(c) Holdover.

i.) *Tenant-At-Sufferance*. If Tenant remains in possession of any portion of the Premises after the Expiration Date, with or without Landlord's acquiescence and without a written agreement of the parties, Tenant will be a tenant-at-sufferance at 150% of the Base Rent in effect at the end of the Term.

ii.) *Additional Rent.* Tenant must also continue to pay all other Additional Rent due hereunder, provided that no concessions or limits on Operating Expenses or other concessions regarding Additional Rent will apply with respect to the holdover period.

iii.) *No Renewal by Operation of Law.* Notwithstanding anything to the contrary contained in this Section 28(c), there will be no renewal of this Lease by operation of law or otherwise.

iv.) Tenant shall be liable for all damages for which Landlord is held liable to a third-party, successor tenant due to Landlord's inability to deliver the Premises to such third-party, successor tenant as required by the terms of the deal with the third-party, successor tenant due to Tenant's holdover (but only if Landlord provides notice to Tenant, at least thirty (30) days prior to the required delivery date, that Landlord has entered into a new, replacement lease, the notice specifies the required delivery date and Tenant fails to surrender possession of the entire Premises to Landlord at least five (5) business days prior to the specified required delivery date); provided, however, if Tenant provides Landlord written notice, at least one hundred eighty (180) days prior to the scheduled expiration date of the Term, that Tenant intends to hold over for either thirty (30) or sixty (60) days (as specified in Tenant's notice), then Tenant shall be entitled to hold over for the specified time period (at 125% of the Base Rent in effect as of the last day of the Term and with the payment of all other Additional Rent including Tenant's Percentage Share of Operating Expenses) without Tenant being liable for any such third-party costs.

v.) *No Implied Reinstatement or Renewal.* No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises will reinstate, continue or extend the Term or of Tenant's right of possession.

v.) *Survival.* The provisions of this Section 28(c) will survive the Expiration Date.

29. **Late Payments**.

(a) Administrative Fee. If any installment of Rent is not paid within 5 days after the date when due, Tenant will pay a one-time administrative fee (the "**Administrative Fee**") equal to 5% of such past due amount, in order to defray the additional expenses incurred by Landlord as a result of such late payment.

(b) Interest. If any past-due installment of Rent, plus the Administrative Fee, is not paid in full within 30 days after the original due date thereof, then the past-due installment, plus the Administrative Fee, will, after expiration of such 30 days and until paid in full, accrue interest at the lesser of: (i) 1.0% per month, compounded monthly; and (ii) the maximum interest rate allowed by law (the "**Interest Rate**").

(c) Additional Fees. The Administrative Fee and accrual of interest at the Interest Rate are in addition to, and not in lieu of, any of Landlord's remedies under this Lease for non-payment of Rent.

30. **Rules and Regulations**. Tenant will abide by the Rules and Regulations.

31. **Miscellaneous**.

(a) OFAC. Landlord and Tenant each certifies, represents, warrants and covenants to the other that it is not, and is not acting (and will not act), directly or indirectly, for or on behalf of any of the following, and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of:

i.) *Terrorist*. any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist;

ii.) *Specially Designated National or Blocked Person*. any Specially Designated National or Blocked Person; or

iii.) *Others*. any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control.

(b) Entire Agreement; Amendment; Severability.

i.) *Entire Agreement*. This Lease contains the entire agreement of the parties hereto as to the subject matter of this Lease and no prior representations, inducements, letters of intent, promises or agreements, oral or otherwise, between the parties not embodied herein will be of any force and effect.

ii.) *Future Amendments*. Any future amendment to this Lease must be in writing and signed by the parties hereto.

iii.) *Severability*. If any clause or provision of this Lease is determined to be illegal, invalid or unenforceable under applicable law, then: (A) all remaining provisions of this Lease will remain in full force and effect; and (B) it is the intention of Landlord and Tenant that, in lieu of such illegal, invalid or unenforceable clause or provision, there will be substituted a clause or provision as similar to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

(c) Cumulative Rights. All rights, remedies, powers, and privileges conferred hereunder upon the parties hereto (i) will be cumulative, but not restrictive to those given by law, and (ii) will not be (or deemed to be) exclusive of those that may at any time be available Landlord under applicable law.

(d) No Election of Remedies. An exercise of one remedy by Landlord (including, but not limited to, exercising rights under Sections 5(c) or 20(b)), shall not be deemed an election of remedies by Landlord, and Landlord will have the right to pursue any and all other remedies available to it.

(e) No Waiver. No failure of Landlord or Tenant to exercise any power given Landlord or Tenant hereunder or to insist upon strict compliance by Landlord or Tenant with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof will constitute a waiver of Landlord's or Tenant's rights to demand exact compliance with the terms hereof or lessen either party's right to insist upon strict performance of the terms of this Lease. No provision of this Lease will be deemed to have been waived by either party unless such waiver is made in writing by the party making such waiver.

(f) Time Periods. TIME IS OF THE ESSENCE OF THIS LEASE. If the time period by which any right, option or election provided under this Lease must be exercised, or by which any act required hereunder must be performed, expires on a Saturday, Sunday or legal or bank holiday in the state where the Premises are located, then such time period will be automatically extended through the close of business on the next regularly scheduled business day in such state.

(g) Relationship. This contract creates the relationship of landlord and tenant between Landlord and Tenant; no estate will pass out of Landlord. The interest of Tenant is not intended to, and will not, be subject to levy and sale and will not be assignable, except as expressly permitted by this Lease.

(h) No Recordation. Tenant will not record this Lease; provided, however, that upon the request of Tenant, Landlord shall execute, acknowledge and deliver to Tenant, a memorandum of this Lease in form reasonably satisfactory to Tenant and Landlord (but, in no event will any rent amounts, improvement allowances or other similar monetary provisions of the Lease be included in such memorandum) and suitable for recordation in the official records of the jurisdiction in which the Premises are located. In the event the Lease is terminated pursuant to the mutual agreement of Landlord and Tenant or by its terms because of expiration of the Term or otherwise by agreement, Tenant covenants and agrees to execute and deliver to Landlord a document in recordable form stating that the Lease has been terminated and is no longer in force and effect on the Premises.

(i) Counterparts. This Lease may be executed in multiple counterparts including by electronic or PDF signature, each of which will constitute an original, but all of which taken together will constitute one and the same agreement.

(j) Governing Law. All matters relating to the interpretation, construction, validity and enforcement of this Lease, including all claims (whether in contract or tort) that may be based upon, arise out of or relate to this Lease or the negotiation, execution or performance of this Lease or the transactions contemplated thereby, will be governed by and construed in accordance with the domestic laws of the state where the Premises are located, without giving effect to any choice of law or conflict of law provision or rule (whether of such state or of any other jurisdiction) that would cause the application of laws of any jurisdiction other than such state.

(k) Headings and Subheadings. The headings and subheadings of this Lease are for convenience only and are not a part of this Lease, and do not in any way define, limit, describe or amplify the terms or provisions of this Lease or the scope or intent thereof.

(l) Negotiated Document. This Lease is the result of negotiations between the parties, and in construing any ambiguity hereunder no presumption will be made in favor of either party.

(m) Waiver of Jury Trial. The parties hereto waive trial by jury in any action, proceeding or counterclaim brought by any party against any other party on any matter arising out of or in any way connected with this Lease or the relationship of the parties hereunder.

32. **Special Stipulations**. The Special Stipulations, if any, attached hereto as EXHIBIT C, are incorporated herein and made a part hereof and, to the extent of any conflict between the foregoing provisions and the Special Stipulations, the Special Stipulations will govern and control.

33. **Authority**. Tenant certifies to Landlord as follows:

(a) Organization. Tenant is duly organized, validly existing and in good standing under the laws of the state in which it was formed and duly qualified to do business in the state in which the Premises is located; and

(b) Authorization. Tenant is authorized by all required corporate or partnership action to enter into this Lease, and the individual(s) signing this Lease on behalf of Tenant are each authorized to bind Tenant.

34. **Prevailing Party**. In the event of a dispute between Landlord and Tenant regarding the terms of this Lease, including any dispute regarding the enforcement of this Lease or the interpretation of any provision of this Lease, whether arising in a lawsuit filed by either Landlord or Tenant, an arbitration, bankruptcy or otherwise, the prevailing party in such dispute will be entitled to recover from the other its Legal Costs in connection with such dispute.

35. **Quiet Enjoyment**. Provided Tenant has performed all of its obligations hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, but not otherwise, subject to the terms and conditions of this Lease.

36. **Consequential Damages**. Anything to the contrary contained herein notwithstanding, Landlord and Tenant shall not be liable to the other party or such party's Affiliates for any indirect, special, consequential, punitive, or other similar damages, lost profits, lost revenues, lost business opportunities or the like incurred in any way relating to this Lease.

37. **Force Majeure**. Landlord and Tenant shall not be required to perform any term, condition or covenant of this Lease so long as the performance or nonperformance of the term, condition, or covenant is delayed, hindered, or prevented by Force Majeure; provided, however, that Tenant's obligation to pay Rent, as and when due, shall not be excused or extended as a result of Force Majeure.

38. **Landlord's Representations and Warranties**. Anything to the contrary contained herein notwithstanding, Landlord hereby represents and warrants to, and covenants with, Tenant the following:

(a) Landlord has fee simple title to the Premises, the Building, the Land, and the Project;

(b) No consent of any third party is required (or if required, will be obtained by Landlord prior to the Lease Commencement Date) in connection with Landlord's lease of the Premises to Tenant hereunder;

(c) As of the date hereof, Landlord has no knowledge of any current, pending or threatened condemnation, annexation, or similar proceeding affecting the Premises, the Building, the Land, or the Project or any portion thereof, nor has Landlord knowledge that any such actions are presently contemplated;

(d) The Premises, the Building, the Land, and the Project shall have on the Lease Commencement Date and at all times during the term of this Lease, have vehicular and pedestrian access either (i) directly to the Building by paved public roadway adjacent to, abutting, and connecting to the Land or (ii) directly to the Building through a perpetual easement area intended to provide access over a paved private roadway through and over any privately owned lands all the way to connect to a public roadway, in either instance together with appropriate curb cuts onto such roadways to provide reasonable vehicular access to and from the Tenant;

(e) As of the Lease Commencement Date and for remainder of Lease Year 1, the HVAC and all other Building Systems shall be in good working order and condition.

For purposes of this Section 38 and any other warranty or representation in this Lease, the terms "to the best of Landlord's Knowledge" or similar term shall mean the current, actual knowledge of Avery Dorr and Steve Yeager, without any duty to investigate or inquire.

39. **Incentives.**

(a) Landlord acknowledges that, in connection with Tenant's operation of the Property, Tenant has obtained, and may from time to time in the future pursue, certain tax and other incentives from the State of South Carolina or any political subdivision thereof, including, without limitation, any incentives provided pursuant to any agreement entered into with a governmental authority providing for a FILOT arrangement (collectively, the "**Tenant Incentives**"). Landlord hereby agrees to reasonably cooperate with Tenant to further Tenant's pursuit and realization of the Tenant Incentives, and to execute, acknowledge, and deliver such further documents, and perform such further acts (in each case, at no cost to Landlord), as may be reasonably necessary to obtain or to comply with the terms of such Tenant Incentives; provided, however, that such Tenant Incentives or pursuit of such Tenant Incentives shall not adversely impact any Landlord Incentives existing as of the date hereof and Landlord shall not be obligated to cooperate in any manner that would adversely affect Landlord's FILOT for the Project or that would subject Landlord to any potential liability. Landlord shall not take any action which, to the knowledge of Landlord, will result in any material delay or reduction in the Tenant Incentives available to Tenant. In furtherance (and not in limitation) of the foregoing, Landlord agrees to

reasonably cooperate, if requested by Tenant, with Tenant's efforts to be added as a party to any FILOT to which Landlord is a party with respect to the real property constituting the Premises (the "**Landlord FILOT**"). During the term of this Lease, Landlord shall not terminate the Landlord FILOT as it relates to the Premises or take any other action (or fail to take any action) which, to the knowledge of Landlord, will result in any material delay or reduction of the incentives provided pursuant to the Landlord FILOT, in each case without the written consent of Tenant.

(b) Landlord shall file or cause to be filed, on a timely basis, all property tax returns required in connection with the Premises, including but not limited to Form SCDOR PT-300 or such comparable form as the South Carolina Department of Revenue may provide. Landlord shall provide drafts of such returns for Tenant's review no less than thirty (30) days prior to their filing, and Tenant's written consent shall be required to file any such returns (such consent not to be unreasonably withheld). Tenant hereby agrees to reasonably cooperate with Landlord with respect to any such filings and hereby agrees to execute, acknowledge and deliver such further documents or information, and to perform such further acts, as may be reasonably necessary for any such filings. Promptly upon making or causing to be made any filings pursuant to this section, Landlord shall provide to Tenant a copy of any such filings.

*[signatures on next page]*

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands under seal, the day and year written next to their signatures below.

LANDLORD:

Date: July 28, 2021

SFG CHARLESTON OMNI, LLC,
a Delaware limited liability company

By: SFG Charleston Omni Investors, LLC, its Manager

By: /s/ Neal Moskowitz
Name: Neal Moskowitz
Title: Vice President

[Signatures continued on following page]

TENANT:

Date:July 28, 2021

THORNE HEALTHTECH, INC.,
a Delaware corporation

By: /s/ Thomas McKenna
Name: Thomas McKenna
Title: Chief Operating Officer

*[Signature Page 2 of 2 of Thorne Healthtech, Inc. Lease – Omni]*

**SCHEDULE A**

**"Additional Rent":** Any amount, other than Base Rent, required to be paid by Tenant to Landlord pursuant to this Lease and any cost or expense incurred by Landlord on behalf of Tenant or reimbursable to Landlord by Tenant under the terms of the Lease, including, without limitation, any amount advanced by Landlord to cure a default by Tenant under this Lease and any payment of Tenant's Percentage Share of Operating Expenses.

**"Administrative Fee":** Defined in Section 29.

**"Affiliates"**: Shall mean Tenant's Affiliates or Landlord's Affiliates, as applicable.

**"Architect":** Shall mean the Design Professional engaged by Landlord to prepare the Architectural Drawings.

**"Base Rent":** Defined in Section 1(d).

**"Base Rent Commencement Date":** Defined in Section 1(f).

**"Brokers":** Defined in Section 1(n).

**"Building":** Defined in Section 1(b).

**"Building Common Area":** Portions of the Project surrounding the Premises other than the interior of the Building and dock areas, including, without limitation, landscaped areas, driveways, sidewalks, parking areas and exterior lighting, as shown on EXHIBIT A.

**"Building Shell":** The slab, exterior walls and roof of the Building.

"**Building Systems**": "The Premises' and Building's HVAC, life-safety, plumbing, electrical, and mechanical systems.

**"Capital Expenditure":** An expenditure that would be characterized as capital expenditure within the meaning of Section 263(a) of the Internal Revenue Code of 1986 and the regulations thereunder, or any applicable successor provisions of federal income tax law.

"**Change in Control**": (a) the transfer of 50% or more of the direct or indirect equity or controlling interests in Tenant in one or more transactions occurring in a 12 month period, whether by sale, merger, consolidation or other transfers of equity interests of any kind; or (b) the sale or other transfer or disposition of all or substantially all of the assets of Tenant. Neither the transfer of any direct or indirect interests in Tenant as part of an initial public offering (or subsequent follow-on offering) of shares of stock in Tenant nor any transfer of shares of stock in Tenant which are publicly traded on any recognized national or international securities exchange will be deemed a Change in Control.

**"Code Modification":** Any alteration or modification of any portion of the Premises or Improvements required during the Term by Governmental Requirements, except for those required as a result of latent defects or Landlord's failure to deliver the Premises in compliance with the Final Plans and Specifications.

**"Condemned"** or **"Condemnation"**: The taking or condemnation of property by any authority having the power of eminent domain.

**"Construction Addendum":** The Construction Addendum attached hereto as EXHIBIT E.

**"Contamination":** The presence of, or release of, Hazardous Substances into any environmental media from, upon, within, below, into or on any portion of the Premises so as to require remediation, cleanup or investigation under any Environmental Law.

**"Delay":** Tenant Delay or Force Majeure Delay.

**"Design Professionals":** Third Party design professionals engaged by Landlord to design portions of the Final Plans and Specifications.

**"Dock Equipment":** Equipment servicing the dock areas, including without limitation, dock levelers, trailer restraints, and overhead doors and associated tracks and hardware.

**"Environmental Laws":** All federal, state, and local laws, regulations, orders, permits, ordinances or other requirements, which exist now or as may exist after the Lease Date, concerning protection of human health, safety and the environment, all as may be amended from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. ("**CERCLA**") and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. ("**RCRA**").

**"Event of Default":** Defined in Section 20(a).

**"Expiration Date":** Defined in Section 1(g).

**"Final Plans and Specifications":** Defined in EXHIBIT E.

**"Force Majeure Delay":** Delay in construction of Landlord's Work (or other work to be performed by Landlord) or in any obligation to be performed by Landlord or Tenant which is not within the direct control of such party, as applicable; Force Majeure Delay includes without limitation delays resulting from the failure of permits to be issued in timely manner, strikes or other labor troubles, governmental restrictions and limitations, war, pandemic or other national emergency, non-availability or unexpected delay in delivery of materials or supplies, delay in transportation, accidents, floods, fire, damage or other casualties, weather, riots, explosions, earthquakes, acts of terrorism, delays by utility companies in bringing utility lines to the Premises, or any other cause whatsoever beyond the control of Landlord or Tenant, as applicable.

**"Fractional Month":** Defined in Section 3.

**"Governmental Requirements":** Any restrictions of public record and all present and future laws, regulations, orders, permits, ordinances, rules and other requirements of federal, state, municipal and local governments and governmental authorities.

**"Hazardous Substances":** Any hazardous or toxic substance, material, chemical, pollutant, contaminant or waste, as those terms are defined by any applicable Environmental Law, and any solid wastes, polychlorinated biphenyls, urea formaldehyde, asbestos, radioactive materials, radon, explosives, petroleum products and oil.

**"HVAC System":** A heating, ventilation and air conditioning system.

**"Improvements":** All improvements at the Premises, including, without limitation, all improvements which are a part of the Landlord's Work, are performed by Tenant using allowances provided by Landlord or other funds of Tenant, Tenant Alterations, demising walls, the HVAC System (including the rooftop units), the fire protection system, dock high doors, drive-in doors, warehouse lighting, and electrical panels/units.

**"Insured Issue":** A Landlord Insured Issue or a Tenant Insured Issue. Because Tenant's insurance is primary and non-contributory, to the extent any cost or liability is insured against by both Landlord's insurance and Tenant's insurance, it shall be deemed to be a Tenant Insured Issue and not a Landlord Insured Issue.

**"Interest Rate":** Defined in Section 29.

**"Landlord":** Defined in the preamble.

**"Landlord's Affiliates":** The employees, agents and contractors of Landlord.

**"Landlord Construction Representative":**

**"Landlord Insured Issue":** Cost or liability that is insured against by insurance carried by (or required by the terms of this Lease to be carried by) Landlord.

**"Landlord's Work":** All of the work and improvements installed or constructed by Landlord in accordance with the Construction Addendum.

**"Landlord's Work Costs":** All out-of-pocket third party costs incurred by Landlord in connection with construction of Landlord's Work, including, without limitation expenses related to (a) design of Landlord's Work by Design Professionals, including, without limitation, preparation of the Preliminary Plans, Proposed Plans and Final Plans and Specifications (all as set forth in the Construction Addendum), (b) obtaining building permit fees, (c) obtaining easements or variances, (d) construction management fees (including without, limitation, a construction management fee paid to Landlord's Affiliate), and (e) all costs and expenses charged by contractors, including, without limitation costs of labor and materials.

**"Lease":** Defined in the preamble.

**"Lease Commencement Date":** Defined in Section 1(e).

**"Lease Date":** The later date on which this Lease is signed by Landlord or Tenant, as indicated next to their signatures on this Lease.

**"Lease Year":** Defined in Section 3.

**"Legal Costs"**: All reasonable and actual attorneys' fees, paralegal fees, disbursements and mediation, arbitration and court costs and expenses, including litigation through all trial and appellate levels.

**"Lender":** The holder of any Mortgage.

**"Letter of Credit":** Defined in Section 5(g).

**"Mortgage":** Each and every deed to secure debt, mortgage, deed of trust or other comparable instrument which may now or hereafter affect or encumber the title of Landlord to the Premises, and any amendments, modifications, extensions or renewals thereof.

**"Notice of Right to Terminate":** Defined in Section 18.

**"Operating Expenses":** Defined in Section 6(a).

**"Permitted Use":** Defined in Section 1(k).

**"Personal Property":** Any merchandise, inventory or other personal property owned by Tenant, Tenant's Affiliates or any other party.

**"Premises":** Defined in Section 1(a).

**"Preventative Maintenance Contracts":** Defined in Section 8(b)(i).

**"Primary Term":** Defined in Section 3.

**"Project":** Defined in Section 1(c).

**"Proposed Plans":** Defined in EXHIBIT E.

**"Remaining Term":** Defined in Section 20(b)(ii)(A)(i).

**"Rent":** The aggregate amount of Base Rent and Additional Rent.

"**Roof Replacements**": Wholesale replacements of the roof or the roof membrane that would be treated as a capital improvement under GAAP, which are necessitated age and normal wear and tear (as opposed to casualty damage).

**"Rules and Regulations":** The rules and regulations set forth on EXHIBIT D, as well as other rules and regulations reasonably promulgated by Landlord from time to time, so long as such other rules and regulations do not materially and adversely affect the rights of Tenant hereunder.

**"Security Deposit":** Defined in Section 1(j).

**"Specially Designated National or Blocked Person":** A person or entity designated as a Specially Designated National or Blocked Person pursuant to any law, order, rule, or regulation that is enforced or administered by the United States Government or any of its departments or agencies.

**"Tenant":** Defined in the preamble.

**"Tenant's Affiliates":** The subsidiaries and affiliates of Tenant and all agents, contractors, employees, vendors, customers, licensees or invitees of Tenant and such subsidiaries and affiliates.

**"Tenant Alteration" and "Tenant Alterations":** Defined in Section 17(a).

"**Tenant's Construction Representative**": Tom McKenna.

**"Tenant Delay":** Delay in completion of Landlord's Work (or other work to be performed by Landlord) resulting from (a) Tenant Specific Requirements, (b) Tenant's failure to timely approve the Preliminary Plans, Proposed Plans or Final Plans and Specifications as set forth in Construction Addendum, (c) by Change Orders (or Change Order requests), (d) resulting from early entry activities by Tenant, its agents or contractors, as permitted in Section 2 of the Construction Addendum, or (d) by any other act or omission of Tenant or Tenant's Affiliates.

**"Tenant Insured Issue":** Cost or liability that is insured against by insurance carried by (or required by the terms of this Lease to be carried by) Tenant, assuming a deductible of $0.00 notwithstanding the right of Tenant to maintain a higher deductible pursuant to the terms of the Lease.

**"Tenant-Initiated Improvements":** Improvements constructed or installed by or at the instance of Tenant or any Tenant's Affiliates (including any Improvements which are the product of a Tenant Alteration), but specifically excluding any Improvements constructed or installed as part of Landlord's Work.

"**Tenant Specific Requirements**" means accommodations for individual employees, invitees and/or guests of Tenant and any requirements (including, without limitation, Governmental Requirements) relating to (a) Tenant's trade fixtures or equipment, (b) Tenant-Initiated Improvements, (c) Tenant's specific use of the Premises, or (d) the particular products to be located at the Premises or the manner of storage or use of such products. Without limiting the foregoing, requirements under Title I of the ADA and all requirements imposed by the Occupational Safety and Health Administration (OSHA) are deemed Tenant Specific Requirements. Tenant will comply with any Tenant-Specific Requirements at its own cost and expense.

**"Tenant's Percentage Share":** Defined in Section 1(i).

**"Term":** Defined in Section 3.

**"Transfer":** (a) Any assignment, mortgage, pledge, encumbering, granting of a license to occupy, subleasing or other transfer of this Lease, or any interest hereunder or (b) any Change in Control.

**"Treasury Yield":** The rate of return in percent per annum of Treasury Constant Maturities for the length of time specified (or as most recently corresponding) as published in document H.15(519) (presently published by the Board of Governors of the U.S. Federal Reserve System titled "Federal Reserve Statistical Release") for the calendar week

immediately preceding the calendar week in which the termination occurs. If the publishing of the rate of return of Treasury Constant Maturities is ever discontinued, then the Treasury Yield will be based upon the index, in Landlord's reasonable determination, most nearly corresponds to the rate of return of Treasury Constant Maturities.

**"Utility" or "Utilities":** Any or all natural gas, fuel, electricity, telephone, steam, water, sewer and any and all other utility services provided to the Premises by any public or private utility supplier.

**EXHIBIT A**

**Premises**

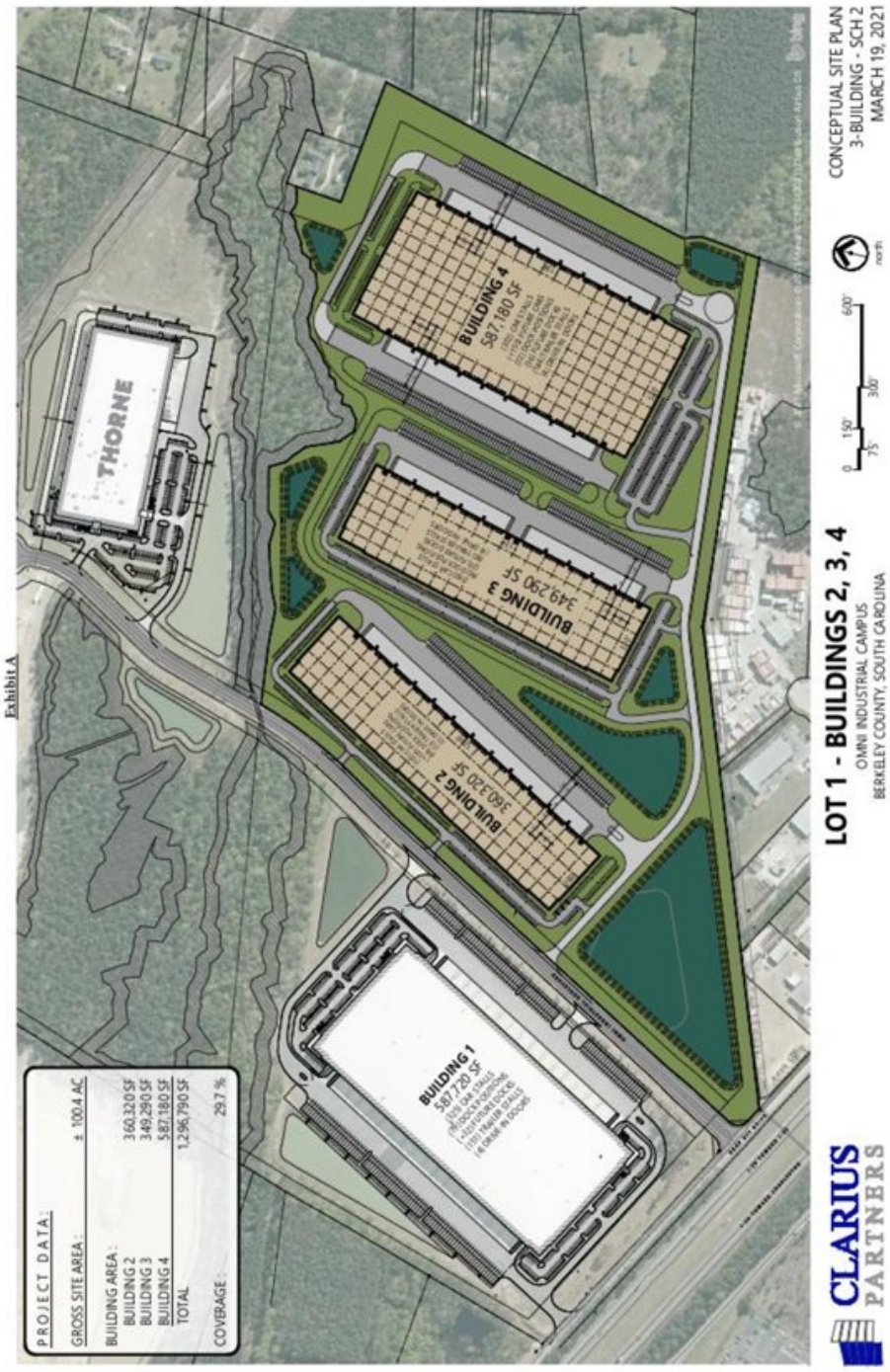

**EXHIBIT A-1**

**Land**

ALL that parcel or tract of land located in Berkeley County, South Carolina being designated as "LOT 1" as shown on a plat entitled "PLAT OF THE PROPERTY LINE ABANDONMENT BETWEEN TRACT A (192.62 ± Ac.) & Tract A-1 (50.53 ± Ac.) TO CREATE TRACT A (243.15 ± Ac.) AND THE SUBSEQUENT SUBDIVISION OF TRACT A (243.15 ± Ac.) TO CREAT LOT 1 (100.41 Ac.) P.O.A. PARCEL #1 (13.70 Ac.) LOT 10 (35.01 Ac.) & TRACT A (94.03 ± Ac.)" prepared by Thomas and Hutton dated February 14, 2016 and recorded March 14, 2017 in Plat Cabinet S, at Page 88q in the ROD Office for Berkeley County, South Carolina, with the following metes and bounds, to-wit:

COMMENCING (P.O.C.) AT THE SOUTHEASTERN RIGHT-OF-WAY INTERSECTION OF DROP OFF DRIVE (A PUBLIC R/W WITHIN THE 360' PUBLIC R/W OF US INTERSTATE 26) AND OMNI INDUSTRIAL BLVD., A 66' PUBLIC R/W.
THENCE FIVE (5) CALLS NORTHEASTERLY ALONG THE PUBLIC RIGHT-OF-WAY OF OMNI INDUSTRIAL BLVD. WITH THE ARC OF A CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 74.48 FEET, A RADIUS OF 50.00 FEET, A CHORD LENGTH OF 67.79 FEET, AND A CHORD BEARING N 05°09'49" W TO A POINT;
THENCE N 37°30'47" E A DISTANCE OF 182.84 FEET TO A POINT;
THENCE WITH THE ARC OF A CURVE TURNING TO THE LEFT, HAVING AN ARC LENGTH OF 71.68 FEET, A RADIUS OF 1,013.50 FEET, A CHORD LENGTH OF 71.67 FEET, AND A CHORD BEARING N 35°29'13" E TO A POINT;
THENCE WITH A REVERSE CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 69.77 FEET, A RADIUS OF 986.50 FEET, A CHORD LENGTH OF 69.76 FEET, AND A CHORD BEARING N 35°29'13" E TO A POINT;
THENCE N 37°30'47" E A DISTANCE OF 633.90 FEET TO A POINT;
SAID POINT BEING THE TRUE POINT OF BEGINNING (P.O.B.).
THENCE SEVEN (7) CALLS WITH THE RIGHT-OF-WAY OF OMNI INDUSTRIAL BLVD. N 37°30'47" E A DISTANCE OF 667.32 FEET TO A POINT;
THENCE WITH THE ARC OF A CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 36.75 FEET, A RADIUS OF 967.00 FEET, A CHORD LENGTH OF 36.75 FEET, AND A CHORD BEARING N 38°36'06" E TO A POINT;
THENCE N 39°41'25" E A DISTANCE OF 227.51 FEET TO A POINT;
THENCE WITH THE ARC OF A CURVE TURNING TO THE LEFT, HAVING AN ARC LENGTH OF 381.61 FEET, A RADIUS OF 1,533.00 FEET, A CHORD LENGTH OF 380.63 FEET, AND A CHORD BEARING N 32°33'32" E TO A POINT;
THENCE S 65°00'44" E A DISTANCE OF 17.00 FEET TO A POINT;
THENCE WITH THE ARC OF A CURVE TURNING TO THE LEFT, HAVING AN ARC LENGTH OF 11.77 FEET, A RADIUS OF 1,550.00 FEET, A CHORD LENGTH OF 11.77 FEET, AND A CHORD BEARING N 25°12'19" E TO A POINT;
THENCE N 24°59'16" E A DISTANCE OF 9.84 FEET TO A POINT;
THENCE ONE (1) CALL WITH THE LANDS OF TMS# 207-00-02-147 S 87°58'31" E A DISTANCE OF 150.37 FEET TO A POINT;
THENCE SEVEN (7) CALLS WITH THE LANDS OF LOT 1-3 S 52°30'00" E A DISTANCE OF 394.77 FEET TO A POINT;
THENCE S 22°41'52" W A DISTANCE OF 1,115.21 FEET TO A POINT;
THENCE S 67°18'08" E A DISTANCE OF 18.00 FEET TO A POINT;
THENCE S 22°41'52" W A DISTANCE OF 11.09 FEET TO A POINT;
THENCE WITH THE ARC OF A CURVE TURNING TO THE LEFT, HAVING AN ARC LENGTH OF 136.08 FEET, A RADIUS OF 226.50 FEET, A CHORD LENGTH OF 134.04 FEET, AND A CHORD BEARING S 05°29'11" W TO A POINT;
THENCE S 11°43'30" E A DISTANCE OF 73.95 FEET TO A POINT;
THENCE WITH THE ARC OF A CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 37.17 FEET, A RADIUS OF 33.50 FEET, A CHORD LENGTH OF 35.29 FEET, AND A CHORD BEARING S 20°03'46" W TO A POINT;

THENCE FOUR (4) CALLS WITH THE LANDS OF LOT 1-4 S 78°16’30” W A DISTANCE OF 78.17 FEET TO A POINT;
THENCE WITH THE ARC OF A CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 317.88 FEET, A RADIUS OF 370.00 FEET, A CHORD LENGTH OF 308.19 FEET, AND A CHORD BEARING N 77°06’45” W TO A POINT;
THENCE N 52°30’00” W A DISTANCE OF 567.51 FEET TO A POINT;
THENCE N 10°37’16” W A DISTANCE OF 67.14 FEET TO THE TRUE POINT OF BEGINNING.

Derivation: Deed of Charleston Omni 1, LLC to SGC Charleston Omni, LLC dated June 16, 2021 and recorded June 17, 2021 in the Office of the Register of Deeds for Berkeley County, South Carolina in Book 3853 at Page 371.

**EXHIBIT B**

**Preliminary Plans**

| | | |
|---|---|---|
| BUILDING HIGHLIGHTS | Building Size | 360,320 SF |
| | Building Dimensions | 1,296'x280' |
| | Bay Size | 54'x55' Typical<br>54'x60' Speed Bays |
| | Clear Height | 36' |
| | Car Parking | 105 Stalls; 205 future |
| | Receiving + Shipping Docks | 44 Positions |
| | Future Docks | 24 Positions |
| | Drive-in Doors | 2 |
| | Remote Trailer Stalls | 72 |
| | Truck Court | 60' Dock Apron, 190' Overall |
| | Dock Equipment | 40,000# mechanical levelers, Z-guards, bumpers, dock lights |
| | Warehouse Floor | 7", strategically reinforced, w/ Lapidolith floor sealer |
| | Sprinkler System | ESFR |
| | Warehouse HVAC | Conditioned Warehouse w/ Packaged Rooftop HVAC Units |
| | Warehouse Lighting | 30 FC at 36" AFF |
| | Building Power Service | 3,200A (two 1,600A services to each end of building) |

OUTLINE SPECIFICATIONS – see attached

**Division 2 – Site Construction & Earthwork**

1. Site Preparation
   a. Includes site clearing and grubbing, removal of existing brush, etc.
   b. Includes installation and maintenance of requisite soil erosion control measures

2. Structural Excavation
   a. Includes all mass grading and excavation of building pad and on site detention ponds
   b. Includes all fine grading of building pads, foundation excavation
   c. Trench and/or formed / pier foundations

3. Site Concrete
   a. Concrete Pavement
      i. Truck dock (at depth of 60' off the building) and remote trailer dollies
      ii. Section is 7" thick, 3500 psi concrete with diamond, dowels at control joints, and sawcuts at 15'o.c. max, placed over stabilized subgrade
   b. Sidewalk
      i. Exterior concrete sidewalk paving (minimum 4" thick) installed where indicated on site plan
      ii. Includes concrete door stops where exit doors exit at a landscaped area
   c. All paved areas surrounded with concrete curb

4. Asphalt Pavement
   a. Heavy Duty
      i. New truck court and all paved areas except car parking lots
      ii. Section includes 3" asphalt pavement placed over 9" aggregate base course
   b. Light Duty
      i. Car parking lots and circulation aisle around front of the building (105 car parking spaces are included paved "day one")
      ii. Section includes 2" pavement placed over 6" aggregate base course
   c. Includes striping and signage

5. Site Utilities
   a. Underground site utilities, inclusive of storm sewer, watermain, sanitary sewer are included

6. Fencing
   a. Secured truck court is included utilizing 8' tall black vinyl coated chain link fence
   b. Manual swing gates are provided at each drive crossing

7. Landscaping
   a. Full landscaping, plantings and sod/seed within green spaces surrounding building and detention pond is included per County approved plans

8. Signage
   a. A $25,000 monetary allowance is included for ground mounted monument signage to allow for individual Tenant identification.

**Division 3 – Concrete**

1. Concrete Foundations & Slab-on-Grade
   a. Trench and/or pier foundations
   b. Dock pits - see Overhead Doors below for number of dock positions
   c. Interior warehouse slab on grade is 7" thick, 4,000 psi, placed over stabilized subgrade
   d. Reinforcement:

i. Load plate reinforcing is included at all control joints
ii. Diamond dowels at all construction joints

e. Sawcuts at 15' on-center max
f. Lapidolith floor sealer, or equal, included throughout warehouse area
g. All warehouse slab joints within building's interior are caulked/filled

2. Concrete Tilt Walls
   a. 4,000 psi load bearing tilt wall panels, cast on site
   b. Includes structural reinforcement
   c. Patch brace holes with epoxy and pick points with plastic caps
   d. Interior electrical gear room walls and sprinkler pump room walls to be tilt wall concrete. Walls at the electrical gear room to be fire rated

**Division 5 – Metals**

1. Steel
   a. Structural steel, joists & metal deck all included
   b. Typical bay spacing is 54' x 55', with speed bays having a dimension of 54' x 60'
   c. **36'** clear height to the underside of the steel joists measured 6" inside first column in from dock wall
   d. Structural steel is shop primed gray
   e. Bottom of roof deck is primed white

2. Miscellaneous Metals
   a. Bollards (concrete filled), interior and exterior
   b. Roof access ladder with requisite landing at roof hatch outside of electrical gear room
   c. Exterior stairs and platforms
   d. Roof opening supports for mechanical equipment
   e. Includes dock pit/platform angles

**Division 6 – Woods & Plastics**

1. Rough Carpentry
   a. Wood blocking atop roof parapet
   b. Painted plywood at Electrical Room for phone equipment

**Division 7 – Thermal & Moisture Protection**

1. Roofing
   a. Single-ply, 45-mil white TPO (mechanically attached) roof over R-30 insulation (to support air conditioned warehouse), 15 yr. warranty
   b. One roof hatch
   c. Metal downspouts & overflows

2. Caulking & Sealants - Walls
   a. Exterior sealants at all concrete and wall panel joints
   b. Interior sealants at all floor and concrete wall panel joints

3. Interior wall insulation
   a. Interior warehouse walls include stick pinned insulation (R-19) board from 10' AFF to deck above

**Division 8 – Doors & Windows**

1. Hollow Metal Doors & Frames

a. Perimeter hollow metal frames and doors complete with kick plates and exterior kits (thresholds, sweeps, etc.), included

2. Aluminum & Glass
   a. All aluminum window framing is to be clear anodized, and thermally-broken, and shall include insulated, grey-tinted glass with specifications to comply with Energy Code
   b. Windows – Clerestory included at a rate of one window per bay the length of each long wall
3. Overhead Doors
   a. Insulated sectional overhead doors manufactured by Clopay, or equal, with 2 vision panels
   b. Dock Doors: 44 qty. sized at 9'x10', manual
   c. Drive-in Doors: 2 qty. sized at 12'x14', motorized

**Division 9 – Finishes**

1. Painting
   a. Exterior face of tilt walls is painted with a three-color paint scheme
   b. Interior walls are painted white
   c. Hollow metal doors and frames per Division 8 above

**Division 10 – Specialties**

1. Canopies
   a. Includes a continuous dock canopy above overhead doors with a 24" high bull nosed fascia
2. Specialties
   a. 10# ABC fire extinguishers are included, one (1) each installed at every perimeter door or as required by code
   b. Knox box as required by AHJ is included

**Division 11 – Equipment**

1. Dock Equipment- Each loading dock at 44 equipped positions is provided with the following:
   a. 40,000# capacity, 7'x8' mechanical dock leveler, manufactured by Kelley, Serco, Poweramp or equal
   b. Z-guard protection at dock door rails
   c. Dock bumpers are included which are laminated, not molded, 20" high, with steel face
   d. Swing arm type dock light with lamp
   e. Representative photos of equipped dock position below:

**Division 15 – Mechanical**

1. Fire Protection
   a. Complete ESFR wet pipe fire protection system with K-22 heads designed and installed per local code(s)
   b. Base building system includes an electric fire pump and jockey pump
2. Plumbing
   a. Complete interior plumbing system designed and installed in accordance with applicable code(s)
   b. Interior domestic water distribution provided via overhead insulated water supply line (2-1/2" minimum), run along length of building along front office wall to accommodate future office build out work
   c. Below-slab sanitary sewer is installed in a similar configuration, run down the length of the building, along the front elevation of the building
   d. Includes exterior meter assembly with backflow preventer on water service

3. HVAC
   a. Complete warehouse heating and air conditioning system designed and installed in accordance with applicable code(s). System to provide 77°in summer and 60°in winter with 50% RH.

b. Base building warehouse HVAC shall include gas/electric powered packaged roof top units. A total of 16 units each with a capacity of 25 tons of cooling capacity are included
c. Base building system shall be designed to provide code required ventilation
d. Gas piping to be routed inside the building
e. Includes electric heater in fire pump room

**Division 16 – Electrical**

1. Electrical Work - Building
   a. Complete core and shell electrical power, and lighting (warehouse and site) designed and installed in accordance with applicable code(s)
   b. Power Service & Distribution
      i. Main building electrical service shall include two (2) 480/277 volt, 1,600 amp, three-phase, four-wire services, one located at either end of the building
      ii. Building transformer(s) will be located just outside of the building next to the electrical gear room, located at one end of the building adjacent to the fire pump room
      iii. Includes primary and secondary electrical raceways
   c. Power - Equipment
      i. Include standard quadplex outlet at a quantity of one outlet shared by every two overhead dock doors
      ii. Include power to drive-in overhead door motors (2 total)
      iii. Include power to all warehouse HVAC equipment
   d. Lighting
      i. Includes network of LED high bay light fixtures in an overall quantity to achieve an average maintained minimum lighting level of (30) foot-candles measured at 36" above finished floor (prior to tenant racking or storage)
      ii. All warehouse fixtures are equipped with individual occupancy sensors
      iii. Includes safety and egress lighting (wall packs, exit signage, etc.), as required by code for an empty core and shell warehouse building only
      iv. Interior lighting shall comply with local energy codes
2. Electrical Work – Site
   a. Lighting
      i. Combination of pole mounted and building wall mounted fixtures to provide average coverage of one (1) foot-candle
      ii. Exterior lighting scope shall include the use of LED fixtures
      iii. Controls shall be photocell on and timer off
3. Fire Alarm
   a. The fire alarm system shall meet the minimum applicable local code requirements, and accommodate monitoring as required by local fire and building codes applicable for an empty core and shell warehouse

**EXHIBIT C**

**Special Stipulations**

The Special Stipulations set forth herein are hereby incorporated into the body of the Lease to which these Special Stipulations are attached, and to the extent of any conflict between these Special Stipulations and the preceding language, these Special Stipulations will govern and control.

**1. Option to Extend**. Provided no Event of Default has occurred which remains uncured either as of the date of Tenant's notice as set forth below or as of the commencement date of the Extended Term, Tenant shall have the right to extend the Term of this Lease for one successive period of five (5) years ("**Extended Term**") with respect to the entire Premises only upon all of the following terms and conditions:

(a) Tenant must provide Landlord notice of its exercise of the option for the Extended Term not less than twelve (12) full months, or more than eighteen (18) months, prior to the expiration date of the Term. Time is of the essence with respect to the foregoing dates.

(b) The Base Rent for the Extended Term shall be the greater of (i) the then prevailing rental rate (the "**Market Rental Rate**") as of the date of Tenant's notice for the applicable Extended Term, for comparable leases then being executed for similar warehouse/distribution space in the Charleston, South Carolina market area, on a per rentable square foot basis, taking into account all relevant factors, including, without limitation, size of space, age, location and quality of building, length of term, credit standing of tenant, method of paying operating costs, services provided and improvement allowances, commissions payable, free rent or other concessions being provided (such concessions shall be deemed only to reduce the effective rate and therefore will result in a lower Market Rental Rate, but Landlord shall not be obligated to provide any free rent, lease assumptions, moving allowances or other concessions whatsoever) or (ii) 102.5% of the Base Rent in effect during the last year of the Primary Term, escalating by 2% on the first day of each Leaser Year during the Extended Term.

(i) If Tenant exercises its option for the Extended Term by written notice to Landlord as provided above ("**Notice Date**"), Landlord and Tenant shall meet promptly and shall negotiate, in good faith, to reach agreement on the Market Rental Rate within sixty (60) days following the Notice Date. If Landlord and Tenant are unable to reach agreement within such sixty (60) day period, Tenant may, at its option, either (a) cancel its exercise of the then applicable option to extend the Term of the Lease or (b) elect to have the Market Rental Rate determined as set forth below. Tenant shall notify Landlord, within ten (10) Business Days after the expiration of the aforesaid sixty (60) day period, of its election either to cancel its exercise of the option to extend or to have the Market Rental Rate determined as set forth below. If Tenant elects to cancel its exercise of the option to extend, the Lease shall terminate upon the expiration of the Primary Term. If Tenant does not notify Landlord of either of the options contained in subsentences: (a) and (b) above within said ten (10) Business Day period, then Tenant shall be deemed to have elected not to have withdrawn its exercise of the option to extend and to have the Market Rental Rate determined as set forth below.

(ii) If, Tenant elects (or is deemed to have elected) to have the Market Rental Rate determined as described herein, then within thirty (30) days after the Notice Date, Landlord and Tenant shall mutually agree upon a commercial real estate broker who has at least ten (10) years' experience, immediately prior to the date in question, evaluating Market Rental Rates for similar warehouse/distribution space in the Charleston, South Carolina market area. If the parties are unable to agree on a broker the parties shall ask the commercial division of the Charleston Board of Realtors to designate a broker. The broker agreed upon or so designated is hereinafter referred to as the "Broker". Within ten (10) Business Days after the Broker has been agreed upon or appointed, Landlord and Tenant shall each deliver to Broker, in writing, their respective determinations of the Market Rental Rate. Within thirty (30) days after receipt of the final written determinations, the Broker shall select Landlord's determination or Tenant's determination, but no other amount and no compromise between the two, as the Market Rental Rate. The fees and expenses of the Broker shall be borne equally by Landlord and Tenant.

(iii) The determination of the Market Rental Rate as provided above shall be final, binding and conclusive on both Landlord and Tenant, shall be considered a final award pursuant to any applicable state or federal law and judgment may be had on the award in any court of competent jurisdiction.

(c) During the Extended Term Tenant shall continue to pay Tenant's Share of Operating Expenses as provided in the Lease.

(d) Except for Base Rent at the new rate determined pursuant to Special Stipulation 1(b) above, all of the terms and conditions of the Lease shall remain the same and shall remain in full force and effect throughout the Extended Term; provided, however, that any construction provisions requiring Landlord to construct improvements, free rent, improvement allowances, moving allowances, lease assumption payments, plan design allowances (or payments) or other similar concessions provided for in the Lease shall not apply during the Extended Term.

**EXHIBIT D**

**Rules and Regulations**

These Rules and Regulations have been adopted by Landlord for the safety, care and cleanliness of the Premises and the preservation of order therein.

1. **Sidewalks and Roof**. The sidewalks will not be obstructed or used for any purpose other than ingress and egress. No party will go upon the roof of the Building without the consent of Landlord.

2. **Awnings**. No awnings or other projections will be attached to the outside walls of the Building without the prior written consent of Landlord.

3. **Plumbing**. The plumbing fixtures will not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags or other substances, including Hazardous Substances, will be thrown therein.

4. **Odors**. Tenant will prevent the emission of any objectionable or offensive odors from the Premises. Smoking is prohibited within the Building and in outdoor areas located within 25 feet of entry-ways, outdoor intakes and operable windows.

5. **Prohibited Uses**. The Premises will not be used for (a) an auction, "fire sale", "liquidation sale", "going out of business sale" or any similar such sale or activity or (b) lodging or sleeping.

6. **Disturbances**. Tenant will not permit any unseemly or disturbing noises, sounds or vibrations that unreasonably disturb or interfere with use and enjoyment of property of owners or users of neighboring buildings or premises.

7. **Obligations upon Termination of Tenancy**. Tenant must, upon the termination of its tenancy, return to the Landlord all keys of stores, offices, and rooms, either furnished to, or otherwise procured by, Tenant, and in the event of the loss of any keys so furnished, Tenant will pay to the Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord deems it necessary to make such change.

8. **Canvassing**. Canvassing, soliciting and peddling in the Project are prohibited and Tenant will cooperate to prevent such activity.

9. **Wiring**. Tenant's in-house electrician shall be permitted to install telephone, telegraph, computer and other wires and cables (collectively, "**Wires**"), including boring or cutting for Wires or stringing of Wires, as needed for Tenant's operations within the Premises. The location of telephones, call boxes and other office equipment affixed to the Building will be subject to the prior written approval of Landlord, not to be unreasonably withheld. Tenant will remove all Wires from the Premises by the end of the Term.

10. **Parking**.

(a) Types of Vehicles. Parking spaces associated with the Building are intended for the exclusive use of passenger automobiles. Except for intermittent deliveries, no vehicles other than passenger automobiles may be parked in a parking space (other than spaces expressly designated for such purpose by Landlord for truck parking) without the express written permission of Landlord, except for truck and trailer parking as set forth in Subsection (b) hereinbelow.

(b) Truck and Trailer Parking. Trucks may be parked only in truck dock positions and in other paved areas expressly designated for such purpose by Landlord. Trailers may be parked only in paved areas expressly designated for such purpose by Landlord. Neither trucks nor trailers may be parked or staged in the following:

i. Areas adjacent to truck docks, serving any portion of the Building, which are intended by Landlord for truck maneuvering; or

ii. Any driveway, drive aisle or other paved area which provides ingress or egress for cars or trucks to or from any portion of the Building or any street adjoining the Building.

(c) Use of Truck Court. Tenants may only use that portion of the truck court for truck and trailer parking or staging that is contiguous to the Premises (i.e. the truck court area that would be included in the area if the sidewalls of the Premises were extended into the truck court). Trucks, trailers, and other vehicles parked, staged or otherwise brought onto the Project are subject to the provisions of Section 15 of this Lease.

11. **Storage**. Tenant may not use any area within the Premises for storage purposes other than the interior of the Building, unless otherwise expressly consented to in writing by Landlord.

12. **Floor Marking**.

(a) General. Tenant will have the right to stripe or mark the floor of the Building only in compliance with this rule.

(b) Recommended Tape. Landlord strongly encourages Tenant to stripe or otherwise mark the floor of the Building only with 3M floor striping tape.

(c) Removal. If Tenant elects to paint stripes or other markings on the floor of the Building, all such paint must, by the Expiration Date, be removed by Tenant at its expense in accordance with this rule. Paint on the floor of the Building must be removed only by use of a chemical paint remover; provided that the chemical used for removal must be permissible for such use under Environmental Laws and other Governmental Requirements and the chemical must be used (and all chemicals and removed paint must be disposed of) in accordance with Environmental Laws and other Governmental Requirements. Under no circumstances may paint be removed from the floor of the Building by grinding, scraping or shot-blasting. After paint has been chemically removed in accordance with this rule, the floor must be thoroughly cleaned to remove completely any chemical residue which might be present as a result of the removal process.

13. **Tenant Racking**. If Tenant installs any racking, equipment or machinery in the Building which requires installation of bolts in the floor of the Building, Tenant must, by the Expiration Date, at the expense of Tenant, remove all such bolts in accordance with this rule. All bolts will be cut or ground so that the top of the remaining portion of the bolt is at least three-quarters inch below the surface of the floor. All holes created by such removal of bolts must be filled with 100% epoxy, which meets the standards set by the American Concrete Institute and which is color-matched to the floor being filled.

14. **Landlord Branding**. Landlord has the right to install: (i) address and other signage in and on the Building, including on the Building roof; and (ii) monument and directional signage in the vicinity of the Building and the entrances thereto, in each case, which may include Landlord's name, logo and other branding.

15. **No Open Dumpsters.** No "open" dumpsters are permitted. All dumpsters will have appropriate doors and top covers to prevent trash and debris from escaping the dumpster.

**EXHIBIT E**

**Construction Addendum**

1. **Plans and Specifications; Change Orders**.

(a) Programming Information. Within 5 days after Tenant's execution of this Lease, Tenant will provide to Landlord's Design Professionals the programming information necessary to include the Tenant Improvements (as defined in Section 3(b) below) in the Proposed Plans (as hereinafter defined), including, without limitation, the number and sizes of the required offices and conference rooms; the restroom, break-room and production area requirements; the racking plans and the desired location of dock equipment and battery chargers (collectively, the "**Programming Information**").

(b) Preparation of Proposed Plans. Landlord will use all commercially reasonable efforts to prepare and submit to Tenant within 45 days after the receipt of the Programming Information, a set of plans and specifications and/or construction drawings (collectively, the "**Proposed Plans**") based on the Programming Information and based on the Building description and the Outline Specifications attached to this Lease as EXHIBIT B and incorporated herein (the "**Preliminary Plans**"), covering all of Landlord's Work.

(c) Tenant's Review of Proposed Plans. Tenant will have 5 business days after receipt of the Proposed Plans in which to review and to give to Landlord written notice of either its approval of, or requested changes to, the Proposed Plans. If Tenant fails to approve or request changes to the Proposed Plans within such time period, then Tenant will be deemed to have approved the Proposed Plans and the same will thereupon be final.

(d) Changes to Proposed Plans.

i. *Material Change*. Tenant will have no right to request any changes to the Proposed Plans which would do the following (collectively, a "**Material Change**"):

(A) materially alter either the size of the Premises or the size, shape, exterior appearance or basic nature of the Building, as the same are contemplated by the Preliminary Plans;

(B) require any penetration of the roof or exterior walls of the Building or placement of any equipment or structure of any kind on the roof of the Building; or

(C) increase or alter either the scope of, or the specifications for, the work contemplated by the Preliminary Plans in a manner which would either (x) cause Landlord to incur costs or expenses in excess of the cost which would have been incurred by Landlord on the basis of the Preliminary Plans or (y) cause a delay in the occurrence of Substantial Completion (as hereinafter defined).

ii. *Landlord Approval of Material Changes*. Landlord may grant or withhold its approval to a Material Change proposed by Tenant in its absolute discretion; provided, however, that, with respect solely to a Material Change involving an increase in the cost of the Landlord's Work, Landlord will not unreasonably withhold, delay or condition its approval to such proposed change so long as Tenant executes a Change Order (as hereinafter defined) confirming that Tenant will pay in full, in cash, in advance, the full amount of the incremental cost of the proposed change and the proposed change will not delay the occurrence of Substantial Completion.

iii. *Tenant's Requested Changes*. If Tenant requests any changes to the Proposed Plans, Landlord will make those changes which are reasonably requested by Tenant (subject to the right of Landlord to reject any Material Change proposed by Tenant) and will submit the revised Proposed Plans to Tenant for approval by Tenant in accordance with Section 1(c) of this Construction Addendum. Tenant may not thereafter disapprove the revised Proposed Plans unless Landlord has failed to incorporate reasonable comments of Tenant and, subject to the foregoing, the Proposed Plans, as modified by said revisions, will be deemed to be final upon the submission of said revisions to Tenant.

iv. *Approved Plans and Specifications*. The Proposed Plans, as approved or deemed approved by Tenant in accordance with this Construction Addendum, are referred to in this Lease as the "**Final Plans and Specifications**".

v. *Standard of Conduct*. Tenant will at all times in its review of the Proposed Plans, and of any revisions thereto, act reasonably and in good faith.

vi. *Change Orders*.

(A) General. Any change in the Final Plans and Specifications requested by Tenant (any such change being herein referred to as a "**Change Order**") will be at Tenant's sole cost and expense and subject to Landlord's written approval, which approval will not be unreasonably withheld, conditioned or delayed.

(B) Notice of Approved Change Order. In the event Landlord approves any such requested Change Order, Landlord will give written notice thereof to Tenant, which notice will specify the Change Order approved by Landlord as well as the estimated incremental cost thereof and any estimated delay in the occurrence of Substantial Completion.

(C) Cost for Change Orders. The cost to Tenant for Change Orders will be Landlord's incremental cost plus an amount equal to 5% of such incremental cost payable to Landlord (or, at Landlord's election, a Landlord's Affiliate designated by Landlord) for Landlord's overhead.

(D) Payment of Change Order Cost. Landlord will be under no obligation to proceed with any work related to an approved Change Order unless and until Tenant delivers to Landlord an amount equal to the full estimated incremental cost of such approved Change Order as set forth in Landlord's notice. When the final incremental cost of any such Change Order has been determined and incurred, Landlord and Tenant each agree to pay or refund the amounts owed to the other with respect to such Change Order, based on the final actual cost compared to the estimated advance payment made to Landlord.

2. **Substantial Completion**. Landlord will use reasonable speed and diligence to Substantially Complete Landlord's Work on or before the anticipated Lease Commencement Date set forth in Section 1(e), subject only to Delay. If Landlord's Work is not Substantially Complete by that date, such failure to complete will not in any way affect the obligations of Tenant hereunder except that the Lease Commencement Date (and any other dates tied to the Lease Commencement Date) will be postponed one day for each day Substantial Completion is delayed beyond such date. No liability whatsoever will arise or accrue against Landlord by reason of its failure to deliver or afford possession of the Premises, and Tenant hereby releases and discharges Landlord from and of any claims for damage, loss, or injury of every kind whatsoever as if this Lease were never executed. Notwithstanding anything to the contrary contained herein, if Tenant commences business operations from all or any portion of the Premises prior to (i) the anticipated Lease Commencement Date set forth in Section 1(e) or (ii) Substantial Completion of the Landlord's Work, the Lease Commencement Date shall be accelerated to the date that Tenant commences such operations; provided, however, that the commencement of business operations in the Premises by Tenant prior to the Substantial Completion of Landlord's Work shall not waive Landlord's requirement of Substantial Completion, the completion of the Punchlist; and provided further, in no event shall the Base Rent Commencement Date occur prior to April 1, 2023, even if Tenant has commenced its business operations in the Premises and the Lease Commencement Date occurs prior to January 1, 2023. Tenant may access the Premises not earlier than 90 days prior to the proposed Lease Commencement Date for the purpose of installing furniture, fixtures, equipment and racking, subject to approval as required by Berkeley County or any other applicable governmental authority; provided, however, that the foregoing activities shall not be deemed to constitute Tenant's commencement of business operations. Tenant and its agents and contractors will not interfere with the completion of Landlord's Work during any such early entry and will cooperate fully with Landlord's contractors.

3. **Costs of Landlord's Work**.

(a) Landlord's Work Costs Generally. Landlord will pay the Landlord's Work Costs without reimbursement by Tenant, except to the extent Tenant is responsible for adjustments associated with Change Orders and except for Landlord's Work Costs associated with the Tenant's Improvements, as described below.

(b) Allowance Items. Notwithstanding subsection (a) above, Landlord will not be responsible for Landlord Work Costs associated with the completion of interior improvements to the Premises which are not included in the Preliminary Plans ("**Tenant's Improvements**"). Landlord will provide Tenant an allowance in the amount of $3.50 per square foot of the Premises ($1,261,120.00) ("**Tenant Allowance**") to cover the costs of the Tenant's Improvements.

(c) As required by Section 1(a) above, Tenant has provided Landlord the information necessary to have Landlord's Design Professionals include the Tenant's Improvements in the Proposed Plans. Landlord will have its Contractor provide pricing for the Tenant's Improvements. Upon Tenant's approval or deemed approval of the Final Plans and Specifications, the Tenant's Improvements will be included in Landlord's Work and completed by Landlord's contractor, but Tenant will be responsible for all costs of the Tenant Improvements in excess of the Tenant Allowance.

(d) Overages. In the event that following the final approval of the Plans and Specifications, Landlord's contractor notifies Landlord and Tenant that the cost of Tenant's Improvements will exceed the Tenant Allowance, Landlord will give written notice to Tenant, which notice will specify the estimated amount of such excess. Tenant agrees to deliver to Landlord such amount within 10 days following receipt of such notice (any failure by Tenant to timely deliver the amount will be deemed a default under this Lease and Tenant Delay, as Landlord will not be required to proceed with Landlord's Work until such payment has been made by Tenant). When the actual final cost of Tenant's Improvements has been determined and incurred, Landlord and Tenant each agree to repay or refund the amounts owed to the other with respect thereto, based on the final actual cost compared to the original estimated payment made, in advance, by Tenant.

(d) Unused Allowances. If any portion of the Tenant Allowance associated is not utilized on or before the Lease Commencement Date, twenty percent (20%) of the unused portion of said Tenant Allowance may be applied by Landlord and Tenant to Rent and the remainder will be forfeited by Tenant.

4. **Punchlist**. Upon Substantial Completion of Landlord's Work, Landlord's Representative and Tenant's Construction Representative together will inspect the Premises and generate a punchlist of defective or uncompleted items relating to the completion of construction of Landlord's Work (the "**Punchlist**"). Landlord will, within a reasonable time after the Punchlist is prepared and agreed upon by Landlord and Tenant, complete such incomplete work and remedy such defective work as is set forth on the Punchlist. All construction work performed by Landlord will be deemed approved by Tenant in all respects except for items of said work which are not completed or do not conform to the Plans and Specifications and which are included on the Punchlist.

5. **Warranty**. Landlord hereby warrants to Tenant, which warranty will survive for the 1 year period following the Lease Commencement Date, that (a) the materials and equipment furnished by Landlord's contractors in the completion of Landlord's Work will be of good quality and new, (b) such materials and equipment and the work of such contractors will be free from defects not inherent in the quality required or permitted hereunder, and that (c) the Landlord's Work shall conform to the Final Plans and Specifications in all material respects, subject to approved Change Orders (collectively, "**Landlord's Warranty**"). Landlord's Warranty excludes damages or defects caused by Tenant or Tenant's Affiliates, improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage.

6. **Definition of Substantial Completion**. For purposes of this Lease, the term "**Substantial Completion**" (or any variation thereof) means completion of construction of Landlord's Work (including the Tenant's Improvements) substantially in accordance with the Final Plans and Specifications, subject only to Punchlist items, as established by the later of (i) the delivery by Landlord to Tenant of a certificate of occupancy or its equivalent (or temporary certificate of occupancy or its equivalent) issued by the appropriate governmental authority, if a certificate is so required by a governmental authority, or if unavailable because of unfinished work to be performed by Tenant, then by the delivery by Landlord to Tenant of a Certificate of Substantial Completion on the Standard AIA Form G-704 executed by Landlord's architect and (ii) Tenant's opportunity to conduct a walk-through inspection of the Premises and the Landlord's Work with Landlord's Construction Representative and the Architect, within five (5) business days following the date of Landlord's notice to Tenant of anticipated Substantial Completion, to confirm Landlord's completion of the same in accordance with the Final Plans and Specifications, subject to the Punchlist. In

the event Substantial Completion is delayed because of Tenant Delay, then for the purpose of establishing the Lease Commencement Date and any other date tied to the date of Substantial Completion, Substantial Completion means the date when Substantial Completion would have been achieved but for such Tenant Delay. Anything to the contrary contained herein notwithstanding, Substantial Completion shall not be deemed to have occurred until such date as Tenant can safely occupy and store its products in the Premises, including without limitation fully and properly installed and functioning HVAC in the Premises.

**Exhibit 31.1**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Paul F. Jacobson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2021 of Thorne HealthTech, 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)) for the registrant and have:

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

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

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

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

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

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

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

By: /s/ Paul F. Jacobson

Paul F. Jacobson
Chief Executive Officer
(Principal Executive Officer)
November 10, 2021

**Exhibit 31.2**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Scott S. Wheeler, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2021 of Thorne HealthTech, 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)) for the registrant and have:

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

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

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

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

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

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

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

By: /s/ Scott S. Wheeler

Scott S. Wheeler
Chief Financial Officer
(Principal Financial and Accounting Officer)
November 10, 2021

**Exhibit 32.1**

**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 Thorne HealthTech, Inc. (the "Company") for the fiscal quarter ended September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Paul F. Jacobson, President and Chief Executive Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

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

By: /s/ Paul F. Jacobson
Paul F. Jacobson
Chief Executive Officer
(Principal Executive Officer)

November 10, 2021

*The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 1350 of Title 18 of the United States Code and, accordingly, is not being filed with the U.S. Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).*

**Exhibit 32.2**

**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 Thorne HealthTech, Inc. (the "Company") for the fiscal quarter ended September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Scott S. Wheeler, Chief Financial Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

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

By: /s/ Scott S. Wheeler
Scott S. Wheeler
Chief Financial Officer
(Principal Financial and Accounting Officer)

November 10, 2021

*The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 1350 of Title 18 of the United States Code and, accordingly, is not being filed with the U.S. Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).*