

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 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 **June 30, 2022**

or

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

For the transition period from _____ to _____

COMMISSION FILE NO. **001-36905**

SeaSpine Holdings Corporation

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

Delaware
(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION)

47-3251758
(I.R.S. EMPLOYER
IDENTIFICATION NO.)

5770 Armada Drive, Carlsbad, CA 92008

(Address of principal executive offices) (zip code)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: **(760) 727-8399**

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock	SPNE	The Nasdaq Global Select Market

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 (§ 232.405 of this chapter) 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

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 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 of the registrant's common stock, \$0.01 par value, outstanding as of August 1, 2022 was 37,187,807.

SEASPINE HOLDINGS CORPORATION
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

SEASPINE HOLDINGS CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Total revenue, net	\$ 56,318	\$ 47,463	\$ 107,011	\$ 89,417
Cost of goods sold	19,127	17,482	39,503	32,848
Gross profit	37,191	29,981	67,508	56,569
Operating expenses:				
Selling and marketing	33,029	25,436	62,535	48,835
General and administrative	12,192	9,986	23,131	20,413
Research and development	5,649	4,850	11,499	9,356
Intangible amortization	856	843	1,712	1,635
Total operating expenses	51,726	41,115	98,877	80,239
Operating loss	(14,535)	(11,134)	(31,369)	(23,670)
Other (expense) income, net	(559)	6,079	(557)	5,920
Loss before income taxes	(15,094)	(5,055)	(31,926)	(17,750)
(Benefit) provision for income taxes	(1,147)	158	(1,375)	183
Net loss	\$ (13,947)	\$ (5,213)	\$ (30,551)	\$ (17,933)
Net loss per share, basic and diluted	\$ (0.38)	\$ (0.16)	\$ (0.83)	\$ (0.58)
Weighted average shares used to compute basic and diluted net loss per share	36,767	33,489	36,726	30,716

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

SEASPINE HOLDINGS CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(Unaudited)
(In thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Net loss	\$ (13,947)	\$ (5,213)	\$ (30,551)	\$ (17,933)
Other comprehensive income (loss)				
Foreign currency translation adjustments	(467)	102	(642)	(255)
Comprehensive loss	<u>\$ (14,414)</u>	<u>\$ (5,111)</u>	<u>\$ (31,193)</u>	<u>\$ (18,188)</u>

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

SEASPINE HOLDINGS CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(In thousands, except par value data)

	June 30, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 66,078	\$ 83,106
Trade accounts receivable, net of allowances of \$231 and \$74	34,441	36,231
Inventories	85,906	72,299
Prepaid expenses and other current assets	3,570	4,328
Total current assets	189,995	195,964
Property, plant and equipment, net	54,592	46,892
Right of use assets	16,860	6,948
Intangible assets, net	38,375	42,056
Goodwill	84,595	84,595
Other assets	1,153	812
Total assets	\$ 385,570	\$ 377,267
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable, trade	19,221	20,301
Accrued compensation	8,142	8,769
Accrued commissions	12,389	9,877
Short-term lease liability	2,377	2,234
Deferred revenue	2,260	1,545
Other accrued expenses and current liabilities	10,054	10,255
Total current liabilities	54,443	52,981
Long-term borrowings under credit facility	25,000	—
Long-term lease liability	15,532	5,866
Deferred tax liability, net	2,872	4,308
Other liabilities	896	1,748
Total liabilities	98,743	64,903
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.01 par value; 15,000 authorized; no shares issued and outstanding at June 30, 2022 and December 31, 2021	—	—
Common stock, \$0.01 par value; 120,000 authorized; 37,185 and 36,584 shares issued and outstanding at June 30, 2022 and December 31, 2021, respectively	372	366
Additional paid-in capital	589,681	584,031
Accumulated other comprehensive income	928	1,570
Accumulated deficit	(304,154)	(273,603)
Total stockholders' equity	286,827	312,364
Total liabilities and stockholders' equity	\$ 385,570	\$ 377,267

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

SEASPINE HOLDINGS CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2022	2021
OPERATING ACTIVITIES:		
Net loss	\$ (30,551)	\$ (17,933)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	8,497	5,880
Instrument replacement expense	2,683	1,645
Provision for excess and obsolete inventories	2,514	2,237
Deferred income tax benefit	(1,399)	(237)
Stock-based compensation	6,520	5,642
Gain on forgiveness of Paycheck Protection Program Loan	—	(6,173)
Other	(91)	(53)
Changes in assets and liabilities, net of the effects from acquisition:		
Accounts receivable	1,334	(1,164)
Inventories	(14,739)	(12,098)
Prepaid expenses and other current assets	753	417
Other non-current assets	(410)	247
Accounts payable	1,277	10,234
Accrued commissions	2,511	923
Other accrued expenses and current liabilities	(1,193)	(8)
Other non-current liabilities	(824)	350
Net cash used in operating activities	(23,118)	(10,091)
INVESTING ACTIVITIES:		
Purchases of property and equipment	(17,103)	(11,317)
Additions to technology assets	(700)	(800)
Acquisitions	—	(28,331)
Net cash used in investing activities	(17,803)	(40,448)
FINANCING ACTIVITIES:		
Borrowings under credit facility	25,000	20,000
Repayments of credit facility	—	(20,000)
Proceeds from issuance of common stock- employee stock purchase plan	964	1,016
Proceeds from exercise of stock options	31	1,603
Proceeds from issuance of common stock, net of offering costs	—	94,531
Repurchases of common stock for income tax withheld upon vesting of restricted stock awards and restricted stock units	(1,859)	(2,544)
Payment of contingent royalty consideration liabilities in connection with acquisition of business	(24)	(23)
Net cash provided by financing activities	24,112	94,583
Effect of exchange rate changes on cash and cash equivalents	(219)	(160)
Net change in cash and cash equivalents	(17,028)	43,884
Cash and cash equivalents at beginning of period	83,106	76,813
Cash and cash equivalents at end of period	\$ 66,078	\$ 120,697
Supplemental cash flow information:		
Interest paid	\$ 114	\$ 169
Income taxes paid	\$ 129	\$ 136
Non-cash investing activities:		
Purchases of property and equipment in liabilities	\$ 4,680	\$ 2,250
Intangible assets payments in liabilities	\$ —	\$ 200
Non-cash financing activities:		
Issuance of common stock - Acquisition	\$ —	\$ 61,048
Exchangeable shares - Acquisition	\$ —	\$ 26,505

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

SEASPINE HOLDINGS CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF EQUITY
(Unaudited)
(In thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Number of Shares	Amount				
Balance December 31, 2021	36,584	\$ 366	\$ 584,031	\$ 1,570	\$ (273,603)	\$ 312,364
Net loss	—	—	—	—	(16,604)	(16,604)
Foreign currency translation adjustment	—	—	—	(175)	—	(175)
Issuance of common stock- Exchangeable Shares	50	1	(1)	—	—	—
Restricted stock issued	155	1	—	—	—	1
Issuance of common stock - exercise of stock options	—	—	3	—	—	3
Repurchases of common stock for income tax withheld upon vesting of restricted stock awards and restricted stock units	—	—	(1,587)	—	—	(1,587)
Stock-based compensation	—	—	2,819	—	—	2,819
Balance March 31, 2022	36,789	368	585,265	1,395	(290,207)	296,821
Net loss	—	—	—	—	(13,947)	(13,947)
Foreign currency translation adjustment	—	—	—	(467)	—	(467)
Restricted stock issued	192	2	(1)	—	—	1
Issuance of common stock under employee stock purchase plan	201	2	962	—	—	964
Issuance of common stock- exercise of stock options	3	—	28	—	—	28
Repurchases of common stock for income tax withheld upon vesting of restricted stock awards and restricted stock units	—	—	(274)	—	—	(274)
Stock-based compensation	—	—	3,701	—	—	3,701
Balance June 30, 2022	37,185	372	589,681	928	(304,154)	286,827

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Number of Shares	Amount				
Balance December 31, 2020	27,729	\$ 277	\$ 388,574	\$ 2,124	\$ (219,257)	\$ 171,718
Net loss	—	—	—	—	(12,720)	(12,720)
Foreign currency translation adjustment	—	—	—	(357)	—	(357)
Restricted stock issued	175	2	—	—	—	2
Issuance of common stock - exercise of stock options	44	—	496	—	—	496
Repurchases of common stock for income tax withheld upon vesting of restricted stock awards and restricted stock units	—	—	(2,418)	—	—	(2,418)
Stock-based compensation	—	—	2,546	—	—	2,546
Balance March 31, 2021	27,948	279	389,198	1,767	(231,977)	159,267
Net loss	—	—	—	—	(5,213)	(5,213)
Foreign currency translation adjustment	—	—	—	102	—	102
Restricted stock issued	71	1	(1)	—	—	—
Issuance of common stock under employee stock purchase plan	109	1	1,015	—	—	1,016
Issuance of common stock- Public Offering	5,175	52	94,479	—	—	94,531
Issuance of common stock- Acquisition	2,991	30	61,018	—	—	61,048
Issuance of common stock- Exchangeable Shares	—	—	26,505	—	—	26,505
Issuance of common stock- exercise of stock options	81	1	1,106	—	—	1,107
Repurchases of common stock for income tax withheld upon vesting of restricted stock awards and restricted stock units	—	—	(126)	—	—	(126)
Stock-based compensation	—	—	3,096	—	—	3,096
Balance June 30, 2021	36,375	364	576,290	1,869	(237,190)	341,333

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

SEASPINE HOLDINGS CORPORATION
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. BUSINESS AND BASIS OF PRESENTATION

Business

SeaSpine Holdings Corporation was incorporated in Delaware on February 12, 2015. Unless the context indicates otherwise, references to "SeaSpine" or the "Company" refer to SeaSpine Holdings Corporation and its wholly-owned subsidiaries.

SeaSpine is a global medical technology company focused on the design, development, and commercialization of surgical solutions for the treatment of patients suffering from spinal disorders. SeaSpine's complete procedural solutions feature its FLASH™ Navigation, a system designed to improve accuracy of screw placement and provide a cost-effective, rapid, radiation-free solution to surgical navigation, and a comprehensive portfolio of spinal implants and orthobiologics to meet the varying combinations of products that neurosurgeons and orthopedic spine surgeons need to facilitate spinal fusion in degenerative, minimally invasive surgery (MIS), and complex spinal deformity procedures on the lumbar, thoracic and cervical spine.

Basis of Presentation and Principles of Consolidation

The Company prepared the unaudited interim condensed consolidated financial statements included in this report in accordance with accounting principles generally accepted in the U.S. (GAAP) for interim financial information and the rules and regulations of the Securities and Exchange Commission (SEC) related to quarterly reports on Form 10-Q.

The Company's financial statements are presented on a consolidated basis. The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation. The unaudited interim condensed consolidated financial statements do not include all information and disclosures required by GAAP for annual audited financial statements and should be read with the Company's consolidated financial statements and notes thereto for the year ended December 31, 2021 included in the Company's Annual Report on Form 10-K filed with the SEC. In the opinion of management, the unaudited interim condensed consolidated financial statements included in this report have been prepared on the same basis as the Company's audited consolidated financial statements and include all adjustments (consisting only of normal recurring adjustments) necessary for a fair statement of the financial position, results of operations, cash flows, and statement of equity for periods presented. The results for the three and six months ended June 30, 2022 are not necessarily indicative of the results expected for the full year. The condensed consolidated balance sheet as of December 31, 2021 was derived from the audited consolidated balance sheet for the year ended December 31, 2021. Certain prior year amounts have been reclassified for consistency with the current year presentation. These reclassifications had no effect on the reported results of operations.

Prior period revisions

During the third quarter of 2021, the Company made a revision related to the functional currency of its recently acquired Canadian company, 7D Surgical Inc., a corporation incorporated under the laws of the Province of Ontario (7D Surgical). Prior to July 1, 2021, the functional currency for 7D Surgical was the Canadian dollar. The Company reassessed the functional currency and determined that the functional currency is the U.S. dollar based on management's analysis of the primary economic environment in which 7D Surgical operates. The Company revised the presentation of the unaudited statements for the prior quarter ending June 30, 2021 to reflect this determination and revised such prior period information presented in this filing.

The Company assessed the materiality of the error, both quantitatively and qualitatively, in accordance with the SEC's Staff Accounting Bulletin No. 99, and concluded that the error was not material to any of its previously reported unaudited financial statements based upon qualitative aspects of the error. However, in order to correctly present other comprehensive income, previously issued unaudited financial statements have been revised and are presented "As Revised" in the tables below.

The \$3.2 million adjustment noted in the tables below reflects the change in foreign currency fluctuations.

SEASPINE HOLDINGS CORPORATION
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

	Three Months Ended June 30, 2021			Six Months Ended June 30, 2021		
	As Reported	Adjustment	As Revised	As Reported	Adjustment	As Revised
Condensed Consolidated Statements of Comprehensive Loss:						
Foreign currency translation adjustments	\$ (3,070)	\$ 3,172	\$ 102	\$ (3,427)	\$ 3,172	\$ (255)
Comprehensive loss	(8,283)	3,172	(5,111)	(21,360)	3,172	(18,188)
As of June 30, 2021						
	As Reported	Adjustment	As Revised			
Condensed Consolidated Statements of Equity:						
Accumulated other comprehensive (loss) income	\$ (1,303)	\$ 3,172	\$ 1,869			
Foreign currency translation adjustments	(3,070)	3,172	102			
Total stockholders' equity	338,161	3,172	341,333			
Condensed Consolidated Balance Sheet:						
Intangible assets, net	\$ 57,015	\$ 1,203	\$ 58,218			
Goodwill	73,845	1,983	75,828			
Other assets	389	(14)	375			
Total assets	397,212	3,172	400,384			
Accumulated other comprehensive (loss) income	\$ (1,303)	\$ 3,172	\$ 1,869			
Total stockholders' equity	338,161	3,172	341,333			

Concentration of Risk

Financial instruments, which potentially subject the Company to concentrations of credit risk, consist principally of cash, which is held at major financial institutions, and trade receivables.

The Company's products are sold on an uncollateralized basis and on credit terms based upon a credit risk assessment of each customer. A portion of the Company's trade receivables to customers outside the United States includes sales to foreign stocking distributors, who then sell to government owned or supported healthcare systems. The ongoing economic conditions in certain European countries, especially Greece, Ireland, Italy, Portugal and Spain remain uncertain. Accounts receivable from customers in these countries are not a material amount of the Company's overall receivables.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Below is a summary of certain of the Company's significant accounting policies. For a comprehensive description of the Company's accounting policies, refer to the Annual Report on Form 10-K for the year ended December 31, 2021.

Use of Estimates

Preparing consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent liabilities, and the reported amounts of revenues and expenses. Significant estimates affecting amounts reported or disclosed in the consolidated financial statements include allowances for doubtful accounts receivable and sales returns and other credits, net realizable value of inventories, discount rates and estimated projected cash flows used to value and test impairments of goodwill, identifiable intangible and long-lived assets, fair value estimates related to business combinations, assumptions related to the timing and probability of product launch dates, discount rates matched to the estimated timing of payments, probability of success rates and discount adjustments on the related cash flows for contingent considerations in business combinations, depreciation and amortization periods for identifiable intangible and long-lived assets, computation of taxes, valuation allowances recorded against deferred tax assets, the valuation of stock-based compensation and loss contingencies. These estimates are based on historical experience and on various other assumptions believed to be reasonable under the current circumstances. Actual results could differ from these estimates.

Risk and Uncertainties

The full extent to which the COVID-19 pandemic or the ongoing conflict in Ukraine will directly or indirectly impact the Company's business, results of operations and financial condition, including revenues, expenses, manufacturing, research and development costs and employee-related compensation, will depend on future developments that are highly uncertain, including, with respect to COVID-19, as a result of variants of the virus that causes COVID-19 or other information that may emerge concerning COVID-19 and the actions taken to contain or treat COVID-19, and with respect to the ongoing conflict in Ukraine, the impact thereof on the supply chain for titanium, which is used in certain of our products, as well as the broader macroeconomic impact arising from both COVID-19 and the conflict on local, regional, national and international customers and markets. The Company has made estimates of the impact of the pandemic within its financial statements and there may be changes to those estimates in future periods. Actual results may differ from these estimates.

The Company has not achieved profitable operations, nor is there assurance that profitable operations will ever be achieved, and, if achieved, could be sustained on a continuing basis. The Company is subject to a number of risks similar to other medical device companies, including, but not limited to, risks related to maintaining high levels of inventory, raising additional capital, and the successful discovery, development, and commercialization of products. As a result of these and other factors and the related uncertainties, there can be no assurance of the Company's future success.

Based on the Company's updated operating plans, the Company believes that it has sufficient resources to fund operations and meet its contractual obligations through the second quarter of 2023 with its existing cash and equivalents and additional borrowing capacity under its extended and expanded credit facility. However, based on the Company's recurring losses from operations and the expectation of continued operating losses, the Company will need to raise additional capital to finance its future operations. If the Company is unable to raise such additional capital, it may raise substantial doubt about the Company's ability to continue as a going concern. Longer term, the Company expects to raise additional capital through the sale of common stock in public offerings and/or private placements, debt financings, or through other capital sources.

Although the Company has been successful in raising capital in the past, there is no assurance that it will be successful in obtaining such additional financing on terms acceptable to the Company, if at all. If the Company is unable to obtain sufficient funding on acceptable terms, it could be forced to delay, reduce or eliminate some or all of its projected inventory and capital expenditures spend, research and development programs or commercialization activities, which could materially adversely affect its business prospects or its ability to continue operations.

Recently Adopted Accounting Standards

In June 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU or Update) No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which requires credit losses on most financial assets measured at amortized cost, including trade receivables, and certain other instruments to be measured using an expected credit loss model, referred to as the current expected credit loss (CECL) model. Under this model, entities will estimate credit losses over the entire contractual term of the instrument. The FASB subsequently issued other related ASUs that amend ASU No. 2016-13 to provide clarification and additional guidance. The new standard was effective for the Company beginning January 1, 2022 and primarily impacted trade accounts receivable. The amendments in this update were adopted using a modified retrospective transition method as of January 1, 2022, which had no cumulative impact to retained earnings. The adoption of this new standard had no material impact on the Company's consolidated financial statements. The Company's concentrations of credit risks are limited due to the large number of customers and their dispersion across a number of geographic areas. Substantially all of the Company's trade receivables are concentrated in the public and private hospital and healthcare industry in the U.S. and internationally or with distributors who operate in international markets. The Company's historical credit losses have not been significant due to this dispersion and the financial stability of the Company's customers. The Company considers credit losses immaterial to its business and, therefore, has not provided all the disclosures otherwise required by the standard. The Company updated its accounting policy disclosure for accounts receivable as follows:

Trade accounts receivable in the accompanying consolidated balance sheets are presented net of allowances for doubtful accounts for expected credit losses and sales returns and other credits. The Company grants credit to customers in the normal course of business, but generally does not require collateral or any other security to support its receivables.

The Company evaluates the collectability of accounts receivable based on a combination of factors. In circumstances where a specific customer is unable to meet its financial obligations to the Company, a provision to the allowances for doubtful accounts for expected credit losses is recorded to reduce the net recognized receivable to the amount that is

reasonably expected to be collected. For all other customers, a provision to the allowances for doubtful accounts for expected credit losses is recorded based on factors including the length of time the receivables are past due, the current business environment, the geographic market and the Company's historical experience. Provisions to the allowances for doubtful accounts for expected credit losses are recorded to general and administrative expenses. Account balances are charged off against the allowance when it is probable that the receivable will not be recovered. The allowance for doubtful accounts for expected credit losses was \$231 thousand and \$74 thousand as of June 30, 2022 and December 31, 2021, respectively.

In January 2017, the FASB issued Update No. 2017-04, *Simplifying the Test for Goodwill Impairment* (ASU 2017-04). ASU 2017-04 simplifies the accounting for goodwill impairment by removing Step 2 of the goodwill impairment test, which requires a hypothetical purchase price allocation. ASU 2017-04 was effective for the Company beginning January 1, 2022 and was applied on a prospective basis. The adoption of ASU 2017-04 had no material impact on its consolidated financial statements.

In May 2021, the FASB issued Update No. 2021-04, *Earnings Per Share (Topic 260), Debt-Modifications and Extinguishments (Subtopic 470-50), Compensation-Stock Compensation (Topic 718), and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40) Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options*. This Update addresses issuer's accounting for certain modifications or exchanges of freestanding equity-classified written call options. The new standard was effective for the Company beginning January 1, 2022. The adoption of this new standard had no material impact on its consolidated financial statements.

In July 2021, the FASB issued Update No. 2021-05, *Leases (Topic 842): Lessors—Certain Leases with Variable Lease Payments*. Under this standard, lessors will classify leases with variable payments that do not depend on an index or rate as operating leases if a different classification would result in a commencement date selling loss. The new standard was effective for the Company beginning January 1, 2022 and early adoption is permitted. The adoption of this new standard had no material impact on its consolidated financial statements.

Net Loss Per Share

The Company follows the two-class method when computing net loss per share. Because the Company's board of directors has discretion in declaring/issuing dividends on the Company's common stock, these dividend rights meet the definition for participating securities. Basic and diluted net loss per share was calculated using the weighted-average number of shares of common stock outstanding during the period. The weighted average number of shares used to compute diluted net loss per share excludes any assumed issuance of common stock upon exercise of stock options, any assumed issuance of common stock under restricted stock awards or units, and any assumed issuances under the Company's employee stock purchase plan, because the effect, in each case, would be antidilutive. Common stock equivalents, including the Exchangeable Shares (as defined below), of 7.1 million and 6.5 million shares for each of the three and six months ended June 30, 2022 and 2021, respectively, were excluded from the calculation because of their antidilutive effect.

3. DEBT AND INTEREST

Credit Agreement

In December 2015, the Company entered into a credit facility with Wells Fargo Bank, N.A. (as amended, the Credit Facility). The Credit Facility provides an asset-backed revolving line of credit of up to \$30.0 million. On July 15, 2022, the Company entered into an amendment to the Credit Facility which, among other things, extends the maturity date from July 27, 2022 to July 27, 2025, and changes the monthly interest rate from an interest rate based on LIBOR and a three-level grid based on the prior month's excess availability to an interest rate based on Term SOFR plus 2.65% (the transition from LIBOR to Term SOFR was intended to be value neutral). The Company paid to Wells Fargo a \$150,000 closing fee in connection with parties entering into the amendment. In connection with entering into the Credit Facility, the Company was required to become a guarantor and to provide a security interest in substantially all its assets for the benefit of the counterparty.

As of June 30, 2022, there was \$25.0 million outstanding under the Credit Facility. There were no amounts outstanding at December 31, 2021. As of June 30, 2022, the effective interest rate on the amounts borrowed was 3.67%. At June 30, 2022, the Company had \$1.2 million of current borrowing capacity under the Credit Facility before the requirement to maintain the minimum fixed charge coverage ratio as discussed below. Debt issuance costs and legal fees related to the Credit Facility totaling \$0.6 million were recorded as a deferred asset and are being amortized ratably over the term of the arrangement.

Borrowings under the amended Credit Facility accrue interest at the rate then applicable to base rate loans (as customarily defined), unless and until converted into SOFR rate loans (as customarily defined) in accordance with the Credit Facility. Borrowings bear interest at a floating annual rate equal to (a) base rate plus 1.50 percentage points for base rate loans and (b)

SEASPINE HOLDINGS CORPORATION
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

SOFR rate plus 2.65 percentage points for SOFR rate loans. The Company also pays an unused line fee based on the average amount borrowed under the Credit Facility for the most recently completed month equal to 0.50% per annum of the amount unused under the Credit Facility. The unused line fee is due on the first day of each month.

The Credit Facility contains various customary affirmative and negative covenants, including prohibiting the Company from incurring indebtedness without the lender's consent. The Credit Facility also includes a financial covenant that requires the Company to maintain a minimum fixed charge coverage ratio of 1.10 to 1.00 for the applicable measurement period, if the Company's Total Liquidity (as defined in the Credit Facility) is less than \$5.0 million. The Company was in compliance with all applicable covenants at June 30, 2022.

The Credit Facility also includes customary events of default, including events of default relating to non-payment of amounts due under the Credit Facility, material inaccuracy of representations and warranties, violation of covenants, bankruptcy and insolvency, failure to comply with health care laws, violation of certain of the Company's existing agreements, and the occurrence of a change of control. Under the Credit Facility, if an event of default occurs, the lender will have the right to terminate the commitments and accelerate the maturity of any loans outstanding.

4. INVENTORIES

Inventories consisted of:

	June 30, 2022	December 31, 2021
	(In thousands)	
Finished goods	\$ 59,186	\$ 49,405
Work in process	19,307	17,644
Raw materials	7,413	5,250
	<u>\$ 85,906</u>	<u>\$ 72,299</u>

5. PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment are stated at historical cost less accumulated depreciation and amortization and any impairment charges. The Company provides for depreciation using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized over the lesser of the lease term or the useful life. The cost of major additions and improvements is capitalized, while maintenance and repair costs that do not improve or extend the lives of the respective assets are charged to operations as incurred. The cost of computer software obtained for internal use is accounted for in accordance with FASB Accounting Standards Codification, *Internal-Use Software (Subtopic 350-40)*.

The cost of purchased spinal instruments that the Company consigns to hospitals and independent sales agents to support surgeries is initially capitalized as construction in progress. The amount is then either reclassified to spinal instruments and sets, and depreciation is initiated when instruments are put together in a newly built set with spinal implants, or directly expensed for the instruments used to replace damaged instruments in an existing set. The depreciation expense and direct expense for replacement instruments are recorded in selling and marketing expense.

Property, plant and equipment balances and corresponding useful lives were as follows:

	June 30, 2022	December 31, 2021	Useful Lives
	(In thousands)		
Leasehold improvements	\$ 6,549	\$ 6,501	Shorter of lease term or useful life
Machinery and production equipment	10,769	10,408	3 - 10 years
Spinal instruments and sets	47,389	45,076	4 - 6 years
Information systems and hardware	9,519	8,186	3 - 7 years
Furniture and fixtures	2,076	2,097	3 - 5 years
Construction in progress	21,776	17,615	
Total	98,078	89,883	
Less accumulated depreciation and amortization	(43,486)	(42,991)	
Property, plant and equipment, net	<u>\$ 54,592</u>	<u>\$ 46,892</u>	

Depreciation and amortization expenses totaled \$2.5 million and \$1.7 million for the three months ended June 30, 2022 and 2021, respectively, and \$4.8 million and \$3.4 million for the six months ended June 30, 2022 and 2021, respectively. The cost of purchased instruments used to replace damaged instruments in existing sets and recorded directly to instrument replacement expense totaled \$1.7 million and \$0.9 million for the three months ended June 30, 2022 and 2021, respectively, and \$2.7 million and \$1.6 million for the six months ended June 30, 2022 and 2021, respectively.

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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

6. IDENTIFIABLE INTANGIBLE ASSETS

Identifiable intangible assets are initially recorded at fair value at the time of acquisition, generally using an income or cost approach. The Company capitalizes costs incurred to renew or extend the term of recognized intangible assets and amortizes those costs over their expected useful lives.

The components of the Company's identifiable intangible assets were:

June 30, 2022				
	Weighted Average Life	Cost	Accumulated Amortization	Net
(Dollars in thousands)				
Product technology	12 years	\$ 65,642	\$ (34,456)	\$ 31,186
Customer relationships	12 years	56,830	(50,827)	\$ 6,003
Trademarks/brand names	6 years	1,600	(556)	\$ 1,044
Other intangibles	8 years	\$ 164	\$ (22)	\$ 142
		<u>\$ 124,236</u>	<u>\$ (85,861)</u>	<u>\$ 38,375</u>

December 31, 2021				
	Weighted Average Life	Cost	Accumulated Amortization	Net
(Dollars in thousands)				
Product technology	12 years	\$ 65,642	\$ (32,484)	\$ 33,158
Customer relationships	12 years	56,830	(49,241)	7,589
Trademarks/brand names	6 years	1,600	(438)	1,162
Other intangibles	8 years	159	(12)	147
		<u>\$ 124,231</u>	<u>\$ (82,175)</u>	<u>\$ 42,056</u>

Annual amortization expense (including amounts reported in cost of goods sold) is expected to be approximately \$7.3 million in 2022, \$6.6 million in 2023, \$4.6 million in 2024, \$3.3 million in 2025, and \$3.3 million in 2026. For the three months ended June 30, 2022 and 2021, amortization expense totaled \$1.8 million and \$1.5 million, respectively, and included \$1.0 million and \$0.6 million, respectively, of amortization of product technology intangible assets that is presented within cost of goods sold. Amortization expense totaled \$3.7 million and \$2.5 million for the six months ended June 30, 2022 and 2021, respectively, and included \$2.0 million and \$0.9 million, respectively, of amortization of product technology intangible assets that is presented within cost of goods sold.

7. EQUITY AND STOCK-BASED COMPENSATION

Common Stock

In April 2021, the Company entered into an Underwriting Agreement with Piper Sandler & Co., Canaccord Genuity LLC, and Stifel, Nicolaus & Company, Incorporated relating to the issuance and sale of 4,500,000 shares of the Company's common stock at a price to the public of \$19.50 per share, before underwriting discounts and commissions. Under the terms of that agreement, the Company granted the underwriters an option, exercisable for 30 days, to purchase up to an additional 675,000 shares of common stock. The underwriters exercised this option and the offering closed on April 20, 2021 with the sale of 5,175,000 shares of common stock, resulting in net proceeds to the Company of approximately \$95 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by the Company. The Company used a portion of the net proceeds from the offering to repay all of its then-outstanding borrowings under the Credit Facility and to finance the cash consideration of \$27.5 million for the Company's acquisition of 7D Surgical.

In May 2021, the Company issued 2,991,054 shares of the Company's common stock and 1,298,648 Exchangeable Shares in connection with Company's acquisition of 7D Surgical.

Equity Award Plans

In May 2015, the Company adopted the 2015 Incentive Award Plan, which was subsequently amended and restated with approval of the Company's stockholders. In February and March 2018, the Company's board of directors approved amendments to the plan that increased the share reserve by an aggregate of 2,726,000 shares over the then-existing share reserve thereunder, subject to stockholder approval. The Company's stockholders approved both amendments in May 2018. In April 2020, the Company's board of directors approved an amendment to the plan that, among other things, increased the share reserve by an aggregate of 3,500,000 shares over the then-existing share reserve thereunder, subject to stockholder approval. The Company's stockholders approved the amendment in June 2020 (the 2015 Incentive Award Plan, as amended and restated to date, the Restated Plan). Under the Restated Plan, the Company can grant its employees, non-employee directors and consultants incentive stock options and non-qualified stock options, restricted stock, performance stock, dividend equivalent rights, stock appreciation rights, stock payment awards and other incentive awards. The aggregate number of shares that may be issued or transferred pursuant to awards under the Restated Plan is the sum of (1) the number of shares issuable upon exercise or vesting of the equity awards issued by the Company's former parent company prior to the spin-off that were converted into the Company's equity awards under the Restated Plan as of the date of the spin-off and (2) 9,735,500 shares of the Company's common stock in respect of awards granted under the Restated Plan. As of June 30, 2022, 1,446,213 shares were available for issuance under the Restated Plan.

In August 2020, the Company adopted the 2020 Employment Inducement Incentive Award Plan (the 2020 Inducement Plan). The terms of the 2020 Inducement Plan are substantially similar to the terms of the Restated Plan with four principal exceptions: (1) incentive stock options may not be granted under the 2020 Inducement Plan; (2) there are no annual limits on awards that may be issued to an individual under the 2020 Inducement Plan; (3) awards granted under the 2020 Inducement Plan are not required to be subject to any minimum vesting period; and (4) awards may be granted under the 2020 Inducement Plan only to those individuals and in those circumstances described below. An aggregate of 2,000,000 shares are reserved under the 2020 Inducement Plan. As of June 30, 2022, 1,252,826 shares were available for issuance under the 2020 Inducement Plan.

The 2020 Inducement Plan was adopted by the Company's board of directors without stockholder approval pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules. In accordance with Rule 5635(c)(4) of the Nasdaq Listing Rules, awards under the plan may only be made to an employee who has not previously been an employee or member of the Company's board of directors or of any board of directors of any parent or subsidiary of the Company, or following a bona fide period of non-employment by the Company or a parent or subsidiary, if he or she is granted such award in connection with his or her commencement of employment with the Company or a subsidiary and such grant is an inducement material to his or her entering into employment with the Company or such subsidiary.

Forfeiture Rate Assumptions

Stock-based compensation expense related to all equity awards includes an estimate for forfeitures. The expected forfeiture rate of all equity-based compensation is based on historical experience of pre-vesting forfeitures on awards and options by each homogeneous group of shareowners. For awards and options granted to non-executive employees, the forfeiture rate is estimated to be 9% and 13% annually for the six months ended June 30, 2022 and 2021, respectively. There is no forfeiture rate applied to awards or options granted to non-employee directors or executive employees because their pre-vesting forfeitures are anticipated to be highly unlikely. As individual awards and options become fully vested, stock-based compensation expense is adjusted to recognize actual forfeitures.

Restricted Stock Awards and Restricted Stock Units

Restricted stock award and restricted stock unit grants to employees generally have a requisite service period of three years, and restricted stock award and restricted stock unit grants to non-employee directors generally have a requisite service period of one year. Both are subject to graded vesting. The Company expenses the fair value of restricted stock awards and restricted stock units on an accelerated basis over the vesting period or requisite service period, whichever is shorter.

No restricted stock units were granted to non-employee directors during any of the three or six months ended June 30, 2022 or 2021. During each of the three and six months ended June 30, 2022, there were 141,575 shares of restricted stock awards granted to non-employee directors. There were 61,519 and 65,540 restricted stock awards granted to non-employee directors during the three and six months ended June 30, 2021, respectively.

During the three and six months ended June 30, 2022, 44,884 and 721,407 restricted stock units were granted to employees, respectively. During the three and six months ended June 30, 2021, 14,200 and 398,785 restricted stock units were granted to employees, respectively. No restricted stock awards were granted to employees during any of the three or six months ended June 30, 2022 or 2021.

As of June 30, 2022, there was approximately \$9.9 million of unrecognized compensation expense related to the unvested portions of restricted stock awards and restricted stock units. This expense is expected to be recognized over a weighted-average period of approximately 1.4 years.

Stock Options

Stock option grants to employees generally have a requisite service period of four to five years, and stock option grants to non-employee directors generally have a requisite service period of one year. Both are subject to graded vesting. The Company records stock-based compensation expense associated with stock options on an accelerated basis over the applicable vesting period within each grant and based on their fair value at the date of grant using the Black-Scholes-Merton option pricing model. There were 11,000 and 544,150 stock options granted during the three months ended June 30, 2022 and 2021, respectively, and 535,045 and 1,078,013 stock options granted during the six months ended June 30, 2022 and 2021, respectively. The following weighted-average assumptions were used in the calculation of fair value for options granted during the period indicated.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Expected dividend yield	—%	—%	—%	—%
Risk-free interest rate	2.9%	0.7%	1.7%	0.6%
Expected volatility	54.5%	51.8%	52.1%	51.7%
Expected term (in years)	4.2	4.5	5.4	4.9

The Company considered that it has never paid, and does not currently intend to pay, cash dividends. The risk-free interest rates are derived from the U.S. Treasury yield curve in effect on the date of grant for instruments with a remaining term similar to the expected term of the options. The expected volatility is calculated based upon the historical volatility of the Company's share prices. The expected term is calculated using the historical weighted average term of the Company's options.

As of June 30, 2022, there was approximately \$6.3 million of unrecognized compensation expense related to unvested stock options. This expense is expected to be recognized over a weighted-average period of approximately 1.6 years.

Employee Stock Purchase Plan

In May 2015, the Company adopted the SeaSpine Holdings Corporation 2015 Employee Stock Purchase Plan, which was amended in November 2018, as described below (as amended, the ESPP). Under the ESPP, eligible employees may purchase shares of the Company's common stock through payroll deductions of up to 15% of eligible compensation during an offering period. Generally, each offering period will be for 24 months as determined by the Company's board of directors. There are four six-month purchase periods in each offering period for contributions to be made and to be converted into shares at the end of the purchase period. In no event may an employee purchase more than 2,500 shares per purchase period based on the closing price on the first trading date of an offering period or more than \$25,000 worth of stock during any calendar year. The purchase price for shares to be purchased under the ESPP is 85% of the lesser of the market price of the Company's common stock on the first trading date of an offering period or on any purchase date during an offering period (June 30 or December 31).

SEASPINE HOLDINGS CORPORATION
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

Subject to stockholder approval, on and effective as of November 2, 2018, the Company's board of directors approved an amendment to the ESPP pursuant to which the share reserve under the ESPP would increase from 400,000 shares to 800,000 shares. The Company's stockholders approved that amendment in May 2019. In December 2020, the Company's board of directors approved the issuance of an additional 500,000 shares of common stock under the ESPP. The Company's stockholders approved that amendment in June 2021. The ESPP is intended to qualify as an "employee stock purchase plan" within the meaning of Section 423 of the Internal Revenue Code of 1986, as amended (the IRC). The ESPP contains a restart feature, such that if the market price of the stock at the end of any six-month purchase period is lower than the market price at the original grant date of an offering period, that offering period will terminate after that purchase date, and a new two-year offering period will commence on the January 1 or July 1 immediately following the date the original offering period terminated. This restart feature was triggered on the purchase date that occurred on December 31, 2021, such that the offering periods that commenced on January 1, 2021 and July 1, 2021 were terminated, and a new two-year offering period commenced on January 1, 2022 and will end on December 31, 2023. This restart feature was triggered again on the purchase date that occurred on June 30, 2022, such that the offering period that commenced on January 1, 2022 was terminated, and a new two-year offering period commenced on July 1, 2022 and will end on June 30, 2024. The Company applied share-based payment modification accounting to the awards that were initially valued at the grant date to determine the amount of any incremental fair value associated with the modified awards. The impact to stock-based compensation expense for modifications during the six months ended June 30, 2022 was immaterial.

During the six months ended June 30, 2022 and 2021, there were 200,642 and 109,178 shares of common stock purchased under the ESPP. The Company recognized \$0.4 million and \$0.6 million in expense related to the ESPP for the six months ended June 30, 2022 and 2021, respectively. As of June 30, 2022, 226,675 shares were available under the ESPP for future issuance.

The Company estimates the fair value of shares issued to employees under the ESPP using the Black-Scholes-Merton option-pricing model. The following weighted average assumptions were used in the calculation of fair value of shares under the ESPP at the grant date for the periods indicated:

	Three and Six Months Ended June 30,	
	2022	2021
Expected dividend yield	— %	— %
Risk-free interest rate	0.5 %	0.1 %
Expected volatility	56.2 %	64.3 %
Expected term (in years)	1.3	1.2

8. LEASES

The Company determines if an arrangement is a lease at inception. The Company's leases primarily relate to administrative, manufacturing, research, and distribution facilities and various manufacturing, office and transportation equipment. Lease assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. Lease assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. As the Company's leases do not provide an implicit rate, the Company's incremental borrowing rate is used as a discount rate, based on the information available at the commencement date, in determining the present value of lease payments. Lease assets also include the impact of any prepayments made and are reduced by impact of any lease incentives.

The Company made an accounting policy election for short-term leases, such that the Company will not recognize a lease liability or lease asset on its balance sheet for leases with a lease term of twelve months or less as of the commencement date. Rather, any short-term lease payments will be recognized as an expense on a straight-line basis over the lease term. The current period short-term lease expense reasonably reflects the Company's short-term lease commitments.

The Company made a policy election for all classifications of leases to combine lease and non-lease components and to account for them as a single lease component. Variable lease payments are excluded from the lease liability and recognized in the period in which the obligation is incurred. Additionally, lease terms may include options to extend or terminate the lease when it is reasonably certain the Company will exercise the option.

The Company's lease portfolio only includes operating leases. As of June 30, 2022, the weighted average remaining lease term of these operating leases was 8.9 years and the weighted average discount rate was 4.7%. For the three months ended June 30,

SEASPIKE HOLDINGS CORPORATION
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

2022 and 2021, lease expense, which represents expense from operating leases, was \$0.6 million and \$0.5 million, respectively. For the six months ended June 30, 2022 and 2021, lease expense was \$1.2 million and \$1.1 million, respectively.

A summary of the Company's remaining lease liabilities at June 30, 2022 are as follows:

	Operating Leases (In thousands)
2022	1,584
2023	2,578
2024	2,726
2025	2,795
2026	2,848
Thereafter	9,700
Total undiscounted value of lease liabilities	\$ 22,231
Less: present value adjustment	(3,829)
Less: short-term leases not capitalized	(493)
Present value of lease liabilities	17,909
Less: current portion of lease liability	(2,377)
Operating lease liability, less current portion	\$ 15,532

9. INCOME TAXES

The following table summarizes the Company's effective tax rate for the periods indicated:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Reported income tax expense rate	7.6 %	(3.1)%	4.3 %	(1.0)%

The Company recorded an income tax benefit for each of the three and six months ended June 30, 2022 primarily related to the change in deferred tax assets and liabilities in foreign jurisdictions, offset by current activity in state and foreign operations as well as the change in U.S. indefinite lived deferred tax liabilities. The Company recorded an income tax provision for each of the three and six months ended June 30, 2021 primarily related to federal, foreign and state operations.

In addition, for all periods presented, the pretax losses incurred by the consolidated U.S. tax group received no corresponding tax benefit because the Company concluded that it is not more-likely-than-not that the full value of any resulting deferred tax assets will be realized. The Company will continue to assess its position in future periods to determine if it is appropriate to reduce a portion of its valuation allowance.

The acquisition of 7D Surgical was treated as an asset purchase for U.S. tax purposes and a stock purchase for Canadian tax purposes in 2021. As such, the Company recorded deferred tax assets and liabilities on its Canadian tax attributes. The Company continues to use its deferred tax liabilities as a source of income against a portion of its deferred tax assets. A valuation allowance was recorded for the portion of the deferred tax assets that are not more-likely-than-not to be realized.

As part of the Tax Cuts and Jobs Act of 2017 (TCJA), beginning with the Company's 2022 tax year, the Company is required to capitalize research and development expenses, as defined under Internal Revenue Code section 174. For expenses that are incurred for research and development in the U.S., the amounts will be amortized over 5 years, and expenses that are incurred for research and experimentation outside the U.S. will be amortized over 15 years. This provision is not expected to have a significant impact to the consolidated financial statements.

10. COMMITMENTS AND CONTINGENCIES

In consideration for certain technology, manufacturing, distribution, and selling rights and licenses granted to the Company, the Company agreed to pay royalties on sales of certain products sold by the Company. Except for the royalties paid to N.L.T. Spine Ltd. (NLT), the royalties the Company paid are included as a component of cost of goods sold in the consolidated statements of operations.

The Company is subject to various legal proceedings in the ordinary course of its business with respect to its products, its current or former employees, and its commercial relationships, some of which have been settled by the Company. In the opinion of management, such proceedings are either adequately covered by insurance or otherwise indemnified, or are not expected, individually or in the aggregate, to result in a material adverse effect on the Company's financial condition. However, it is possible that the Company's results of operations, financial position and cash flows in a particular period could be materially affected by these contingencies.

The Company accrues for loss contingencies when it is deemed probable that a loss has been incurred and that loss is estimable. The amounts accrued are based on the full amount of the estimated loss before considering insurance proceeds, and do not include an estimate for legal fees expected to be incurred in connection with the loss contingency. While uncertainty exists, the Company does not believe there are any pending legal proceedings that would have a material impact on the Company's financial position, cash flows or results of operations.

11. SEGMENT AND GEOGRAPHIC INFORMATION

Segment Reporting

Management assessed its segment reporting based on how it internally manages and reports the results of its business to its chief operating decision maker. Management reviews financial results, manages the business and allocates resources on an aggregate basis. Therefore, financial results are reported in a single operating segment: the development, manufacture and marketing of orthobiologics, spinal implants and enabling technologies. The Company reports revenue in two product categories: (1) orthobiologics and (2) spinal implants and enabling technologies. Orthobiologics products consist of a broad range of advanced and traditional bone graft substitutes designed to improve bone fusion rates following a wide range of orthopedic surgeries, including spine, hip, and extremities procedures. The spinal implants and enabling technologies portfolio consists of an extensive line of products and image-guided surgical solutions to facilitate spinal fusion in degenerative, minimally invasive surgery (MIS), and complex spinal deformity procedures. The Company attributes revenues to geographic areas based on the location of the customer.

The following table disaggregates revenue by major sales channel for each of the periods presented (in thousands):

	<i>Three Months Ended June 30, 2022</i>			<i>Six Months Ended June 30, 2022</i>		
	United States	International	Total	United States	International	Total
Orthobiologics	\$ 24,520	\$ 2,463	\$ 26,983	\$ 45,841	\$ 4,664	\$ 50,505
Spinal Implants and Enabling Technologies	24,980	4,355	29,335	49,152	7,354	56,506
Total revenue, net	<u>\$ 49,500</u>	<u>\$ 6,818</u>	<u>\$ 56,318</u>	<u>\$ 94,993</u>	<u>\$ 12,018</u>	<u>\$ 107,011</u>

	<i>Three Months Ended June 30, 2021</i>			<i>Six Months Ended June 30, 2021</i>		
	United States	International	Total	United States	International	Total
Orthobiologics	\$ 21,184	\$ 2,387	\$ 23,571	\$ 40,244	\$ 4,815	\$ 45,059
Spinal Implants and Enabling Technologies	21,385	2,507	23,892	39,795	4,563	44,358
Total revenue, net	<u>\$ 42,569</u>	<u>\$ 4,894</u>	<u>\$ 47,463</u>	<u>\$ 80,039</u>	<u>\$ 9,378</u>	<u>\$ 89,417</u>

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

The terms "we," "us," "our," "SeaSpine" or the "Company" refer collectively to SeaSpine Holdings Corporation and its wholly-owned subsidiaries, unless otherwise stated. All information in this report is based on our fiscal year. Unless otherwise stated, references to particular years, quarters, months or periods refer to our fiscal years ending December 31 and the associated quarters, months and periods of those fiscal years.

This Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). The matters discussed in these forward-looking statements are subject to risk and uncertainties that could cause actual results to differ materially from those made, projected or implied in the forward-looking statements. Such risks and uncertainties may also give rise to future claims and increase exposure to contingent liabilities. Please see the "Risk Factors" section in our Annual Report on Form 10-K for the year ended December 31, 2021 (the 2021 10-K) for a discussion of the uncertainties, risks and assumptions associated with these statements. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

You can identify these forward-looking statements by forward-looking words such as "believe," "may," "could," "will," "estimate," "continue," "anticipate," "intend," "seek," "plan," "expect," "should," "would" and similar expressions.

These risks and uncertainties arise from (among other factors):

- our expectations and estimates concerning future financial performance, financing plans and the impact of competition;
- our ability to successfully develop new and next-generation products and the costs associated with designing and developing those new and next-generation products, including risks inherent in collaborations, such as with restor3d, Inc. or use of nascent manufacturing techniques, such as additive processing/3D printing;
- physicians' willingness to adopt our recently launched and planned products, customers' continued willingness to pay for our products and third-party payors' willingness to provide or continue coverage and appropriate reimbursement for any of our products and our ability to secure regulatory clearance and/or approval for products in development;
- our ability to attract and retain new, high-quality distributors, whether as a result of perceived deficiencies, or gaps, in our existing product portfolio, inability to reach agreement on financial or other contractual terms or otherwise, as well as disruption associated with restrictive covenants to, which distributors may be subject and potential litigation and expense associate therewith;
- the full extent to which the COVID-19 pandemic will, directly or indirectly, impact our business, results of operations and financial condition, including our sales, expenses, supply chain integrity, manufacturing capability, research and development activities, including arising from or relating to deferrals of procedures using our products, disruptions or restrictions on the ability of many of our employees and of third parties on which we rely to work effectively, and temporary closures of our facilities and of the facilities of our customers and suppliers;
- the full extent to which the ongoing conflict in Ukraine will, directly or indirectly, impact our business, results of operations and financial condition, including our sales, expenses, supply chain integrity, manufacturing capability, and research and development activities;
- our ability to continue to invest in medical education and training, product development, and/or sales and commercial marketing initiatives at levels sufficient to drive future revenue growth;
- anticipated trends in our business, including consolidation among hospital systems, healthcare reform in the United States, increased pricing pressure from our competitors or hospitals, exclusion from major healthcare systems, whether as a result of unwillingness to provide required pricing or otherwise, and changes in third-party payment systems;
- the risk of supply shortages, and the associated potentially long-term disruption to product sales, including as a result of the pandemic, the ongoing conflict in Ukraine and a limited number of third-party suppliers for components, raw materials and certain processing and assembly services;
- unexpected expenses and delay and our ability to manage timelines and costs related to manufacturing our products including as a result of litigation or developing and supporting the full commercial launch of new products or relating to the pandemic;

- *our ability to obtain additional debt and equity financing to fund capital expenditures and working capital requirements and acquisitions;*
- *our ability to complete acquisitions, integrate operations post-acquisition and maintain relationships with customers of acquired entities;*
- *our ability to support the safety and efficacy of our products with long-term clinical data;*
- *existing and future regulations affecting our business, both in the United States and internationally, and enforcement of those regulations;*
- *our ability to protect our intellectual property, including unpatented trade secrets, and to operate without infringing or misappropriating the proprietary rights of others;*
- *general economic and business conditions, in both domestic and international markets; and*
- *other risk factors described in the section entitled “Risk Factors” of the 2021 10-K.*

These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements included in this report.

Overview

We are a global medical technology company focused on the design, development, and commercialization of surgical solutions for the treatment of patients suffering from spinal disorders. We offer procedural solutions that feature our FLASH™ Navigation, a system designed to improve accuracy of screw placement and provide a cost-effective, rapid, radiation-free solution to surgical navigation, and a comprehensive portfolio of spinal implants and orthobiologics to meet the varying combinations of products that neurosurgeons and orthopedic spine surgeons need to facilitate spinal fusion in degenerative, minimally invasive surgery (MIS), and complex spinal deformity procedures on the lumbar, thoracic and cervical spine. We believe our offerings are essential to meet the “complete solution” requirements of these surgeons.

We report revenue in two product categories: (i) orthobiologics and (ii) spinal implants and enabling technologies. Our orthobiologics products consist of a broad range of advanced and traditional bone graft substitutes designed to improve bone fusion rates following a wide range of orthopedic surgeries, including spine, hip, and extremities procedures. Our spinal implants and enabling technologies portfolio consists of an extensive line of products and image-guided surgical solutions to facilitate spinal fusion in degenerative, minimally invasive surgery (MIS), and complex spinal deformity procedures.

Our U.S. spinal implants and orthobiologics sales organization consists primarily of regional and territory managers who oversee a broad network of independent sales agents. We pay these sales agents commissions based on the sales of our products. Our enabling technologies sales organization consists of a direct sales force that works together with our independent sales agents to generate either a capital sale or to place systems and components in an account in a capital efficient manner in return for a longer-term revenue commitment for our spinal implant systems and/or orthobiologics products. Our international sales organization consists of a sales management team that oversees a network of independent stocking distributors that purchase products directly from us and independently sell them. For the three months ended June 30, 2022 and 2021, international sales accounted for approximately 12% and 10% of our revenue, respectively, and 11% and 10% for the six months ended June 30, 2022 and 2021, respectively. Our policy is not to sell our products through or to participate in physician-owned distributorships.

Acquisition

In May 2021, we acquired 7D Surgical, Inc., a pioneer in the image-guided surgery market, that developed and commercialized advanced machine-vision-based registration algorithms to improve surgical workflow and patient care, currently with applications in spine and cranial surgeries. Its flagship system, founded on its machine-vision, image-guided surgery platform, reduces radiation exposure in open spine surgery by eliminating intra-operative CT (computed tomography) and fluoroscopy for purposes of registration, both of which commonly are used for patient registration with traditional navigational systems.

European Spinal Implant Sales and Marketing

During the third quarter of 2021, we ceased in-person sales and marketing operations in France to reduce operating expenses and to centralize the management of our European sales and marketing operations in our headquarters located in Carlsbad, California. As a result, we closed our office located in Lyon, France, and eliminated all employment positions at that location.

During the fourth quarter of 2021, we notified our European distributors that we will discontinue all sales and marketing activities for our spinal implant portfolio in the European market effective in August 2022 due to the significantly higher upfront and recurring annual costs required to comply with European medical device regulations. We will continue to market and sell our orthobiologics and enabling technologies products in the European market.

Components of Our Results of Operations

Revenue

Our net revenue is derived primarily from the sale of orthobiologics, spinal implants and enabling technology products in North America, Europe, Asia Pacific and Latin America. Sales are reported net of returns, rebates, group purchasing organization fees and other customer allowances.

In the United States, we generate most of our revenue by consigning our orthobiologics products and by consigning or loaning our spinal implant sets to hospitals and independent sales agents, who in turn either deliver them to hospitals for a single surgical procedure, after which they are returned to us, or leave them with hospitals that are high volume users for multiple procedures. The spinal implant sets typically contain the instruments, disposables, and spinal implants required to complete a surgery. We ship replacement inventory to independent sales agents to replace the consigned inventory used in surgeries. We maintain and replenish loaned sets at our kitting and distribution centers and return replenished sets to a hospital or independent sales agent for the next procedure. We recognize revenue on these consigned or loaned products when they have been used or implanted in a surgical procedure.

Enabling technologies revenue related to capital equipment, tools and software is typically recognized upon acceptance by the customer. Revenue from training and installation is recognized upon completion of the training and installation process. Revenue from service contracts is recognized over the term of the contract.

Under certain contracts, the transfer of capital equipment occurs over time as the customer's purchase commitments on other spinal implant and orthobiologics products are met. We allocate the transaction price to the multiple performance obligations under these contracts related to the sale of the products (recognized either upon the shipment or delivery of goods), the lease of capital equipment (recognized over the contract period), and the sale of capital equipment (recognized once the purchase commitments are met).

For all other sales transactions, including sales to international stocking distributors and private label partners, we generally recognize revenue when the products are shipped and the customer or stocking distributor obtains control of the products. There is generally no customer acceptance or other condition that prevents us from recognizing revenue in accordance with the delivery terms for these sales transactions.

Cost of Goods Sold

Cost of goods sold primarily consists of the costs of finished goods purchased directly from third parties and raw materials used in the manufacturing of our products, plant and equipment overhead, labor costs and packaging costs. The majority of our orthobiologics products are designed and manufactured internally. The cost of human tissue and fixed manufacturing overhead costs are significant drivers of the cost of goods sold, and consequently our orthobiologics products, at current production volumes, generate lower gross margin than our spinal implant products. We rely on third-party suppliers to manufacture our spinal implants and enabling technology products, and we assemble the spinal implants into surgical sets at our kitting and distribution centers. The cost to inspect incoming finished goods is included in the cost of goods sold. Other costs included in cost of goods sold include amortization of product technology intangible assets, royalties, scrap and consignment losses, and charges for expired, excess and obsolete inventory.

Selling and Marketing Expense

Our selling and marketing expenses consist primarily of sales commissions, payroll and other headcount related expenses, marketing expenses, shipping, third-party logistics expenses, depreciation of instrument sets, instrument replacement expense, and cost of medical education and training.

General and Administrative Expense

Our general and administrative expenses consist primarily of payroll and other headcount related expenses, and expenses for information technology, legal, human resources, insurance, finance, and management. We also record gains or losses associated with changes in the fair value of contingent consideration liabilities in general and administrative expenses.

Research and Development Expense

Our research and development (R&D) expenses primarily consist of expenses related to the headcount for engineering, product development, clinical affairs and regulatory functions, as well as consulting services, third-party prototyping services, outside research and clinical studies activities, and materials, production and other costs associated with development of our products. We expense R&D costs as they are incurred.

While our R&D expenses fluctuate from period to period based on the timing of specific initiatives, we expect these costs will increase over time as we continue to design and commercialize new products and expand our product portfolio, add related personnel and conduct additional clinical activities.

Intangible Amortization

Our intangible amortization, including the amounts reported in cost of goods sold, consists of acquisition-related amortization. We expect total annual amortization expense (including amounts reported in cost of goods sold) to be approximately \$7.3 million in 2022, \$6.6 million in 2023, \$4.6 million in 2024, \$3.3 million in 2025 and \$3.3 million in 2026.

COVID-19 Pandemic - Impact on our Business

The COVID-19 pandemic has presented a substantial public health and economic challenge around the world and has materially and adversely affected our business. From late March 2020 to mid-May 2020, among other impacts on our business related to the pandemic, surgeons and their patients deferred surgical procedures in which our products otherwise could have been used. This decrease in demand for our products temporarily recovered to varying degrees beginning in the latter half of May 2020 as conditions improved in certain geographies, allowing patients to resume receiving their treatments. However, from late November 2020 to mid-February 2021, a significant and sustained increase in COVID-19 cases and hospitalization rates once again caused the deferral of surgical procedures in which our products otherwise could have been used. Additionally, in the third quarter of 2021, hospitalization rates in many geographies increased as a result of the spread of the Delta variant. This, along with hospital support staffing shortages in certain geographies, adversely impacted the number of elective surgical procedures and slowed the partial recovery we had been experiencing. There is a risk that we will see continued volatility in the demand for our products in 2022 and thereafter as geographies respond to local conditions. We will continue to closely monitor developments related to the pandemic and our decisions will continue to be driven by the health and well-being of our employees, our distributor and surgeon customers, and their patients while maintaining operations to support our customers and their patients in the near-term.

At this time, the full extent of the impact of the pandemic on our business, financial condition and results of operations is uncertain and cannot be predicted with reasonable accuracy and will depend on future developments that are also uncertain and cannot be predicted with reasonable accuracy.

The effect of the pandemic will not be fully reflected in our results of operations and overall financial performance until future periods. For additional information on the various risks posed by the pandemic on our business, financial condition and results of operations, please see "Item 1A. Risk Factors" in Part II of this report.

RESULTS OF OPERATIONS

(In thousands, except percentages)	Three Months Ended June 30,		2022 vs. 2021	Six Months Ended June 30,		2022 vs. 2021
	2022	2021	% Change	2022	2021	% Change
Total revenue, net	\$ 56,318	\$ 47,463	19 %	\$ 107,011	\$ 89,417	20 %
Cost of goods sold	19,127	17,482	9 %	39,503	32,848	20 %
Gross profit	37,191	29,981	24 %	67,508	56,569	19 %
Gross margin	66.0 %	63.2 %		63.1 %	63.3 %	
Operating expenses:						
Selling and marketing	33,029	25,436	30 %	62,535	48,835	28 %
General and administrative	12,192	9,986	22 %	23,131	20,413	13 %
Research and development	5,649	4,850	16 %	11,499	9,356	23 %
Intangible amortization	856	843	2 %	1,712	1,635	5 %
Total operating expenses	51,726	41,115	26 %	98,877	80,239	23 %
Operating loss	(14,535)	(11,134)	31 %	(31,369)	(23,670)	33 %
Other (expense) income, net	(559)	6,079	(109)%	(557)	5,920	NM
Loss before income taxes	(15,094)	(5,055)	199 %	(31,926)	(17,750)	80 %
(Benefit) provision for income taxes	(1,147)	158	NM	(1,375)	183	(851)%
Net loss	\$ (13,947)	\$ (5,213)	168 %	\$ (30,551)	\$ (17,933)	70 %

NM: not meaningful

Three Months Ended June 30, 2022 Compared to Three Months Ended June 30, 2021

Revenue

Total revenue, net for the three months ended June 30, 2022, was \$56.3 million, an increase of 19% compared to the same period in 2021.

	Three Months Ended June 30,		2022 vs. 2021
	2022	2021	% Change
(In thousands)			
Orthobiologics	\$ 26,983	\$ 23,571	14 %
United States	24,520	21,184	16 %
International	2,463	2,387	3 %
Spinal Implants and Enabling Technologies	\$ 29,335	\$ 23,892	23 %
United States	24,980	21,385	17 %
International	4,355	2,507	74 %
Total revenue, net	\$ 56,318	\$ 47,463	19 %

	Three Months Ended June 30,		2022 vs. 2021
	2022	2021	% Change
(In thousands)			
United States	\$ 49,500	\$ 42,569	16 %
International	6,818	4,894	39 %
Total revenue, net	\$ 56,318	\$ 47,463	19 %

Revenue from orthobiologics sales totaled \$27.0 million for the three months ended June 30, 2022, an increase of \$3.4 million or 14%, from the same period in 2021. Revenue from orthobiologics sales in the United States increased \$3.3 million to \$24.5 million for the three months ended June 30, 2022 compared to the same period in 2021. The increase was primarily driven by higher sales of new and recently launched products. During the three months ended June 30, 2022, sales of products launched within the past five years increased to 43% of U.S. orthobiologics revenue compared to 40% for the same period in 2021. Revenue from orthobiologics sales internationally, which can be volatile from quarter to quarter because of irregular ordering patterns from our stocking distributors, increased \$0.1 million for the three months ended June 30, 2022 compared to the same period in 2021.

Revenue from spinal implants and enabling technology sales was \$29.3 million for the three months ended June 30, 2022, an increase of \$5.4 million or 23%, from the same period in 2021. Revenue from spinal implants and enabling technology sales in the United States increased \$3.6 million to \$25.0 million for the three months ended June 30, 2022 compared to the same period in 2021 and included \$1.1 million of capital sales from recently acquired 7D Surgical. The remaining revenue growth in the current year period was driven by recently launched products, predominantly those products that were alpha or fully launched since 2020, and which have been important catalysts to our ability to take market share in the U.S. spinal implants market. Revenue from spinal implants and enabling technology sales internationally increased \$1.8 million for the three months ended June 30, 2022 as compared to the same period in 2021 and included \$1.1 million of capital sales from recently acquired 7D Surgical. The remaining revenue growth for international was primarily driven by early shipments of a portion of final stocking orders to European distributors.

Cost of Goods Sold and Gross Margin

Cost of goods sold increased \$1.6 million, to \$19.1 million for the three months ended June 30, 2022, compared to the same period in 2021. Gross margin was 66.0% for the three months ended June 30, 2022 and 63.2% for the same period in 2021. The increase in gross margin was due to lower excess and obsolete inventory charges and production efficiencies gained at our Irvine manufacturing facility.

Cost of goods sold included \$1.0 million and \$0.6 million of amortization for product technology intangible assets for the three months ended June 30, 2022 and 2021, respectively.

Selling and Marketing

Selling and marketing expenses increased \$7.6 million to \$33.0 million for the three months ended June 30, 2022 compared to the same period in 2021. The increase was driven primarily by 7D Surgical sales and marketing costs, higher distributor commissions, higher tradeshow and travel costs, as well as higher selling, customer service, and supply chain headcount and related expenses.

General and Administrative

General and administrative expenses increased \$2.2 million to \$12.2 million for the three months ended June 30, 2022, primarily due to the addition of general and administrative expenses attributable to 7D Surgical, higher travel and headcount related expenses, and higher information technology costs, which were partially offset by the legal, accounting and other due diligence costs incurred in the prior year quarter related to the 7D Surgical acquisition.

Research and Development

Research and development expenses increased \$0.8 million to \$5.6 million, or 10% of revenue, for the three months ended June 30, 2022 compared to the same period in 2021 due to research and development headcount and related project expenses attributable to 7D Surgical operations.

Intangible Amortization

Intangible amortization expense, excluding the amounts reported in cost of goods sold for product technology intangible assets was \$0.9 million and \$0.8 million for the three months ended June 30, 2022 and 2021, respectively.

Income Taxes

	Three Months Ended June 30,	
	2022	2021
	(In thousands)	
Loss before income taxes	\$ (15,094)	\$ (5,055)
(Benefit) provision for income taxes	(1,147)	158
Effective tax rate	7.6 %	(3.1)%

We recorded an income tax benefit for the three months ended June 30, 2022 primarily related to the change in deferred tax assets and liabilities in foreign jurisdictions, offset by current activity in state and foreign operations as well as the change in US indefinite lived deferred tax liabilities. We recorded an income tax provision for the three months ended June 30, 2021 primarily related to federal, foreign and state operations.

In addition, for any pretax losses incurred by the consolidated U.S. tax group, we recorded no corresponding tax benefit because we have concluded that it is not more-likely-than-not that the full value of any resulting deferred tax assets will be realized. We will continue to assess our position in future periods to determine if it is appropriate to reduce a portion of our valuation allowance.

The acquisition of 7D Surgical was treated as an asset purchase for US tax purposes and a stock purchase for Canadian tax purposes in 2021. As such, we recorded deferred tax assets and liabilities on its Canadian tax attributes. We continue to use our deferred tax liabilities as a source of income against a portion of our deferred tax assets. A valuation allowance was recorded for the portion of the deferred tax assets that are not more-likely-than-not to be realized. For the three months ended June 30, 2022, a net tax benefit of \$1.0 million was recorded as a result of the 7D Surgical current year losses. This was offset by expenses recorded for indefinite lived intangibles, current foreign and state taxes and prior year foreign tax true-ups.

As part of the Tax Cuts and Jobs Act of 2017 (TCJA), beginning with our 2022 tax year, we are required to capitalize research and development expenses, as defined under Internal Revenue Code section 174. For expenses that are incurred for research and development in the U.S., the amounts will be amortized over 5 years, and expenses that are incurred for research and experimentation outside the U.S. will be amortized over 15 years. This provision is not expected to have a significant impact to the consolidated financial statements.

Other Income

Other income for the three months ended June 30, 2021 primarily consisted of the gain on the forgiveness of debt related to the loan we obtained under the Paycheck Protection Program (PPP) of the Coronavirus Aid, Relief, and Economic Security Act.

Six Months Ended June 30, 2022 Compared to Six Months Ended June 30, 2021

Revenue

Total revenue, net for the six months ended June 30, 2022 was \$107.0 million, an increase of 20% compared to the same period in 2021.

	Six Months Ended June 30,		2022 vs. 2021
	2022	2021	% Change
	(In thousands)		
Orthobiologics	\$ 50,505	\$ 45,059	12 %
United States	45,841	40,244	14 %
International	4,664	4,815	(3)%
Spinal Implants and Enabling Technologies	\$ 56,506	\$ 44,358	27 %
United States	49,152	39,795	24 %
International	7,354	4,563	61 %
Total revenue, net	\$ 107,011	\$ 89,417	20 %
	(In thousands)		
United States	\$ 94,993	\$ 80,039	19 %
International	12,018	9,378	28 %
Total revenue, net	\$ 107,011	\$ 89,417	20 %

Revenue from orthobiologics sales totaled \$50.5 million for the six months ended June 30, 2022, an increase of \$5.4 million, from the same period in 2021. Revenue from orthobiologics sales in the United States increased \$5.6 million for the six months ended June 30, 2022 compared to the same period in 2021. The increase was primarily driven by higher sales of new and recently launched products. During the six months ended June 30, 2022, sales of products launched within the past five years increased to 42% of U.S. orthobiologics revenue compared to 39% for the same period in 2021. Revenue from orthobiologics sales internationally, which can be volatile from quarter to quarter because of irregular ordering patterns from our stocking distributors, decreased \$0.2 million for the three months ended June 30, 2022 compared to the same period in 2021.

Revenue from spinal implants and enabling technology sales totaled \$56.5 million for the six months ended June 30, 2022, an increase of \$12.1 million, from the same period in 2021. Revenue from spinal implants and enabling technology sales in the United States increased \$9.4 million for the six months ended June 30, 2022 compared to the same period in 2021, and included \$2.9 million of capital sales from recently acquired 7D Surgical. The remaining revenue growth in the current year period was driven by recently launched products, predominantly those products that were alpha or fully launched since 2020, and which have been important catalysts to our ability to take market share in the U.S. spinal implants market. Revenue from spinal implants and enabling technology sales internationally increased \$2.8 million for the six months ended June 30, 2022 compared to the same period in 2021, and included \$1.6 million of capital sales from recently acquired 7D Surgical. The remaining revenue growth for international was primarily driven by early shipments of a portion of final stocking orders to European distributors.

Cost of Goods Sold and Gross Margin

Cost of goods sold increased \$6.7 million to \$39.5 million for the six months ended June 30, 2022, compared to the same period in 2021. Gross margin was 63.1% for the six months ended June 30, 2022, compared to 63.3% for the same period in 2021. The decrease in gross margin was due to increased technology-related intangible asset amortization and inventory purchase accounting fair market value adjustments associated with the 7D Surgical acquisition.

Cost of goods sold included \$2.0 million and \$0.9 million of amortization for product technology intangible assets, for the six months ended June 30, 2022 and 2021, respectively.

Selling and Marketing

Selling and marketing expenses increased \$13.7 million to \$62.5 million for the six months ended June 30, 2022 compared to the same period in 2021. The increase was driven by higher commissions due to the revenue increase, 7D Surgical sales and marketing costs, higher sales, marketing, customer service and logistics headcount and related expenses, additional spinal instrument set depreciation and instrument replacement expense due to product launches, and higher freight and third-party logistics expenses.

General and Administrative

General and administrative expenses increased \$2.7 million to \$23.1 million for the six months ended June 30, 2022 compared to the same period in 2020, mostly due to the addition of general and administrative expenses attributable to 7D Surgical operations, and higher travel and headcount related expenses, which were partially offset by the legal, accounting and other due diligence costs incurred in the prior year quarter related to the 7D Surgical acquisition.

Research and Development

Research and development expenses increased \$2.1 million to \$11.5 million, or 11% of revenue, for the six months ended June 30, 2022 compared to the same period in 2021. The increase was due primarily to research and development headcount and related project expenses attributable to 7D Surgical operations.

Intangible Amortization

Intangible amortization expense, excluding the amounts reported in cost of goods sold for product technology intangible assets, was \$1.7 million and \$1.6 million for the six months ended June 30, 2022 and 2021.

Income Taxes

	Six Months Ended June 30,	
	2022	2021
	(In thousands)	
Loss before income taxes	\$ (31,926)	\$ (17,750)
(Benefit) provision for income taxes	(1,375)	183
Effective tax rate	4.3 %	(1.0)%

We recorded an income tax benefit for the six months ended June 30, 2022 primarily related to the change in deferred tax assets and liabilities in foreign jurisdictions, offset by current activity in state and foreign operations as well as the change in US indefinite lived deferred tax liabilities. We recorded an income tax provision for the six months ended June 30, 2021 primarily related to federal, foreign and state operations.

In addition, for any pretax losses incurred by the consolidated U.S. tax group, we recorded no corresponding tax benefit because we have concluded that it is not more-likely-than-not that the full value of any resulting deferred tax assets will be realized. We will continue to assess our position in future periods to determine if it is appropriate to reduce a portion of our valuation allowance.

See “-Three Months Ended June 30, 2022 Compared to Three Months Ended June 30, 2021-Income Taxes,” above, for information related to the acquisition of 7D Surgical and the effect of the TCJA on our taxes.

Other Income

Other income for the six months ended June 30, 2021 primarily consisted of the gain on the forgiveness of debt related to the loan we obtained under the PPP.

Business Factors Affecting the Results of Operations

Special Charges and Gains

We define special charges and gains as expenses or non-operating gains and losses for which the amount or timing can vary significantly from period to period, and for which the amounts are non-cash in nature, or the amounts are not expected to recur at the same magnitude.

We believe that identification of these special charges and gains provides important supplemental information to investors regarding financial and business trends relating to our financial condition and results of operations. Investors may find this information useful in assessing comparability of our operating performance from period to period, against the business model objectives that management has established, and against other companies in our industry. We provide this information to investors so that they can analyze our operating and financial results in the same way that management does and use this information in their assessment of our core business and valuation.

Loss before income taxes includes the following special charges and gains for the three and six months ended June 30, 2022 and 2021:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Special Charges and (Gains):	(In thousands)			
Severance and other costs associated with European sales and marketing reorganization	\$ 127	\$ —	\$ 406	\$ —
Purchase accounting inventory fair market value and adjustments	83	—	208	—
Acquisition and integration-related charges for 7D Surgical	(10)	519	363	1,795
Gain on forgiveness of PPP Loan	—	(6,173)	—	(6,173)
Total Special Charges and (Gains), net	\$ 200	\$ (5,654)	\$ 977	\$ (4,378)

The items reported above are reflected in the consolidated statements of operations as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(In thousands)			
Cost of goods sold	\$ 83	\$ —	\$ 208	\$ —
General and administrative	117	519	769	1,795
Other expense (income), net	—	(6,173)	—	(6,173)
Total Special Charges and (Gains), net	\$ 200	\$ (5,654)	\$ 977	\$ (4,378)

Other Matters

Critical Accounting Policies and the Use of Estimates

Our discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. Preparing these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent liabilities, and the reported amounts of revenues and expenses. Significant estimates affecting amounts reported or disclosed in the consolidated financial statements include revenue recognition, allowances for doubtful accounts receivable and sales return and other credits, net realizable value of inventories, amortization periods for acquired intangible assets, estimates of projected cash flows and discount rates used to value intangible assets and test them for impairment, estimates of projected cash flows and assumptions related to the timing and probability of the product launch dates, discount rates matched to the timing of payments, and probability of success rates used to value contingent consideration liabilities from business combinations, estimates of projected cash flows and depreciation and amortization periods for long-lived assets, valuation of stock-based compensation, computation of taxes and valuation allowances recorded against deferred tax assets, and loss contingencies. These estimates are based on historical experience and on various other assumptions believed to be reasonable under the current circumstances. Actual results could differ from these estimates.

The full extent to which the COVID-19 pandemic or the ongoing conflict in Ukraine will directly or indirectly impact our business, results of operations and financial condition, including sales, expenses, manufacturing, research and development costs and employee-related compensation, will depend on future developments that are highly uncertain, with respect to COVID-19, including as a result of genetic variations of, or other information that may emerge concerning, COVID-19 and the actions taken to contain it or treat COVID-19, and with respect to the ongoing conflict in Ukraine, the impact thereof on the supply chain for titanium, which is used in certain of our products, as well as the broader macroeconomic impact arising from both COVID-19 and the conflict on local, regional, national and international customers and markets. We have made estimates of the impact of COVID-19 within our financial statements and there may be changes to those estimates in future periods. Actual results may differ from these estimates.

[Note 2, "Summary of Significant Accounting Policies"](#) to the Notes to Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this report and included in Part II, Item 8 of the 2021 10-K describe the significant accounting policies and estimates used in the preparation of our condensed consolidated financial statements.

Recently Issued Accounting Pronouncements

Information regarding new accounting pronouncements is included in [Note 2, "Summary of Significant Accounting Policies,"](#) to the Notes to Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this report.

Liquidity and Capital Resources

Overview

As of June 30, 2022, we had cash and cash equivalents totaling approximately \$66.1 million and \$1.2 million of borrowing capacity available under our credit facility. Subsequent to amending the credit facility in July 2022, we had \$7.3 million of current borrowing capacity. We believe that our cash and cash equivalents, and the amount currently available to us under our credit facility, will be sufficient to fund our operations and meet our contractual obligations for at least the next twelve months.

Capital Resources

In addition to cash from operations, our existing credit facility is our primary source of capital. However, we have raised funds in the capital markets in the past and may continue to do so from time-to-time.

Risks and Uncertainties

We have incurred net losses in each year since inception. Our net losses were \$30.6 million and \$17.9 million for the six months ended June 30, 2022 and 2021, respectively. As of June 30, 2022, we had an accumulated deficit of \$304.2 million. We anticipate that our expenses will increase as we continue invest in the expansion of our business, primarily in sales, marketing and research and development; invest in inventory, spinal implant set builds and instrument capital expenditures; and continue

to operate as a public company. Based on our updated operating plans, we believe that we have sufficient resources to fund operations and meet our contractual obligations through the second quarter of 2023 with our existing cash and equivalents and borrowing capacity under our extended and expanded credit facility. However, based on our recurring losses from operations and the expectation of continued operating losses, we will need to raise additional capital to finance our future operations. If we are unable to raise such additional capital, it may raise substantial doubt about our ability to continue as a going concern. Longer term, we expect to raise additional capital through the sale of common stock in public offerings and/or private placements, debt financings, or through other capital sources.

Although we have been successful in raising capital in the past, there is no assurance that we will be successful in obtaining such additional financing on terms acceptable to us, if at all. If we are unable to obtain sufficient funding on acceptable terms, we could be forced to delay, reduce or eliminate some or all of our projected inventory and capital expenditures spend, research and development programs or commercialization activities, which could materially adversely affect our business prospects or our ability to continue operations.

Credit Facility

We have a \$30.0 million credit facility with Wells Fargo Bank, National Association which matures in July 2027. At June 30, 2022, we had \$25.0 million of outstanding borrowings under the credit facility. The borrowing capacity under the credit facility is determined monthly and is based on the amount of our eligible accounts receivable and inventory balances and qualified cash (as defined in the credit facility). Depending on the extent to which our eligible accounts receivable and inventory balances increase, our borrowing capacity could increase or decrease in the future. The credit facility contains various customary affirmative and negative covenants, including prohibiting us from incurring indebtedness without the lender's consent. Under the terms of the credit facility, if our Total Liquidity (as defined in the credit facility) is less than \$5.0 million, we are required to maintain a minimum fixed charge coverage ratio of 1.10 to 1.00 for the applicable measurement period. Our Total Liquidity was \$62.5 million at June 30, 2022, and therefore that financial covenant was not applicable at that time.

Underwritten Offerings

In April 2021, we sold 5,175,000 shares of common stock, resulting in net proceeds of approximately \$94.5 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

Cash Flows

	Six Months Ended June 30,		2022 vs. 2021
	2022	2021	% Change
	(In thousands)		
Net cash used in operating activities	\$ (23,118)	\$ (10,091)	129 %
Net cash used in investing activities	(17,803)	(40,448)	(56)%
Net cash provided by financing activities	24,112	94,583	(75)%
Effect of exchange rate changes on cash and cash equivalents	(219)	(160)	37 %
Net change in cash and cash equivalents	<u>\$ (17,028)</u>	<u>\$ 43,884</u>	<u>(139)%</u>

Net Cash Used in Operating Activities

Net cash used in operating activities for the six months ended June 30, 2022 increased by \$13.0 million compared to the same period in 2021 due to primarily to timing of payments to vendors.

Net Cash Used in Investing Activities

Net cash used in investing activities for the six months ended June 30, 2022 decreased by \$22.6 million compared to the same period in 2021. The decrease was primarily due to the acquisition of 7D Surgical during the 2021 period, offset by a \$5.8 million increase in purchases of property and equipment during the 2022 period compared to the 2021 period.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was \$24.1 million for the six months ended June 30, 2022. It was comprised primarily of \$25.0 million of borrowings under the credit facility and \$1.0 million of proceeds from the issuance of common stock under our ESPP, partially offset by \$1.9 million of cash used for tax payments we made on our employees' behalf for shares we withheld from such employees on the vesting of restricted stock awards to cover statutory tax withholding requirements. Net cash provided by financing activities was \$94.6 million for the six months ended June 30, 2021. It was comprised primarily of net proceeds of approximately \$94.5 million from our April 2021 public offering, \$20.0 million of borrowings under the credit facility, \$1.6 million of proceeds from the exercise of stock options and \$1.0 million proceeds from the issuance of common stock under our ESPP, partially offset by \$20.0 million of repayments of borrowings under the credit facility and \$2.5 million of cash used for tax payments we made on our employees' behalf for shares we withheld from such employees on the vesting of restricted stock awards to cover statutory tax withholding requirements.

Off-Balance Sheet Arrangements

There were no off-balance sheet arrangements as of June 30, 2022 that have, or are reasonably likely to have, a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to our business.

Contractual Obligations and Commitments

There have been no material changes outside the ordinary course of our business to the contractual obligations disclosed in the 2021 10-K.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Risk

Our wholly owned foreign subsidiaries are consolidated into our financial results and are subject to risks typical of an international business including, but not limited to, differing economic conditions, changes in political climate, differing tax structures, other regulations and restrictions and foreign exchange volatility. To date, we have not used international currency derivatives to hedge against our investment in our subsidiaries or their operating results, which are converted into U.S. dollars at period-end and average foreign exchange rates, respectively. However, as we continue to expand our business through acquisitions and organic growth, the sales of our products that are denominated in foreign currencies has increased, as well as the costs associated with our foreign subsidiaries which operate in currencies other than the U.S. dollar. Accordingly, our future results could be materially impacted by changes in these or other factors.

We are exposed to risk from changes in foreign currency exchange rates, particularly with respect to the Euro and the Canadian dollar. For six months ended June 30, 2022 and 2021, sales transacted in foreign currencies accounted for approximately 11% and 10%, respectively of our consolidated net sales. In addition, our exposure to fluctuations in foreign currencies arises because certain of our subsidiaries enter into purchase or sale transactions using a currency other than the subsidiaries' functional currencies. Accordingly, our future results could be materially impacted by changes in foreign exchange rates or other factors. Currently, we do not use financial instruments to manage the impact of currency fluctuations on our business through hedging transactions.

Credit Risk

Financial instruments, which potentially subject us to concentrations of credit risk, are primarily cash and cash equivalents, and accounts receivable.

We place our cash and cash equivalents with highly-rated financial institutions and limit the amount of credit exposure to any one entity. We believe we do not have any significant credit risk on our cash and cash equivalents.

Our concentrations of credit risks with respect to trade accounts receivable is limited due to the large number of customers and their dispersion across a number of geographic areas and due to frequent monitoring of the creditworthiness of the customers to whom credit is granted in the normal course of business. Our products are sold on an uncollateralized basis and on credit terms based upon a credit risk assessment of each customer. A portion of our trade receivables to customers outside the United States includes sales to foreign stocking distributors, who then sell to government owned or supported healthcare systems.

None of our customers accounted for 10% or more of the net sales or accounts receivable for any of the periods presented.

Interest Rate Risk

In the normal course of business, we are exposed to market risk from changes in interest rates that could affect our results of operations and financial condition. We manage our exposure to interest rate risks through our regular operations and financing activities.

We invest our cash and cash equivalents primarily in highly-rated corporate commercial paper and bank deposits. Currently, we do not use derivative financial instruments in our investment portfolio.

[Note 3, “Debt and Interest”](#) to the Notes to Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this report details our interest rates under our credit facility. As of June 30, 2022, we had \$25.0 million outstanding under our credit facility. Based upon our overall interest rate exposure as of June 30, 2021, a change of 10 percent in interest rates, assuming the principal amount outstanding remains constant, would have impacted our earnings and cash flow for the six months ended June 30, 2022 by \$0.8 million. This analysis does not consider the effect of the change in the level of overall economic activity that could exist in such an environment.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Based on an evaluation under the supervision and with the participation of our management, our Chief Executive Officer and Chief Operating and Financial Officer have concluded that our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act were effective as of the end of the period covered by this report to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Operating and Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting identified in connection with the evaluation required by Rules 13a-15(d) and 15d-15(d) under the Exchange Act that occurred during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations of Internal Controls

Our management, including our Chief Executive Officer and Chief Operating and Financial Officer, does not expect that our disclosure controls and procedures or our internal controls 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 objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the 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 a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we are subject to legal proceedings and claims in the ordinary course of business. While management presently believes that the ultimate outcome of these proceedings, individually and in the aggregate, will not materially harm our financial position, cash flows, or overall trends in results of operations, in part because of the insurance policies we maintain that cover certain of these claims, legal proceedings are subject to inherent uncertainties, and unfavorable rulings or outcomes could occur that have individually or in aggregate, a material adverse effect on our business, financial condition or operating results. We are not currently subject to any pending material litigation, other than ordinary routine litigation incidental to our business, as described above.

ITEM 1A. RISK FACTORS

See "Item 1A. Risk Factors" in Part I of the 2021 10-K for a detailed discussion of the risks we face. The risk factors described in the 2021 10-K have not materially changed except for the addition of the following risk factor.

The ongoing conflict between Russia and Ukraine, and the global response to it, may adversely affect our business and results of operations.

The ongoing conflict between Russia and Ukraine has resulted in the implementation of sanctions by the United States and other governments against Russia and has caused significant volatility and disruptions to the global markets. It is not possible to predict the short- or long-term implications of this conflict, which could include but are not limited to further sanctions, uncertainty about economic and political stability, increases in inflation rate and energy prices, supply chain challenges and adverse effects on currency exchange rates and financial markets. In addition, the United States government reported that United States sanctions against Russia in response to the conflict could lead to an increased threat of cyberattacks against United States companies. These increased threats could pose risks to the security of our information technology systems and networks, as well as the confidentiality, availability and integrity of our data. A significant escalation or further expansion of the conflict's current scope or related disruptions to the global markets could have a material adverse effect on our results of operations.

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

Recent Sales of Unregistered Securities

During the second quarter of 2022, we did not issue any securities that were not registered under the Securities Act of 1933, as amended (the Securities Act).

Purchases of Equity Securities by the Issuer

The table below is a summary of purchases of our common stock we made during the quarter covered by this report. Other than as indicated in the table below, no such purchases were made in any other month during the quarter. We do not have any publicly announced repurchase plans or programs.

Period	Total Number of Shares Purchased (1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet be Purchased Under the Plans or Programs
April 1 - April 30	3,688	\$ 12.19	—	—
May 1 - May 31	1,111	\$ 9.63	—	—
June 1 - June 30	30,173	\$ 7.63	—	—

(1) These shares were surrendered to the Company to satisfy tax withholdings obligations in connection with the vesting of restricted stock awards.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
3.1*	Amended and Restated Certificate of Incorporation, as amended to date
10.1*	Standard Industrial/Commercial Single-Tenant Lease – Net, dated for reference purposes only June 1, 2022, between Isotis Orthobiologics, Inc. and Monarch RRC Properties, LP
31.1*	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification of Principal Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2**	Certification of Principal Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*†	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*†	Inline XBRL Taxonomy Extension Schema Document
101.CAL*†	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*†	Inline XBRL Definition Linkbase Document
101.LAB*†	Inline XBRL Taxonomy Extension Labels Linkbase Document
101.PRE*†	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within Exhibit 101.INS Inline XBRL document)

* Filed herewith

** These certifications are being furnished solely to accompany this report pursuant to 18 U.S.C. 1350, and are not being 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 registrant, whether made before or after the date hereof, regardless of any general incorporation by reference language in such filing.

† The financial information of SeaSpine Holdings Corporation Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 filed on August 4, 2022 formatted in iXBRL (Inline Extensible Business Reporting Language): (i) the Condensed Consolidated Statements of Operations, (ii) Condensed Consolidated Statements of Comprehensive Loss, (iii) the Condensed Consolidated Balance Sheets, (iv) Parenthetical Data to the Condensed Consolidated Balance Sheets, (v) the Condensed Consolidated Statements of Cash Flows, (vi) the Condensed Consolidated Statements of Equity, and (vii) Notes to Unaudited Condensed Consolidated Financial Statements, is furnished electronically herewith.

SIGNATURES

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

SEASPINE HOLDINGS CORPORATION

Date: August 4, 2022

/s/ Keith C. Valentine

Keith C. Valentine
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 4, 2022

/s/ John J. Bostjancic

John J. Bostjancic
Chief Operating and Financial Officer
(Principal Financial Officer)

**CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SEASPINE HOLDINGS CORPORATION**

SeaSpine Holdings Corporation (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), hereby certifies as follows:

1. This Certificate of Amendment (this "Certificate of Amendment") amends the provisions of the Corporation's Amended and Restated Certificate of Incorporation filed with the Secretary of State on June 29, 2015, as amended by the Certificate of Amendment thereto filed with the Secretary of State on June 2, 2021 (as amended to date, the "Certificate of Incorporation").
2. Article IV of the Certificate of Incorporation is hereby amended and restated in its entirety as follows:

ARTICLE IV.

The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of capital stock which the Corporation shall have authority to issue is one hundred thirty five million (135,000,000). The total number of shares of Common Stock that the Corporation is authorized to issue is one hundred twenty million (120,000,000), having a par value of \$0.01 per share, and the total number of shares of Preferred Stock that the corporation is authorized to issue is fifteen million (15,000,000), having a par value of \$0.01 per share.

3. This Certificate of Amendment was duly adopted in accordance with the provisions of Section 242 of the DGCL.
4. All other provisions of the Certificate of Incorporation shall remain in full force and effect.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer on this this 1st day of June, 2022.

SEASPINE HOLDINGS CORPORATION

By: /s/ Patrick L. Keran

Name: Patrick L. Keran

Title: Senior Vice President, General Counsel and Secretary

**CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SEASPINE HOLDINGS CORPORATION**

SeaSpine Holdings Corporation (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware, hereby certifies as follows:

1. This Certificate of Amendment (the "Certificate of Amendment") amends the provisions of the Corporation's Amended and Restated Certificate of Incorporation filed with the Secretary of State on June 29, 2015 (the "Certificate of Incorporation").
2. ARTICLE IX of the Certificate of Incorporation is hereby amended and restated in its entirety as follows:

ARTICLE IX.

- A. Unless the Corporation consents in writing to the selection of an alternate forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have, or declines to accept, jurisdiction, another state court or a federal court located within the State of Delaware) shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer or employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any director, officer or employee of the Corporation arising pursuant to any provision of the DGCL or the Certificate of Incorporation or the Bylaws of the Corporation, (iv) any action to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws of the Corporation, or (v) any action asserting a claim against the Corporation or any director, officer or employee of the Corporation governed by the internal affairs doctrine. This Paragraph A shall not apply to claims or causes of action brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended.
- B. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.
- C. To the fullest extent permitted by law, any person purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX. If any provision or provisions of this Article IX shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article IX (including, without limitation, each portion of any sentence of this Article IX containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

- D. The existence of any consent in writing by the Corporation to the selection of an alternate forum either in accordance with Paragraph A or B of this Article IX, shall not act as a waiver of the Corporation's consent right as set forth in this Article IX with respect to any current or future actions or claims.
 - E. The failure to enforce any provision or provisions of this Article IX would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce such provision or provisions.
3. This amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.
 4. All other provisions of the Certificate of Incorporation shall remain in full force and effect.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer on this 2nd day of June, 2021.

SEASPINE HOLDINGS CORPORATION

By: /s/ Patrick L. Keran
Name: Patrick L. Keran
Title: Senior Vice President, General Counsel and Secretary

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SEASPINE HOLDINGS CORPORATION**

SeaSpine Holdings Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the “DGCL”), does hereby certify that:

1. The Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on February 12, 2015.
2. The terms and provisions of this Amended and Restated Certificate of Incorporation have been fully approved by unanimous written consent of the Board of Directors of the Corporation and the Stockholders, pursuant to Subsections 141(f), 228(a), 242 and 245 of the DGCL. The text of the Amended and Restated Certificate of Incorporation reads in its entirety as follows:

ARTICLE I.

The name of the Corporation is SeaSpine Holdings Corporation (the “Corporation”).

ARTICLE II.

The address of the Corporation’s registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware, 19808, and the name of its registered agent at such address is Corporation Service Company.

ARTICLE III.

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL, as it now exists or may hereafter be amended and supplemented.

ARTICLE IV.

The Corporation is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares of capital stock which the Corporation shall have authority to issue is seventy-five million (75,000,000). The total number of shares of Common Stock that the Corporation is authorized to issue is sixty million (60,000,000), having a par value of \$0.01 per share, and the total number of shares of Preferred Stock that the corporation is authorized to issue is fifteen million (15,000,000), having a par value of \$0.01 per share.

ARTICLE V.

The designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation are as follows:

A. COMMON STOCK

1. General. The voting, dividend, liquidation, conversion and stock split 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 of the Corporation (the “Board of Directors”) upon any issuance of the Preferred Stock of any series.

2. Voting. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held by such holder. Each holder of Common Stock shall be entitled to notice of any stockholders’ meeting in accordance with the Bylaws of the Corporation (as in effect at the time in question) (the “Bylaws”) and applicable law on all matters put to a vote of the stockholders of the Corporation.

Subject to the rights of any holders of any shares of Preferred Stock which may from time to time come into existence and be outstanding, 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 stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

3. Dividends. Subject to the rights of any holders of any shares of Preferred Stock which may from time to time come into existence and be outstanding, the holders of Common Stock shall be entitled to the payment of dividends when, as and if declared by the Board of Directors in accordance with applicable law and to receive other distributions from the Corporation. Any dividends declared by the Board of Directors to the holders of the then outstanding Common Stock shall be paid to the holders thereof pro rata in accordance with the number of shares of Common Stock held by each such holder as of the record date of such dividend.
4. Liquidation. Subject to the rights of any holders of any shares of Preferred Stock which may from time to time come into existence and be outstanding, in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation’s stockholders shall be distributed among the holders of the then outstanding Common Stock pro rata in accordance with the number of shares of Common Stock held by each such holder.

B. PREFERRED STOCK

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors as hereinafter provided. Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designations relating thereto in accordance with the DGCL, to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the fullest extent now or hereafter permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law. 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 stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

C. STOCK SPLIT

Upon the filing and effectiveness of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time"), each then-outstanding share of Common Stock ("Old Common Stock") shall be automatically converted into 109,554.13 validly issued, fully paid and non-assessable shares of Common Stock without any further action by the Corporation or the holder of such shares of Old Common Stock (the "Common Stock Split"). Each stock certificate representing shares of Old Common Stock shall thereafter represent a number of shares of Common Stock equal to the same number of shares of Old Common Stock previously represented by such stock certificate, multiplied by 109,554.13 and rounded down to the nearest whole number; provided, however, that each person holding of record a stock certificate or certificates that represented shares of Old Common Stock shall receive, upon surrender of such certificate or certificates, a new certificate or certificates evidencing and representing the number of whole shares of Common Stock to which such person is entitled as a result of the Common Stock Split based on the aggregate number of shares of Old Common Stock held by such person. No fractional interest in a share of Common Stock shall be deliverable upon the Common Stock Split. Stockholders who otherwise would have been entitled to receive any fractional interest in a share of Common Stock, in lieu of receipt of such fractional interest, shall be entitled to receive from the Corporation an amount in cash equal to the fair value of such fractional interest as of the Effective Time. All share numbers, dollar amounts and other provisions set forth herein give effect to the Common Stock Split.

ARTICLE VI.

For the management of the business and for the conduct of the affairs of the Corporation it is further provided that:

A. The directors of the Corporation shall be classified with respect to the time for which they severally hold office into three classes, as nearly equal in number as possible, designated as Class I, Class II and Class III. The initial Class I directors shall serve for a term expiring at the first annual meeting of the stockholders following the date hereof, the initial Class II directors shall serve for a term expiring at the second annual meeting of the stockholders following the date hereof and the initial Class III directors shall serve for a term expiring at the third annual meeting of stockholders following the date hereof, with directors of each class to hold office until their successors are duly elected and qualified; provided that the term of each director shall continue until the election and qualification of a successor and be subject to such director's earlier death, resignation or removal. At each annual meeting of stockholders of the Corporation beginning with the first annual meeting of stockholders following the date hereof, subject to any rights of the holders of shares of any class or series of Preferred Stock, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election; provided that the term of each director shall continue until the election and qualification of a successor and be subject to such director's earlier death, resignation or removal. In the case of any increase or decrease, from time to time, in the authorized number of directors of the Corporation, the number of directors in each class shall be apportioned as nearly equal as possible. No decrease in the number of directors shall shorten the term of any incumbent director. The Board is authorized to assign members of the Board already in office to Class I, Class II and Class III.

B. The management of the business and the conduct of the affairs of the Corporation shall be vested in the Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted from time to time by the Board of Directors.

C. Subject to the special rights of the holders of one or more series of Preferred Stock to elect directors, the Board of Directors or any individual director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote at an election of directors (the "Voting Stock").

D. Subject to the special rights of the holders of one or more series of Preferred Stock to elect directors, any vacancies on the Board of Directors resulting from death, resignation, disqualification, retirement, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders, and except as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum, or by a sole remaining director, and shall not be filled by the stockholders. Any director appointed in accordance with the preceding sentence shall hold office until such director's successor shall have been elected and qualified or until his or her earlier death, resignation, disqualification, retirement or removal.

E. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal Bylaws of the Corporation. In addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Certificate of Incorporation (including any Certificate of Designation in respect of one or more series of Preferred Stock), the adoption, amendment or repeal of the Bylaws of the Corporation by the stockholders of the Corporation shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the Voting Stock, voting together as a single class.

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

ARTICLE VII.

A. Subject to the rights of the holders of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders of the Corporation, and the taking of any action by written consent of the stockholders in lieu of a meeting of the stockholders is specifically denied.

B. Special meetings of the stockholders of the Corporation may be called, for any purpose or purposes, at any time by the Board of Directors, the Chairperson of the Board of Directors, the Chief Executive Officer or President (in the absence of a Chief Executive Officer), but such special meetings may not be called by stockholders or any other person or persons.

C. Advance notice of stockholder nominations for the election of directors and of other business proposed to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

ARTICLE VIII.

A. To the maximum extent permitted by the DGCL, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

B. The Corporation, to the fullest extent permitted by law, may indemnify and advance expenses to any person made or threatened to be made a party to an action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she, or his or her testator or intestate, is or was a director, officer, employee or agent of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation.

C. Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of the Corporation's certificate of incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII in respect of any matter occurring, or any action or proceeding accruing or arising (or that, but for this Article VIII, would accrue or arise) prior to such amendment or repeal or adoption of an inconsistent provision.

ARTICLE IX.

Unless the Corporation consents in writing to the selection of an alternate forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer or employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any director, officer or employee of the Corporation arising pursuant to any provision of the DGCL or the Certificate of Incorporation or the Bylaws of the Corporation, (iv) any action to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws of the Corporation, or (v) any action asserting a claim against the Corporation or any director, officer or employee of the Corporation governed by the internal affairs doctrine. To the fullest extent permitted by law, any person purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX. If any provision or provisions of this Article IX shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article IX (including, without limitation, each portion of any sentence of this Article IX containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

ARTICLE X.

Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of

any particular class or series of the Voting Stock required by law or by this Certificate of Incorporation (including any Certificate of Designation in respect of one or more series of Preferred Stock), the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the Voting Stock, voting together as a single class, shall be required to alter, amend or repeal Articles VI, VII, VIII, IX and X.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed by its duly authorized officer on this 29th day of June, 2015.

SEASPINE HOLDINGS CORPORATION

By: /s/ Keith Valentine
Name: Keith Valentine
Title: Chief Executive Officer

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET

1. Basic Provisions ("Basic Provisions").

1.1 Parties. This Lease ("Lease"), dated for reference purposes only June 1, 2022, is made by and between Monarch RRC Properties, LP, a California limited partnership ("Lessor") and Isotis Orthobiologics, Inc., a Washington corporation ("Lessee"), collectively the "Parties," or individually a "Party").

1.2 Premises: That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as 2 Goodyear, Irvine, CA 92618 ("Premises"). The Premises are located in the County of Orange, and are generally described as an industrial and office building of approximately 70,000 square feet on a 224,770 square foot parcel. (See also Paragraph 2)

1.3 Term: Ten (10) years and Zero (0) months ("Original Term") commencing May 1, 2023 ("Commencement Date") and ending April 30, 2033 ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession. None.

1.5 Base Rent: \$94,500.00 per month ("Base Rent"), payable on the first day of each month commencing May 1, 2023. (See also Paragraph 4)

[X] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.01.

1.6 Base Rent due on or before May 1, 2023 and Other Monies Paid Upon Execution:

(a) Base Rent: \$94,500.00 for the period May 1, 2023 through May 23, 2023 due on or before May 1, 2023.

(b) Security Deposit: \$130,000 ("Security Deposit"). (See also Paragraph 5 and Paragraph 50.02)

(c) Association Fees: NA for the period

(d) Other: NA

(e) Total Due Upon Execution of this Lease: \$86,462.00 (see also Paragraph 50.02)/

1.7 Agreed Use: Office, manufacturing and warehouse. (See also Paragraph 6)

1.8 Insuring Party. Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.9 Real Estate Brokers. None.

1.10 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by _____. (See also Paragraph 37)

1.11 Attachments. Attached hereto are the following, all of which constitute part of this Lease:

[X] an Addendum consisting of Paragraphs 50.01 through 50.07;

[] a plot plan depicting the Premises;

a current set of the Rules and Regulations;

a Work Letter;

other (specify): Option to Extend (Paragraph 51) and Arbitration Agreement (Paragraph 52).

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. Note: Lessee is advised to verify the actual size prior to executing this Lease.

2.2 Condition. None.

2.3 Compliance. None.

(a) Subject to Paragraph 2.3 (c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) Immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to Inspect and measure the Premises, (b) It has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as

the same relate to Its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor In Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. None.

3.3 Delay in Possession. None.

3.4 Lessee Compliance. None.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any Invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or places as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other Instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

4.3 Association Fees. In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Salary monies shall be paid at the same time and in the same manner as the Base Rent.

5. Security Deposit.

Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and / or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material

change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. **THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.**

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (1) potentially injurious to the public health, safety or welfare, the environment or the Premises, (i) regulated or monitored by any governmental authority, or (ii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) Duty to inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) Lessee Remediation. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or

materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) Lessee Indemnification. Lessee shall Indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) Lessor Indemnification. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises, prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees, Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) Investigations and Remediations. Lessor shall retain the responsibility and pay for any Investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's Investigative and remedial responsibilities.

(g) Lessor Termination Option. If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the Investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire Insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide copies of all relevant material safety data sheets

(MSDS) to Lessor within 10 days of the receipt of a written request therefor. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor. Lessee acknowledges that any failure on its part to allow such Inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations. Lessee agrees to maintain the Premises as set forth in paragraph 7 of the Lease, however, Lessor agrees to initiate maintenance on some of the maintenance items referred herein and described in paragraph 50.04 all which are subject to reimbursement by Lessee.

(a) In General. Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (Interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all Improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) Service Contracts. Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (1) HVAC equipment, (2) boiler, and pressure vessels, (3) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and Irrigation systems, (v) roof covering and drains, and (vi) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) Failure to Perform. If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) Replacement. Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described In Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is Intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the Intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) Definitions. The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) Consent. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not Involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or Improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) Liens; Bonds. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any Interest therein. Lessee shall give Lessor not less than 10 days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate In any such action, Lessee shall pay Lessor's attorneys' fees and costs,

7.4 Ownership; Removal; Surrender; and Restoration.

(a) Ownership. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise Instructed per paragraph 7.4 (b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) Removal. By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) Surrender; Restoration. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the Improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted, "Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment For Insurance, Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8 2(b) in excess of \$2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

8.2 Liability Insurance.

(a) Carried by Lessee, Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional Insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such Insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-Insured exclusions as between Insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's Indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its Insurance shall be primary to and not contributory with any similar Insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) Carried by Lessor. Lessor shall maintain liability insurance as described in Paragraph 8.2(a). In addition to, and not in lieu of the insurance required to be maintained by Lessee. Lessor shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value. Also see paragraph 50.04

(a) Building and Improvements. The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender Insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) Rental Value. The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with less payable to Lessor and any lender, Insuring the loss of the full Rent for one year with an extended period of Indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision In lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss. (c) Adjacent Premises. If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any Increase in the premiums for the property Insurance of such building or buildings if said Increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business interruption Insurance; Worker's Compensation Insurance.

(a) Property Damage. Lessee shall obtain and maintain Insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility installations.

(b) Business Interruption. Lessee shall obtain and maintain loss of income and extra expense Insurance in amounts as will reimburse Lessee for direct or Indirect loss of earnings attributable to all perils commonly Insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) Worker's Compensation Insurance. Lessee shall obtain and maintain Worker's Compensation insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 85.

(d) No Representation of Adequate Coverage. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII as set forth in the most current Issue of "Best's Insurance Guide", or such other rating as may be required by a lender. Lessee shall not do or permit to be done anything which invalidates the required Insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required Insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability Insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this

Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be Insured against herein. The effect of such releases and waivers is not limited by the amount of Insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the Insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, lens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or Invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee In such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and Its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person In or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to lessee's business or for any loss of income or profit therefrom. Instead, it is Intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the Insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to Incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that lessee does not maintain the required Insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required Insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase In Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such Increase In Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the Insurance specified in this Lease. Pagination

9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), respective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 Partial Damage Insured Loss. If a Premises Partial Damage that Is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect, provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required Insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the Improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage. In insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 20 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (1) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (6) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessor (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (1) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 50 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such, damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lesson, except as provided In Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. Lessee duly exercises such option during such period and provides Lessor with funds (or adequate

assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) Abatement. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Valve insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair, or restoration except as provided herein.

(b) Remedies. Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate on the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 621g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes. Also see paragraph 50.04

10.1 Definition. As used herein, the term "Real Property Taxes shall include any form of assessment; real estate, general, special, ordinary extraordinary or rental levy or tax (other than inheritance, personal income or estate taxes); Improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or Indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 Payment of Taxes. In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax in due least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's ability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations and in the assessor's work sheets or such other information as may be reasonably available.

10.4 Personal Property Taxes. Lessee shall pay prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor if any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services

11.1 Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay reasonable proportion, to be determined by Lessor of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions

11.2 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's Interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold Its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, Increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach, and rental adjustment, (ii) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (iii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be Increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is In Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise Its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional Information and/or documentation as may be reasonably requested. (See also Paragraph 35)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessor may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to Inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise

of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default, Breach; Remedies.

13.1 Default Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of Insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. **THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.**

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or Information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if Show all the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach If Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's Interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this

Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at Its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, Insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an Invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's Interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, Inducement or consideration for Lessee's entering into this Lease, all of which concessions

are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive Installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear Interest from the 31st day after it was due. The interest ("interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) Notice of Breach. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) Performance by Lessee on Behalf of Lessor. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or are sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable

therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation

15. Brokerage Fees. None.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by AIR CRE, plus such additional Information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) If Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such Increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person [by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt Sign requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent**. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: **To the Lessor**: A fiduciary duty of utmost care, Integrity, honesty, and loyalty in dealings with the Lessor. **To the Lessee and the Lessor**: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent**. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee**: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor**: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee**. A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, Integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above. In subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover**. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies**. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement**. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the

convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (In this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 50 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding Involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses Incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently

commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, Improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises, All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination: Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate In the Premises, provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) Incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, Including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty In the form most recently published by AIR CRE, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 Default it shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any Option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first

refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no Intention of thereafter assigning or subletting.

39.3 Multiple Options. in the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) In the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period Immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee falls to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are a part of a group of buildings controlled by Lessor Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, lessor, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not Initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to

execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS LEASE.

49. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Leases is attached to this Lease.

50. Accessibility; Americans with Disabilities Act

(a) The Premises:

have not undergone an Inspection by a Certified Access Specialist (CAS), Note: A Certified Access Specialist (CAS) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp Inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp Inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp Inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease. (b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

By LESSOR:
Monarch RRC Properties, LP, a California limited
partnership

By: /s/ Robert Crane
Title: President

By LESSEE:
IsoTis Orthobiologics, Inc., a Washington corporation

By: /s/ Tyler Lipschultz
Title: SVP, Orthobiologics

Addendum to that Standard Industrial/Commercial Single -Tenant Lease-NET

dated June 1, 2022

By and Between

Monarch RRC Properties, LP, a California limited partnership ("Lessor") and

IsoTis OrthoBiologics, Inc. a Washington corporation ("Lessee")

for that certain real property located at 2 Goodyear, Irvine, CA 92618

50.01 **Base Rent:** The monthly Base Rent shall be paid by Lessee as follows:

Period	Number of Months	Monthly Base Rent	Annual Base Rent
May 1, 2023 through April 30, 2024	12	\$ 94,500.00	\$ 1,134,000.00
May 1, 2024 through April 30, 2025	12	\$ 97,807.50	\$ 1,173,690.00
May 1, 2025 through April 30, 2026	12	\$ 101,230.76	\$ 1,214,769.15
May 1, 2026 through April 30, 2027	12	\$ 104,773.84	\$ 1,257,286.07
May 1, 2027 through April 30, 2028	12	\$ 108,440.92	\$ 1,301,291.08
May 1, 2028 through April 30, 2029	12	\$ 112,236.36	\$ 1,346,836.27
May 1, 2029 through April 30, 2030	12	\$ 116,164.63	\$ 1,393,975.54
May 1, 2030 through April 30, 2031	12	\$ 120,230.39	\$ 1,442,764.68
May 1, 2031 through April 30, 2032	12	\$ 124,438.45	\$ 1,493,261.45
May 1, 2032 through April 30, 2033	12	\$ 128,793.80	\$ 1,545,525.60
		Total:	\$ 13,303,399.84

50.02 Security Deposit: The Security Deposit on file with Lessor as of June 1, 2022 is \$43,538.00. Lessee agrees to Increase the Security Deposit to \$130,000.00 with the difference being \$86,462.00. Upon execution of the Lease, Lessee will provide Lessor with the difference of \$86,462.00.

50.03 Tenant Improvement Allowance: Lessor will provide Lessee with a tenant improvement allowance of Sixty Thousand Dollars (\$60,000.00) at the end of each twelve (12) month period during the term of the Lease as follows:

Period	Amount of Allowance
May 1, 2023 through April 30, 2024	\$ 60,000.00
May 1, 2024 through April 30, 2025	\$ 60,000.00
May 1, 2025 through April 30, 2026	\$ 60,000.00
May 1, 2026 through April 30, 2027	\$ 60,000.00
May 1, 2027 through April 30, 2028	\$ 60,000.00
May 1, 2028 through April 30, 2029	\$ 60,000.00
May 1, 2029 through April 30, 2030	\$ 60,000.00
May 1, 2030 through April 30, 2031	\$ 60,000.00
May 1, 2031 through April 30, 2032	\$ 60,000.00
May 1, 2032 through April 30, 2033	\$ 60,000.00
Total:	\$ 600,000.00

50.04 Property Taxes, Property Insurance, and Maintenance Reimbursement: Lessor agrees to pay for property taxes, property insurance, and maintenance subject to reimbursement from Lessee. Lessee shall reimburse Lessor Twenty-Three Thousand Dollars (\$23,000.00) per month for reimbursement of property taxes, property insurance, and maintenance, which includes, but is not limited to the following:

- Property taxes
- Property insurance including earthquake
- Licenses and permits
- Irvine CAM fee
- Utilities serving the common area
- Fire sprinkler maintenance and telephone line for same
- Landscape and Irrigation
- Landscape seasonal planting
- Tree trimming
- Roof maintenance and repair
- Roof screen maintenance
- Heating, ventilation, air conditioning ("HVAC") maintenance and repairs
- Parking lot slurry, seal, and striping .
- Parking lot sweeping
- Window glazing bead and seal
- Property management fee (2% of Base Rent and CAM collection)
- Miscellaneous repairs

The \$23,000.00 per month or \$276,000.00 annual CAM reimbursement will be reconciled at the end of each year. Lessee to pay actual if greater than \$276,000.00 or receive a credit if less than \$276,000.00. In addition to reimbursement, Lessee shall be responsible for all other maintenance as set forth in the lease at Lessee's sole cost and expense.

50.05 Reserve: There is a current reserve on file with Lessor in the amount of \$97,830.00. In addition to the current reserve, Lessee agrees to pay Lessor \$83,475.00 per year to fund the reserve account. The reserve account will cover HVAC unit replacement as needed, roof screen replacement, roof replacement, paving and parking lot replacement and exterior painting of the building. Lessee agrees to pay the annual \$83,475.00 estimated reserve to Lessor on a prorated monthly basis. Commencing May 1, 2023, Lessee agrees to pay \$6,957.00 per month continuing until the expiration of the Lease. The annual reserve is an estimate and subject to change. The reserve will be adjusted from time-to-time so that the reserve is adequate to meet the cost of the aforementioned replacement items.

50.06 Drainage: Lessor agrees to undertake and pay for drainage and sump pumps. The projected cost is \$350,000.00. Lessee is not obligated to pay any cost in this regard.

50.07 Electronic Signatures: Electronic signatures by PDF via email shall be treated as originals for all purposes, including, without limitation, the electronic signature system known as DocuSign.

AGREED AND ACCEPTED
Monarch RRC Properties, LP (Lessor)

By: /s/Robert Crane Date: 6/1/22

AGREED AND ACCEPTED
IsoTis Orthobiologics, Inc., a Washington corporation

By: /s/ Tyler Lipschultz Date: 6/7/22

OPTION(S) TO EXTEND

STANDARD LEASE ADDENDUM

Dated: June 1, 2022

By and Between

Lessor: Monarch RRC Properties, LP, a California limited partnership I

Lessee: IsoTis OrthoBiologics, Inc., a Washington corporation

Property Address: 2 Goodyear, Irvine, CA 92618 (street address, city, state, zip)

Paragraph: 51

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this lease for two (2) additional thirty six (36) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least twelve (12) but not more than eighteen (18) months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) Indicated below: (Check Method(s) to be Used and Fill in Appropriately)

1. None.

ii. Market Rental Value Adjustment(s) (MRV)

1. On May 1, 2033 (First Option to Extend) and May 1, 2036 (Second Option to Extend) the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, In writing, to arbitration In accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an Independent third party appraiser or broker ("Consultant" check one) of their choice to act as an arbitrator [Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie, the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not be limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1. the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
2. The first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further adjustments.

iii. None

iv. None

B. Notice:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the lease.

C. Broker's Fee

None.

ARBITRATION AGREEMENT
STANDARD LEASE ADDENDUM

Dated: June 1, 2022

By and Between

Lessor: Monarch RRC Properties, LP, a California limited partnership

Lessee: IsoTis OrthoBiologics, Inc., a Washington corporation

Property Address: 2 Goodyear, Irvine, CA 92618 (street address, city, state, zip)

Paragraph: 52

A. ARBITRATION OF DISPUTES:

Except as provided in Paragraph 8 below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's Interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B. DISPUTES EXCLUDED FROM ARBITRATION: The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1, Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease. C. APPOINTMENT OF AN ARBITRATOR: All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: a retired Judge of the applicable court of jurisdiction (e.. the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"), the American Arbitration Association ("AAA") under its commercial arbitration rules, or as may be otherwise mutually agreed by lessor and Lessee (the "Arbitrator"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: http://www.adr.org/aaa/ShowProperty?nodeid=/UCM/ADRSTG_003867). Such arbitration shall be Initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining Judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party Initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

D. ARBITRATION PROCEDURE:

1. PRE-HEARING ACTIONS. The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (eg, In California Code of Civil Procedure Section 1282.6).

2. THE DECISION. The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (eg, in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator In his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared In bad faith. Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with Interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

**SECOND ADDENDUM TO
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET**

This is a Second Addendum ("Second Addendum") to that certain Standard Industrial/Commercial Single-Tenant Lease-Net originally dated June 1, 2022 by and between Monarch RRC Properties, LP, a California limited partnership ("Lessor"), and IsoTis OrthoBiologics, Inc., a Washington corporation ("Lessee"), along with the attached Option to Extend, Arbitration Agreement, and Addendum (the "First Addendum"), all of which are collectively referred to as the "Lease."

The Lease is hereby modified and amended by the modification and addition of the following Paragraphs:

50.04 Property Taxes, Property Insurance, and Maintenance Reimbursement. Paragraph 50.04 in the First Addendum is hereby deleted and replaced with the following:

50.04 CAM Reimbursement Expenses. Subject to reimbursement by Lessee as provided below, Lessor shall pay the following expenses to be paid by Lessee under the Lease ("CAM Reimbursement Expenses"):

- Real Property Taxes.
- Property Insurance for Building, Improvements and Rental Value, including earthquake insurance.
- Licenses and permits.
- Irvine Co./Bake association fee.
- Common area utilities.
- Fire sprinkler maintenance and telephone line for same.
- Landscape and irrigation.
- Landscape seasonal planting.
- Tree trimming.
- Roof maintenance and repair.
- Roof screen maintenance.
- HV AC maintenance and repairs.
- Parking lot slurry, seal, and striping.
- Parking lot sweeping.
- Window glazing bead and seal.
- Property management fee (2% of Base Rent and CAM Reimbursement Expenses described in this Section 50.04).
- Miscellaneous repairs.

(a) Commencing on the Start Date, Lessee shall reimburse Lessor for CAM Reimbursement Expenses in an estimated amount equal to one-twelfth of the actual CAM Reimbursement Expenses incurred for the previous calendar year. Such estimated monthly reimbursement amount shall be paid each month along with Base Rent commencing on May 1 of each calendar year.

(b) The actual amount of CAM Reimbursement Expenses for each calendar year shall be the basis for the estimated CAM Reimbursement Expenses to be paid to Lessor by Lessee for the Lease year commencing on May 1 of the next calendar year. During the month of January of each calendar year, Lessor shall determine the actual CAM Reimbursement Expenses paid by Lessor for the previous calendar year and Lessor shall provide Lessee with an account of such actual CAM Reimbursement Expenses.

(c) Each year after the actual CAM Reimbursement Expenses have been determined, Lessor and Lessee shall "true-up" the sum of CAM Reimbursement Expenses paid by Lessor so that for each annual term of the Lease, Lessee shall reimburse Lessor in the amount equal the actual CAM Reimbursement Expenses paid by Lessor during the most recent calendar year. For any year for which the estimated amounts reimbursed by Lessee exceed the actual amounts paid by Lessor, Lessee shall be entitled to a credit which shall be applied against the Rent payable on the next May 1. For any year for which the estimated amounts paid by Lessee are less than the actual amounts

paid by Lessor, Lessee shall pay Lessor the shortfall in addition to the Rent payable on the next May 1.

(d) For informational purposes only, the CAM Reimbursement Expenses for calendar year 2022 are currently estimated to be \$23,000 per month (\$276,000 per year). At the end of 2022, Lessor shall calculate and account for the actual CAM Reimbursement Expenses paid during calendar year 2022, which amount shall be used for the estimated monthly payments of CAM Reimbursement Expenses payable by Lessee during the first twelve months commencing May 1, 2023.

(e) Notwithstanding Lessor's agreement to advance payment of the CAM Reimbursement Expenses on behalf of Lessee, nothing in this Paragraph 50.04 shall be construed to diminish Lessee's ultimate obligation to pay the expenses of Lessee described in the Lease.

50.06 Drainage. Paragraph 50.06 in the First Addendum is hereby deleted and replaced with the following:

50.06 Drainage. Lessor agrees to undertake and pay for drainage and sump pumps. The projected cost is \$350,000.00. Lessee shall not be obligated to pay any cost in this regard. The project shall be completed by Lessor on or before September 30, 2023.

50.08 Date. The date of the Lease for reference purposes shall be March 1, 2022.

50.09 Guarantor. There is no Guarantor for the Lease. Paragraphs 1.10 and 37 of the Lease are hereby deleted.

50.10 Attachments. The other attachments described in Paragraph 1.11 shall include the First Addendum (Paragraphs 50.01 through 50.07), the Option to Extend (Paragraph 51), the Arbitration Agreement (Paragraph 52) and this Second Addendum (Paragraphs 50.08 through 50.19).

50.11 Start Date. The "Start Date" shall be the Commencement Date. Lessee is currently in possession of the Premises and will continue to occupy possession of the Premises in its AS-IS condition without any representation or warranty except as otherwise expressly provided in the Lease.

50.12 Reinstated Definitions. Notwithstanding the deletion of Paragraphs 2.2 and 2.3 of the Lease, the following definitions are reinstated as part of the Lease to be incorporated by reference in other provisions of the Lease:

(a) HVAC. "HVAC" shall mean the, heating, ventilating and air conditioning systems.

(b) Building. The "Building" shall include the roof, bearing walls and foundations of any buildings on the Premises.

(c) Applicable Requirements. "Applicable Requirements" include building and zoning codes, applicable laws, covenants or restrictions of record, regulations and ordinances.

(d) Capital Expenditure. "Capital Expenditure" includes the reinforcement, physical modification, or other capital improvement of the Premises or Building.

50.13 Association Fees. Association Fees to be paid by Lessee in accordance with Sections 4.3 and 50.04 (as revised by this Second Addendum) of the Lease shall include fees payable to Irvine Co./Bake.

50.14 Lessee's Insurance Deductible. The amount of deductible for Lessee's full replacement cost coverage to be maintained pursuant to Paragraph 8.4(a) shall not exceed \$25,000.

50.15 Real Property Taxes. The term "Real Property Taxes" as defined in Paragraph 10.1 shall not include estate, gift, or generation skipping transfer taxes.

50.16 Notices. For notice purposes, the following mailing, delivery, facsimile and email addresses shall be used until changed in accordance with Paragraph 23 .1:

Lessor: Monarch RRC Properties, LP,
a California limited partnership
Attn: Robert R. Crane
17102 Newhope Street,
Fountain Valley, CA 92708
Email: bobcrane&bdb-usa.com

Lessee:
IsoTis OrthoBiologics, Inc.,
a Washington corporation
Attn: Pete Nalbach
2 Goodyear
Irvine, CA 92618
Email: pete.nalbach@seaspine.com

50.17 Brokers. There are no real estate brokers involved in this transaction. All references to a "Broker" contained in the Lease are hereby deleted.

50.18 Arbitration. The Arbitration Agreement (Paragraph 52) is amended by addition of the following:

The arbitration shall be determined by a single arbitrator who is a retired judge of the Superior Court of the State of California experienced in real estate disputes and administrated by an arbitration provider mutually agreed upon, and if no such provider can be agreed upon, by Judicial Arbitration & Mediation Services, Inc. ("JAMS"). The arbitrator must apply and follow the substantive California law related to the issues being arbitrated, and must apply and follow California rules and procedures of discovery and evidence, and the failure of the arbitrator to follow such law and rules shall be subject to appeal. The arbitrator shall not have the power to award punitive or exemplary damages to either party. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

50.19 Agreed Use. The agreed use of the Premises described in Paragraph 1.7 shall be revised to office, manufacturing and warehouse.

50.20 Animals. The following sentence in Paragraph 6.1 shall be deleted in its entirety:

Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles.

50.21 Surrender and Restoration. In addition to the provisions contained in Paragraph 7.4, upon surrender of the Premises, Lessee shall: (1) vacuum carpets and broom sweep all hard flooring surfaces. Replace any chipped or perforated portions of tile; (2) remove all tenant equipment and furniture, including racking, from the warehouse and cut anchor bolts at least 1/4" below the floor and fill holes with epoxy, equipment with exhaust piping and electrical connections above the ceiling will be terminated and safe-off; (3) repair all holes in office walls and restore them to a "paint ready" condition; (4) provide service maintenance records on all HVAC units; (5) remove tenant-installed rooftop equipment to include two cooling towers and pumps, vacuum system and repair any roof penetrations using a licensed and qualified roofing contractor; (6) ensure all truck doors, service doors, roll-up doors and dock levelers are in good working order, including repair or replacement of door panels (in case of major denting) and repair of any condition that precludes proper tracking of the rollers; (7) remove all exterior and interior signs and patch and paint any resulting holes; (8) replace any damaged or missing ceiling tiles with matching style; and (9) leave the 500kW and 300kW back-up generators to remain with the Premises.

This Second Addendum is executed as of March 17, 2022.

Lessor: Monarch RRC Properties, LP,

a California limited partnership

By: /s/Robert R. Crane

Manager

Lessee: IsoTis OrthoBiologics, Inc.,

a Washington corporation

By: /s/Tyler Lipschultz

Its: SVP of Orthobiologics

Certification of Principal Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Keith C. Valentine, certify that:

1. I have reviewed this quarterly report on Form 10-Q of SeaSpine Holdings Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2022

/s/ Keith C. Valentine

Keith C. Valentine

Chief Executive Officer

Certification of Principal Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, John J. Bostjancic, certify that:

1. I have reviewed this quarterly report on Form 10-Q of SeaSpine Holdings Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2022

/s/ John J. Bostjancic

John J. Bostjancic

Chief Operating and Financial Officer

Certification of Principal Executive Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Keith C. Valentine, President and Chief Executive Officer of SeaSpine Holdings Corporation (the "Company"), hereby certify that, to my knowledge:

- 1 The Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2022 (the "Report") fully complies with the requirement of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- 2 The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 4, 2022

/s/ Keith C. Valentine

Keith C. Valentine

Chief Executive Officer

Certification of Principal Financial Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, John J. Bostjancic, Senior Vice President and Chief Operating and Financial Officer of SeaSpine Holdings Corporation (the "Company"), hereby certify that, to my knowledge:

- 1 The Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2022 (the "Report") fully complies with the requirement of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- 2 The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 4, 2022

/s/ John J. Bostjancic

John J. Bostjancic

Chief Operating and Financial Officer