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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES AND EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2003

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES AND EXCHANGE ACT OF 1934

For the transition period from ______ to ______

Commission file number 0-28150

NEUROCRINE BIOSCIENCES, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	**33-0525145**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

10555 SCIENCE CENTER DRIVE
SAN DIEGO, CALIFORNIA 92121
(Address of principal executive offices)

(858) 658-7600
(Registrant’s telephone number, including area code)

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in rule 12b-2 of the Exchange Act): Yes ☑ No o

The number of outstanding shares of the registrant’s common stock, par value $0.001 per share, was 35,268,258 as of November 5, 2003.

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

NEUROCRINE BIOSCIENCES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except for share information)

	September 30, 2003	December 31, 2002
	(unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	$ 123,820	$ 44,313
Short-term investments, available-for-sale	318,957	200,397
Receivables under collaborative agreements	16,397	247
Other current assets	5,200	3,137
Total current assets	464,374	248,094
Property and equipment, net	58,289	14,102
Restricted cash and other non-current assets	29,739	4,343
Total assets	$ 552,402	$ 266,539
LIABILITIES AND STOCKHOLDERS’ EQUITY		
Current liabilities:		
Accounts payable	$ 1,912	$ 1,959
Accrued liabilities	58,524	22,163
Deferred revenues	51,416	5,699
Current portion of long-term debt	3,422	2,658
Total current liabilities	115,274	32,479
Long-term debt, net of current portion	19,105	5,277
Deferred rent	—	2,645
Deferred revenues	29,185	833
Other liabilities	2,009	1,051
Total liabilities	165,573	42,285
Stockholders’ equity:		
Preferred stock, $0.001 par value; 5,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock, $0.001 par value; 50,000,000 shares authorized; issued and outstanding shares were 35,262,670 as of September 30, 2003 and 30,662,273 as of December 31, 2002	35	31
Additional paid-in capital	620,724	424,084
Deferred compensation	(891)	(1,240)
Notes receivable from stockholders	(208)	(208)
Accumulated other comprehensive income	2,544	3,513
Accumulated deficit	(235,375)	(201,926)
Total stockholders’ equity	386,829	224,254
Total liabilities and stockholders’ equity	$ 552,402	$ 266,539

See accompanying notes to the condensed consolidated financial statements.

NEUROCRINE BIOSCIENCES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except loss per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
	(unaudited)		(unaudited)	
Revenues:				
Sponsored research and development	$ 17,580	$ 3,574	$ 81,651	$ 10,712
License fees and milestones	11,319	831	29,306	1,997
Grant income	360	578	986	1,458
Total revenues	29,259	4,983	111,943	14,167
Operating expenses:				
Research and development	37,537	24,231	138,184	67,374
General and administrative	5,296	3,253	15,175	9,135
Total operating expenses	42,833	27,484	153,359	76,509
Loss from operations	(13,574)	(22,501)	(41,416)	(62,342)
Other income and (expenses):				
Interest income	3,724	2,458	8,518	6,785
Interest expense	—	(175)	(518)	(367)
Other income and (expense), net	19	(16)	123	175
Total other income and (expenses)	3,743	2,267	8,123	6,593
Loss before income taxes	(9,831)	(20,234)	(33,293)	(55,749)
Income taxes	3	—	156	—
Net loss	$ (9,834)	$(20,234)	$ (33,449)	$(55,749)
Net loss per share:				
Basic and diluted	$ (0.31)	$ (0.66)	$ (1.07)	$ (1.83)
Shares used in the calculation of net loss per share:				
Basic and diluted	32,053	30,522	31,397	30,447

See accompanying notes to the condensed consolidated financial statements.

NEUROCRINE BIOSCIENCES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Nine Months Ended September 30,	
	2003	2002
	(unaudited)	
CASH FLOW FROM OPERATING ACTIVITIES		
Net loss	$ (33,449)	$ (55,749)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,893	2,188
Deferred revenues	74,069	(372)
Deferred expenses	(956)	404
Non-cash compensation expenses	662	692
Change in operating assets and liabilities:		
Accounts receivable and other current assets	(17,961)	5,324
Restricted cash and other non-current assets	(24,733)	(886)
Accounts payable and accrued liabilities	36,236	1,821
Other non-current liabilities	2,009	—
Net cash provided by (used in) operating activities	38,770	(46,578)
CASH FLOW FROM INVESTING ACTIVITIES		
Purchases of short-term investments	(362,439)	(331,858)
Sales/maturities of short-term investments	242,908	272,112
Deposits	(3,000)	—
Purchases of property and equipment	(33,003)	(3,994)
Net cash used in investing activities	(155,534)	(63,740)
CASH FLOW FROM FINANCING ACTIVITIES		
Issuance of common stock	195,731	1,950
Proceeds from issuance of long-term debt	16,747	2,742
Principal payments on long-term obligations	(16,207)	(1,740)
Payments received on notes receivable from stockholders	—	104
Net cash provided by financing activities	196,271	3,056
Net increase (decrease) in cash and cash equivalents	79,507	(107,262)
Cash and cash equivalents at beginning of the period	44,313	163,888
Cash and cash equivalents at end of the period	$ 123,820	$ 56,626
Supplemental information:		
Increase in property and related debt resulting from increasing ownership percentage in Science Park Center LLC	$ 14,076	$ —

See accompanying notes to the condensed consolidated financial statements.

NEUROCRINE BIOSCIENCES, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. BASIS OF PRESENTATION

The condensed consolidated financial statements included herein are unaudited. These statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions of the Securities and Exchange Commission (SEC) on Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and disclosures required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, these financial statements include all adjustments (consisting of normal recurring adjustments) necessary for a fair presentation of the financial position, results of operations, and cash flows for the periods presented. The results of operations for the interim periods shown in this report are not necessarily indicative of results expected for the full year.

In May 2003, Neurocrine Biosciences, Inc. increased its ownership interest in Science Center Park, LLC from 1% to 50.5%, effective April 1, 2003 (see Note 9 below). Accordingly, the financial statements of the Science Center Park, LLC are included in the condensed consolidated financial statements at September 30, 2003 and for the three and nine months ended September 30, 2003.

These financial statements should be read in conjunction with the “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Quantitative and Qualitative Disclosures About Market Risk” and the audited financial statements and notes thereto for the year ended December 31, 2002 included in our Annual Report on Form 10-K filed with the SEC.

The terms “Company” and “we” and “our” are used in this report to refer collectively to Neurocrine Biosciences, Inc. and its subsidiaries.

2. USE OF ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and the accompanying notes. Actual results could differ from those estimates.

3. SHORT-TERM INVESTMENTS AVAILABLE-FOR-SALE

Available-for-sale securities are carried at fair value, with the unrealized gains and losses reported in comprehensive income. The amortized cost of debt securities in this category is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization is included in interest income. Realized gains and losses and declines in value judged to be other-than-temporary, if any, on available-for-sale securities are included in interest income or expense. The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in interest income.

4. IMPAIRMENT OF LONG-LIVED ASSETS

In accordance with Statement of Financial Accounting Standard (SFAS) No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets,” if indicators of impairment exist, the Company assesses the recoverability of the affected long-lived assets by determining whether the carrying value of such assets can be recovered through undiscounted future operating cash flows. If impairment is indicated, the Company measures the amount of such impairment by comparing the carrying value of the asset to the present value of the expected future cash flows associated with the use of the asset. While the Company’s current and historical operating and cash flow losses are indicators of impairment, the Company believes the future cash flows to be received from the long-lived assets will exceed the assets’ carrying value, and accordingly the Company has not recognized any impairment losses through September 30, 2003.

5. LOSS PER COMMON SHARE

The Company computes net loss per share in accordance with SFAS No. 128, “Earnings Per Share.” Under the provisions of SFAS No. 128, basic net loss per share is computed by dividing the net loss for the period by the weighted average number of common shares outstanding during the period. Diluted net loss per share is computed by dividing the net loss for the period by the weighted average number of common and common equivalent shares outstanding during the period. Additionally, potentially dilutive securities, composed of incremental common shares issuable upon the exercise of stock options and warrants, are excluded from historical diluted loss per share because of their anti-dilutive effect. Potentially dilutive securities totaled 2.0 million for the periods ended September 30, 2003 and 2002, and were excluded from the diluted earnings per share because of their anti-dilutive effect.

6. COMPREHENSIVE LOSS

Comprehensive loss is calculated in accordance with SFAS No. 130, “Comprehensive Income.” SFAS No. 130 requires the disclosure of all components of comprehensive loss, including net loss and changes in equity during a period from transactions and other events and circumstances generated from non-owner sources. The Company’s components of comprehensive loss consist of the net loss and unrealized gains and losses on short-term investments. For the three months ended September 30, 2003 and 2002, comprehensive loss was $11.7 million and $18.3 million, respectively. For the nine months ended September 30, 2003 and 2002, comprehensive loss was $34.4 million and $53.3 million, respectively.

7. REVENUE RECOGNITION

Revenue under collaborative research agreements and grants is recognized as research costs are incurred over the period specified in the related agreement or as the services are performed. These agreements are on a best-efforts basis and do not require scientific achievement as a performance obligation, and provide for payment to be made when costs are incurred or the services are performed. All fees are nonrefundable to the collaborators. Up-front, nonrefundable payments for license fees and advance payments for sponsored research revenues received in excess of amounts earned are classified as deferred revenue and recognized as income over the contract or development period. Estimating the duration of the development period includes continual assessment of development stages and regulatory requirements. Milestone payments are recognized as revenue upon achievement of pre-defined scientific events which require substantive effort. Revenues from government grants are recognized based on a percentage-of-completion basis as the related costs are incurred.

The increase in revenues for the three and nine months ended September 30, 2003 resulted primarily from reimbursement of clinical development expenses under the Pfizer, Inc. (Pfizer) collaboration agreement of $16.1 million and $77.3 million for the three and nine months ended September 30, 2003, respectively. In addition, the Company is amortizing a $100.0 million up front payment received from Pfizer in the first quarter of 2003 over the time period until commercialization of the Company’s indiplon product and has recognized $10.9 million and $27.0 million in license fee revenues during the three and nine months ended September 30, 2003, respectively.

8. RESEARCH AND DEVELOPMENT EXPENSES

Research and development (R&D) expenses are recognized as incurred and include related salaries, contractor fees, facilities costs, administrative expenses and allocations of certain other costs. All such costs are charged to R&D expenses as incurred. These expenses result from our independent R&D efforts as well as efforts associated with collaborations, grants and in-licensing arrangements. In addition, we fund R&D, conducted on our behalf, at other companies and research institutions under agreements, which are generally cancelable. We review and accrue clinical trials expense based on work performed, which relies on estimates of total costs incurred based on completion of patient studies and other events. We follow this method because reasonably dependable estimates of the costs applicable to various stages of a research agreement or clinical trial can be made. Accrued clinical costs are subject to revisions as trials progress to completion. Revisions are charged to expense in the period in which the facts that give rise to the revision become known.

9. SUBSIDIARIES

In May 1997, the Company along with two unrelated parties formed Science Park Center LLC (Science Park) in order to construct an office and laboratory facility which was subsequently leased by the Company. Science Park is a California limited liability company, of which the Company, prior to April 2003, owned only a nominal minority interest. The Company became the majority owner of Science Park effective April 1, 2003, and accordingly the Company now consolidates Science Park in the Company's financial statements. The net effect of the transaction on the Company's consolidated financial statements was to increase property and equipment and long-term debt on the Company's consolidated balance sheet by approximately $14.0 million each at June 30, 2003. In August 2003, the Company retired the outstanding long-term debt of approximately $14.0 million through a lump sum payment.

The Company also recently formed Neurocrine International LLC, a Delaware limited liability company in which the Company holds a 99% ownership interest and Science Park holds a 1% interest.

10. STOCKHOLDERS' EQUITY

The Company applies the intrinsic-value-based method prescribed in APB Opinion No. 25, "Accounting for Stock Issued to Employees," in accounting for employee stock options. Accordingly, compensation expense is generally recognized only when options are granted with a discounted exercise price. Any resulting compensation expense is recognized ratably over the associated service period, which is generally the option vesting term.

The Company has determined pro forma net loss and related per share information as if the fair value method described in SFAS No. 123, "Accounting for Stock Based Compensation," had been applied to its employee stock-based compensation. The pro forma effect on net loss and net loss per share is as follows for the three and nine months ended September 30, 2003 and 2002 (in thousands, except for loss per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Net loss:				
As reported	$ (9,834)	$(20,234)	$(33,449)	$(55,749)
Stock option expense	(4,238)	(2,703)	(14,569)	(9,985)
Pro forma net loss	$(14,072)	$(22,937)	$(48,018)	$(65,734)
Loss per share as reported (basic and diluted)	$ (0.31)	$ (0.66)	$ (1.07)	$ (1.83)
Pro forma loss per share (basic and diluted)	$ (0.44)	$ (0.75)	$ (1.53)	$ (2.16)

During September 2003, we issued 3.75 million shares of our common stock at a price of $53.00 per share which resulted in net proceeds of approximately $187.4 million.

11. REAL ESTATE TRANSACTIONS

We currently have approximately 93,000 square feet of space at our headquarters in San Diego, California, of which approximately 65% is laboratory space dedicated to research and development. During April 2003, the Company, entered into an agreement with a third party to sell the Company's current headquarters and an adjacent undeveloped parcel of land for approximately $40 million. The Company anticipates closing the sale of both parcels during the fourth quarter of 2003, and has negotiated a leaseback provision, as part of the sale agreements, to allow for the completion of the construction of the Company's new facility. The Company expects to recognize a financial statement gain on the sale of the property in November 2003 of approximately $18.0 million.

In May 2003, the Company, entered into an agreement to acquire undeveloped real property in San Diego, California for approximately $17.0 million to construct a new corporate facility. Science Park has also placed a deposit of $3.5 million, which amount is included in restricted cash and other non-current assets on the Company's consolidated balance sheet, and a $4.4 million irrevocable standby letter of credit for an adjacent parcel of land, which it intends to purchase in early 2004. The letter of credit is secured by a $4.4 million cash deposit, which amount is included in restricted cash and other non-current assets, with the issuer and expires in February 2004.

Additional costs the Company expects to incur in connection with these two properties include design and construction costs as well as the purchase and installation of equipment and furnishings for these facilities. The Company estimates these costs at $43 million and expects to finance these costs through the net proceeds of the sale of the existing facility, a construction loan and a subsequent permanent financing. Construction of the new facility commenced in June 2003 and is expected to be completed in July 2004. Capitalized construction costs totaled $11.0 million at September 30, 2003.

The Company has secured a construction loan from a commercial bank for up to $60.6 million to finance the construction of the new facility. The loan requires a guaranty deposit of $17.5 million, which amount is included in restricted cash and other non-current assets, to be maintained at the bank for the duration of the loan. The loan bears interest at the prime rate plus .75 percentage points, and interest is payable monthly. In accordance with SFAS No. 34, applicable interest cost will be capitalized during the construction period.

The Company has structured the sale of the existing campus and the acquisition and construction of the new campus are intended to qualify as "like-kind" exchanges within the meaning of Internal Revenue Code Section 1031.

12. NEW ACCOUNTING PRONOUNCEMENTS

In November 2002, the Emerging Issues Task Force (EITF) reached a consensus on Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables." EITF Issue No. 00-21 provides guidance on how to account for arrangements that involve the delivery or performance of multiple products, services and/or rights to use assets. We were required to adopt this provision for revenue arrangements entered into on or after June 30, 2003. The adoption of EITF 00-21 did not have a material effect on our results of operations or financial condition.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation, Transition and Disclosure." SFAS No. 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. SFAS No. 148 also requires that disclosures of the pro forma effect of using the fair value method of accounting for stock-based employee compensation be displayed more prominently and in tabular format in interim and annual financial statements. The transition and annual disclosure requirements are effective for fiscal year 2003. The Company adopted the interim disclosure requirement in its Consolidated Condensed Financial Statements in the first quarter of fiscal 2003 as disclosed in Note 10.

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

The following Management's Discussion and Analysis of Financial Condition and Results of Operations section contains forward-looking statements, which involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth below under the caption "Risk Factors." The interim financial statements and this Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the Financial Statements and Notes thereto for the year ended December 31, 2002 and the related Management's Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K for the year ended December 31, 2002.

OVERVIEW

We incorporated in California in 1992 and reincorporated in Delaware in 1996. Since inception, we have been engaged in the discovery and development of novel pharmaceutical products for neurological and endocrine-related diseases and disorders. Our product candidates address some of the largest pharmaceutical markets in the world including insomnia, anxiety, depression, various female and male health disorders, multiple sclerosis, diabetes and other neuro-endocrine related diseases and disorders. To date, we have not generated any revenues from the sale of products, and we do not expect to generate any product revenues until the Food and Drug Administration (FDA) approves one of our drug candidates. Our lead clinical development program, indiplon, is a drug for the treatment of insomnia and is currently being evaluated in Phase III clinical trials in collaboration with Pfizer. We currently anticipate filing a New Drug Application (NDA) for indiplon in the first half of 2004. We have funded our operations primarily through private and public offerings of our common stock and payments received under research and development agreements. We are developing a number of products with corporate collaborators and will rely on existing and future collaborators to meet funding requirements. We expect to generate future net losses in anticipation of significant increases in operating expenses as product candidates are advanced through the various stages of clinical development. As of September 30, 2003, we have incurred an accumulated deficit of $235.4 million and expect to incur operating losses in the future.

CRITICAL ACCOUNTING POLICIES

Our discussion and analysis of our financial condition and results of operations is based upon our financial statements, which we have prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses, and related disclosures. On an ongoing basis, we evaluate these estimates, including those related to revenues under collaborative research agreements and grants, clinical trial accruals (which affect research and development expenses), and fixed assets. Estimates are based on historical experience, information received from third parties and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The items in our financial statements requiring significant estimates and judgments are as follows:

Revenues under collaborative research agreements and grants are recognized as research costs are incurred over the period specified in the related agreement or as the services are performed. These agreements are on a best-efforts basis and do not require scientific achievement as a performance obligation and provide for payment to be made when costs are incurred or the services are performed. All fees are nonrefundable to the collaborators. Up-front, nonrefundable payments for license fees and advance payments for sponsored research and for sponsored development received in excess of amounts earned are classified as deferred revenue and recognized as revenue over the contract or development period. Estimating the duration of the development period includes continual assessment of development stages and regulatory requirements. Milestone payments are recognized as revenue upon achievement of pre-defined scientific events which require substantive effort. Revenues from government grants are recognized based on a percentage-of-completion basis as the related costs are incurred.

Research and development, or R&D, expenses include related salaries, contractor fees, facilities costs, administrative expenses and allocations of corporate costs. All such costs are charged to R&D expense as incurred. These expenses result from our independent R&D efforts as well as efforts associated with collaborations, grants and in-licensing arrangements. In addition, we fund R&D at other companies and research institutions under agreements, which are generally cancelable. We review and accrue clinical trials expenses based on work performed, which relies on estimates of total hours incurred based on completion of patient studies and other events. We follow this method since reasonably dependable estimates of the costs applicable to various stages of a research agreement or clinical trial can be made. Accrued clinical costs are subject to revisions as trials progress to completion. Revisions are charged to expense in the period in which the facts that give rise to the revision become known.

We review long-lived assets, including leasehold improvements and property and equipment, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully

recoverable. Long-lived assets and certain identifiable intangible assets to be disposed of are reported at the lower of the carrying amount or fair value less the cost to dispose.

RESULTS OF OPERATIONS

THREE MONTHS ENDED SEPTEMBER 30, 2003 AND 2002

Revenues were $29.3 million for the third quarter 2003 compared with $5.0 million for the respective period last year. The increase in revenues for the three months ended September 30, 2003, compared with the respective period in 2002, is primarily from revenues recognized under our collaboration agreement with Pfizer Inc. (Pfizer) which commenced in 2003. During the third quarter of 2003 we recognized $16.1 million from Pfizer in the form of sponsored development funding and an additional $10.9 million resulting from amortization of up-front license fees. Under our agreement with GlaxoSmithKline, we recognized $1.8 million in revenues this quarter and $2.1 million for the same quarter last year. We did not recognize revenue under the Taisho Pharmaceutical Co., Ltd. (Taisho) agreement in the third quarter of 2003, but we recognized revenue of $2.0 million for the same period last year. This $2.0 million decrease in Taisho revenue is due to the restructuring of our collaboration agreement whereby worldwide rights to our diabetes drug candidate reverted back to us.

Research and development expenses increased to $37.5 million for the third quarter of 2003 compared with $24.2 million for the respective period in 2002. Increased expenses primarily reflect higher costs associated with expanding development activities, particularly the indiplon Phase III program (for insomnia). We currently have 17 programs in various stages of research and development, including seven programs in clinical development. Additionally, personnel and laboratory costs related to the expansion of research activities have increased during the same period. We expect increases in research and development expense in the future as we continue to advance and build our product portfolio focused on neurological and endocrine-related diseases and disorders.

General and administrative expenses increased to $5.3 million for the third quarter of 2003 compared with $3.3 million during the same period last year. The increased cost resulted primarily from increased market research and marketing related costs, increased professional fees associated with business development, increased insurance costs, and the addition of administrative personnel needed to support expanding research and development activities. We expect general and administrative costs to increase this year to provide continued support for research and development, clinical trials, collaborative relationships and commercialization efforts.

Interest income increased to $3.7 million during the third quarter of 2003 compared to $2.5 million for the same period last year. The increase primarily resulted from higher overall investment balances offset slightly by lower interest rates.

Net loss for the third quarter of 2003 was $9.8 million, or $0.31 per share, compared to $20.2 million, or $0.66 per share, for the same period in 2002. The decrease in the net loss resulted primarily from the revenue recognized under the licensing and collaboration agreements with Pfizer. Net losses are expected to continue this year as our programs continue to advance through the various stages of the research and clinical development processes.

To date, our revenues have come from funded research and development, achievements of milestones under corporate collaborations, and licensing of product candidates. The nature and amount of these revenues may fluctuate substantially from period to period, which would affect our quarterly revenues and earnings. Accordingly, results and earnings of one period are not predictive of future periods. Collaborations accounted for 99% and 88% of our revenue for the quarters ended September 30, 2003 and 2002, respectively.

NINE MONTHS ENDED SEPTEMBER 30, 2003 AND 2002

Revenues for the nine months ended September 30, 2003 were $111.9 million compared with $14.2 million in 2002. The increase in revenues for the nine months ended September 30, 2003, compared with the respective period in 2002, is primarily from revenues recognized under our collaboration agreement with Pfizer. During the first three quarters of 2003 we recognized $77.3 million from Pfizer in the form of sponsored development funding and an

additional $27.0 million resulting from amortization of up-front license fees. Under our agreement with GlaxoSmithKline, we recognized $5.5 million in year to date revenues through September 30, 2003 and $5.7 million for the same nine-month period last year. Revenues recognized under the Taisho agreement totaled $1.1 million for the nine-month period ended September 30, 2003 and $5.8 million for the same period last year. This $4.7 million decrease in Taisho revenue is due to the restructuring of our collaboration agreement whereby worldwide rights to our diabetes drug candidate reverted back to us.

Research and development expenses increased to $138.2 million for the first nine months of 2003 compared with $67.4 million for the respective period in 2002. Increased expenses primarily reflect higher costs associated with expanding development activities, in particular the indiplon Phase III program (for insomnia). Additionally, personnel and laboratory costs related to the expansion of research activities have increased during the same period. We expect to incur increases in research and development costs in future periods as we continue to advance and build our product portfolio focused on neurological and endocrine-related diseases and disorders.

General and administrative expenses increased to $15.2 million for the nine months ended September 30, 2003 compared with $9.1 million during the same period last year. The increased cost resulted primarily from increased market research and marketing related costs, increased professional fees associated with business development, increased insurance costs, and the addition of administrative personnel needed to support expanding research and development activities. We expect general and administrative costs to increase this year to provide continued support on development and clinical trials, collaborative relationships and commercialization efforts.

Interest income increased to $8.5 million for the nine months ended September 30, 2003 compared to $6.8 million for the same period last year. The increase primarily resulted from higher overall investment balances offset slightly by lower interest rates.

Net loss for the first nine months of 2003 was $33.4 million, or $1.07 per share, compared to $55.7 million, or $1.83 per share, for the same period in 2002. The decrease in the net loss resulted primarily from the revenue recognized under the licensing and collaboration agreements with Pfizer. Net losses are expected to continue this year as our programs continue to advance through the various stages of the research and clinical development processes.

To date, our revenues have primarily come from funded research and achievements of milestones under corporate collaborations. The nature and amount of these revenues, may fluctuate substantially from period to period, which would affect our quarterly revenues and earnings. Accordingly, results and earnings of one period are not predictive of future periods. Revenues from collaborations accounted for 99% and 90% for the nine months ended September 30, 2003 and 2002, respectively.

LIQUIDITY AND CAPITAL RESOURCES

At September 30, 2003, our cash, cash equivalents, and short-term investments totaled $442.8 million compared with $244.7 million at December 31, 2002. The increase in cash balances at September 30, 2003 resulted primarily from the receipt of the initial license and collaboration payments from Pfizer totaling $100.0 million and the sale of 3.75 million shares of our common stock in a public offering which generated net cash proceeds of $187.4 million, offset by capital acquisitions and operating losses.

Net cash provided by (used in) operating activities during the first three quarters of 2003 was $38.8 million compared with ($46.6) million during the same period last year. The increase in cash provided by operations is a result of the receipt of the initial payment under the collaboration agreement with Pfizer, offset by an increase in accounts receivable from collaborators due to increased clinical development costs.

Net cash used in investing activities during the first three quarters of 2003 was $155.5 million compared to $63.7 million for the same period in 2002. This fluctuation resulted primarily from timing differences in investment purchases, sales and maturities and the fluctuations in our portfolio mix between cash equivalents and short-term investment holdings. We expect similar fluctuations to continue in future periods. Additionally, net cash used in investing activities includes construction in progress and land acquisition costs related to the new corporate

headquarters totaling $28.4 million. Capital equipment purchases for 2003 are expected to be approximately $6.0 million and will be financed primarily through leasing arrangements.

During April 2003, our subsidiary, Science Park Center LLC, entered into an agreement with a third party to sell our current research and administrative facility and an undeveloped parcel of land adjacent to the facility for approximately $40 million. We anticipate closing the sale of both parcels during the fourth quarter of 2003, and we have negotiated a leaseback provision, as part of the sale agreements, to allow for the completion of the construction of our new facility. We expect to recognize a financial statement gain on the sale of these properties of approximately $18.0 million, during the last quarter of 2003.

In May 2003, Science Park Center LLC entered into an agreement to acquire undeveloped real property in San Diego, California for approximately $17 million to construct a new corporate facility. We also have placed a deposit of $3.5 million and a $4.4 million irrevocable standby letter of credit for an adjacent parcel of land, which we intend to purchase in early 2004. The letter of credit is secured by a $4.4 million cash deposit with the issuer and expires in February 2004.

Additional costs we expect to incur in connection with these two properties include design and construction costs as well as the purchase and installation of equipment and furnishings for these facilities. The Company estimates these costs at $43 million and expects to finance these costs through the net proceeds of the sale of the existing facility, a construction loan and a subsequent permanent financing. The construction loan was secured in September 2003 for an amount up to $60.6 million and requires us to place a $17.5 million guaranty deposit with the lender for the term of the loan. The loan bears interest at the prime rate plus .75 percentage points and interest is payable monthly. Construction of the new facility commenced in June 2003 and is expected to be completed in July 2004.

Net cash provided by financing activities during the first three quarters of 2003 was $196.3 million compared to $3.1 million for the respective period last year. The increase in cash provided from financing activities resulted primarily from the issuance of 3.75 million shares of our common stock in September 2003 yielding net cash proceeds of $187.4 million. Cash proceeds from the issuance of common stock upon exercise of outstanding stock options and employee stock purchase plans increased by $7.5 million in the first nine months compared to the same period last year. We expect similar fluctuations to occur throughout the year, as the amount and frequency of stock-related transactions are dependent upon the market performance of our common stock. Additionally, we obtained financing for $16.7 million of capital purchases during the first nine months of 2003, primarily under the construction loan discussed above.

We believe that our existing capital resources, together with interest income and future payments due under our strategic alliances, will be sufficient to satisfy our current and projected funding requirements for at least the next 12 months. However, we cannot guarantee that these capital resources and payments will be sufficient to conduct all of our research and development programs as planned. The amount and timing of expenditures will vary depending upon a number of factors, including progress of our research and development programs.

We will require additional funding to continue our research and product development programs, to conduct preclinical studies and clinical trials, for operating expenses, to pursue regulatory approvals for our product candidates, for the costs involved in filing and prosecuting patent applications and enforcing or defending patent claims, if any, the cost of product in-licensing and any possible acquisitions, and we may require additional funding to establish manufacturing and marketing capabilities in the future. We may seek to access the public or private equity markets whenever conditions are favorable. We may also seek additional funding through strategic alliances and other financing mechanisms, such as debt financing for equipment, our new headquarters, or general corporate purposes. We cannot assure you that adequate funding will be available on terms acceptable to us, if at all. If adequate funds are not available, we may be required to curtail significantly one or more of our research or development programs or obtain funds through arrangements with collaborators or others. This may require us to relinquish rights to certain of our technologies or product candidates.

We expect to incur operating losses over the next several years as our research, development, preclinical studies and clinical trial activities increase. To the extent that we are unable to obtain third-party funding for such expenses, we expect that increased expenses will result in increased losses from operations. We cannot assure you that we will be successful in the development of our product candidates, or that, if successful, any products marketed will generate sufficient revenues to enable us to earn a profit.

CAUTION ON FORWARD-LOOKING STATEMENTS

Any statements in this report about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and are forward-looking statements. You can identify these forward-looking statements by the use of words or phrases such as “believe,” “may,” “could,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “seek,” “plan,” “expect,” “should,” or “would.” Among the factors that could cause actual results to differ materially from those indicated in the forward-looking statements are risks and uncertainties associated with our development programs and businesses and finances including, but not limited to, the risk that our drug candidates will not successfully proceed through clinical trials or that later stage clinical trials will not show that they are effective in treating humans; adverse determinations by regulatory and governmental authorities; dependence on corporate collaborators who could terminate their relationships with us at any time; uncertainties relating to patent protection and intellectual property rights of third parties; the impact of competitive products and technological changes; our ability to raise additional capital and the cost of the capital; and other material risks defined under the heading under “Risk Factors” included in Part I of our Annual Report on Form 10-K filed with the SEC and the discussions set forth below under the caption “Risk Factors.”

Although we believe that the expectations reflected in our forward-looking statements are reasonable, we cannot guarantee future results, events, levels of activity, performance or achievement. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, unless required by law.

INTEREST RATE RISK

We are exposed to interest rate risk on our short-term investments. The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we invest in highly liquid and high quality government and other debt securities. To minimize our exposure due to adverse shifts in interest rates, we invest in short-term securities and ensure that the maximum average maturity of our investments does not exceed 40 months. If a 10% change in interest rates were to have occurred on September 30, 2003, this change would not have had a material effect on the fair value of our investment portfolio as of that date. Due to the short holding period of our investments, we have concluded that we do not have a material financial market risk exposure.

RISK FACTORS

The following information sets forth risk factors that could cause our actual results to differ materially from those contained in forward-looking statements we have made in this Quarterly Report and those we may make from time to time. If any of the following risks actually occur, our business, operating results, prospects or financial condition could be harmed. Additional risks not presently known to us or that we currently deem immaterial may also affect our business operations. For a more detailed discussion of the factors that could cause actual results to differ, see "Item 1: Business — Risks Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2002.

Risks Relating to Our Business

Our clinical trials may fail to demonstrate the safety and efficacy of our product candidates, which could prevent or significantly delay their regulatory approval.

Any failure or substantial delay in completing clinical trials for our product candidates may severely harm our business. Before obtaining regulatory approval for the sale of any of our potential products, we must subject these product candidates to extensive preclinical and clinical testing to demonstrate their safety and efficacy for humans. Clinical trials are expensive, time-consuming and may take years to complete. We are currently conducting Phase III clinical trials in our indiplon development program for insomnia. This is our most advanced clinical program and represents a significant portion of our total clinical development activities and expenditures. If our Phase III indiplon program is significantly delayed or fails to demonstrate that indiplon is safe and efficacious for the targeted patient populations or if the FDA does not approve the proposed indiplon product labeling, our business and reputation would be harmed and our stock price would be negatively affected.

In connection with the clinical trials of indiplon and our other product candidates, we face the risks that:

§ the product may not prove to be effective;

§ we may discover that a product candidate may cause harmful side effects;

§ the results may not replicate the results of earlier, smaller trials;

§ we or the FDA may suspend the trials;

§ the results may not be statistically significant;

§ patient recruitment may be slower than expected; and

§ patients may drop out of the trials.

Also, late stage clinical trials are often conducted with patients having the most advanced stages of disease. During the course of treatment, these patients can die or suffer other adverse medical effects for reasons that may not be related to the pharmaceutical agent being tested but which can nevertheless adversely affect clinical trial results.

We expect to rely on our collaboration with Pfizer for the funding of the completion of our indiplon clinical program and for commercialization of indiplon.

Pfizer has agreed to:

§ fund substantially all third-party costs related to future indiplon development, manufacturing and commercialization activities;

- § fund a 200-person Neurocrine sales force that will initially promote Zoloft® and, upon approval of the indiplon NDA, will co-promote indiplon in the Unites States;
- § be responsible for obtaining all regulatory approvals outside of the United States and regulatory approvals in the United States after approval of the first indiplon NDA; and
- § be responsible for sales and marketing of indiplon worldwide.

While our agreement with Pfizer requires them to use commercially reasonable efforts in the development and commercialization of indiplon, we cannot control the amount and timing of resources Pfizer may devote to our collaboration following FDA approval in the United States nor can we control when Pfizer will seek regulatory approvals outside of the United States. In addition, if Pfizer's development activities in pursuing new indications and uses of indiplon are not successful or Pfizer's sales and marketing activities for indiplon are not effective, indiplon sales and our business may be harmed.

Pfizer may terminate the collaboration at any time upon 180-days written notice, subject to payment of specified amounts related to ongoing clinical development activities. If Pfizer elects to terminate the collaboration prior to FDA approval, we will be responsible for Phase III indiplon development expenses while we seek another partner to assist us in the worldwide development and commercialization of indiplon. This could cause delays in obtaining marketing approvals and sales, and negatively impact our business. If Pfizer elects to terminate the collaboration after receipt of FDA approval, we would be forced to fund the Neurocrine sales force and/or seek new marketing partners for indiplon. This could lead to loss of sales and negatively impact our business. In the event the collaboration is terminated by Pfizer, we may not be successful in finding another collaboration partner on favorable terms, or at all, and any failure to obtain a new partner on favorable terms could adversely affect indiplon development and commercialization and our business.

We may not receive regulatory approvals for our product candidates or approvals may be delayed.

Regulation by government authorities in the United States and foreign countries is a significant factor in the development, manufacture and marketing of our proposed products and in our ongoing research and product development activities. Any failure to receive the regulatory approvals necessary to commercialize our product candidates would harm our business. The process of obtaining these approvals and the subsequent compliance with federal and state statutes and regulations require spending substantial time and financial resources. If we fail or our collaborators or licensees fail to obtain or maintain, or encounter delays in obtaining or maintaining, regulatory approvals, it could adversely affect the marketing of any products we develop, our ability to receive product or royalty revenues and our liquidity and capital resources. All of our products are in research and development and we have not yet requested or received regulatory approval to commercialize any product from the FDA or any other regulatory body. In addition, we have limited experience in filing and pursuing applications necessary to gain regulatory approvals, which may impede our ability to obtain such approvals.

In particular, human therapeutic products are subject to rigorous preclinical testing and clinical trials and other approval procedures of the FDA and similar regulatory authorities in foreign countries. The FDA regulates, among other things, the development, testing, manufacture, safety, efficacy, record keeping, labeling, storage, approval, advertising, promotion, sale and distribution of biopharmaceutical products. Securing FDA approval requires the submission of extensive preclinical and clinical data and supporting information to the FDA for each indication to establish the product candidate's safety and efficacy. The approval process may take many years to complete and may involve ongoing requirements for post-marketing studies. Any FDA or other regulatory approval of our product candidates, once obtained, may be withdrawn. If our potential products are marketed abroad, they will also be subject to extensive regulation by foreign governments.

We plan to file an NDA for indiplon in the first half of 2004. We face the risk that the FDA could force us to delay our filing, reject our NDA filing, find it incomplete or find it insufficient for marketing approval for indiplon, which may cause our business and reputation to be harmed and likely would cause our stock price to decrease. In addition, even if our indiplon NDA is approved, the FDA could require Phase IV, or post-marketing, trials to study the long-term effects of indiplon and could withdraw its approval based on the results of those trials.

We have a history of losses and expect to incur substantial losses and negative operating cash flows for the foreseeable future, and we may never achieve sustained profitability.

Since our inception, we have incurred significant net losses, including net losses of $33.4 million and $94.5 million for the nine months ended September 30, 2003 and the year ended December 31, 2002, respectively. As a result of ongoing operating losses, we had an accumulated deficit of $235.4 million and $201.9 million as of September 30, 2003 and December 31, 2002, respectively. We were not profitable for the year ended December 31, 2002, and we do not expect to be profitable in 2003. We have not yet completed the development, including obtaining regulatory approvals, of any products and, consequently, have not generated revenues from the sale of products. Even if we succeed in developing and commercializing one or more of our drugs, we expect to incur substantial losses for the foreseeable future. We also expect to continue to incur significant operating and capital expenditures and anticipate that our expenses will increase substantially in the foreseeable future as we:

- seek regulatory approvals for our product candidates;
- develop, formulate, manufacture and commercialize our drugs;
- implement additional internal systems and infrastructure; and
- hire additional clinical and scientific personnel.

We also expect to experience negative cash flow for the foreseeable future as we fund our operating losses and capital expenditures. We will need to generate significant revenues to achieve and maintain profitability and positive cash flow. We may not be able to generate these revenues, and we may never achieve profitability in the future. Our failure to achieve or maintain profitability could negatively impact the market price of our common stock. Even if we become profitable, we cannot assure you that we would be able to sustain or increase profitability on a quarterly or annual basis.

Because our operating results may vary significantly in future periods, our stock price may decline.

Our quarterly revenues, expenses and operating results have fluctuated in the past and are likely to fluctuate significantly in the future. Our revenues are unpredictable and may fluctuate, among other reasons, due to our achievement of product development objectives and milestones, clinical trial enrollment and expenses, research and development expenses and the timing and nature of contract manufacturing and contract research payments. A high proportion of our costs are fixed, due in part to our significant research and development costs. Thus, small declines in revenue could disproportionately affect operating results in a quarter. Because of these factors, our operating results in one or more future quarters may fail to meet the expectations of securities analysts or investors, which could cause our stock price to decline.

We depend on continuing our current strategic alliances and developing additional strategic alliances to develop and commercialize our product candidates.

We depend upon our corporate collaborators to provide adequate funding for a number of our programs. Under these arrangements, our corporate collaborators are responsible for:

- selecting compounds for subsequent development as drug candidates;
- conducting preclinical studies and clinical trials and obtaining required regulatory approvals for these drug candidates; and

§ manufacturing and commercializing any resulting drugs.

Our strategy for developing and commercializing our products is dependent upon maintaining our current arrangements and establishing new arrangements with research collaborators, corporate collaborators and others. We have collaborations with Pfizer, GlaxoSmithKline, Wyeth and Eli Lilly and Company. Because we rely heavily on our corporate collaborators, the development of our projects would be substantially delayed if our collaborators:

§ fail to select a compound that we have discovered for subsequent development into marketable products;

§ fail to gain the requisite regulatory approvals of these products;

§ do not successfully commercialize products that we originate;

§ do not conduct their collaborative activities in a timely manner;

§ do not devote sufficient time and resources to our partnered programs or potential products;

§ terminate their alliances with us;

§ develop, either alone or with others, products that may compete with our products;

§ dispute our respective allocations of rights to any products or technology developed during our collaborations; or

§ merge with a third party that may wish to terminate the collaboration.

These issues and possible disagreements with our corporate collaborators could lead to delays in the collaborative research, development or commercialization of many of our product candidates. Furthermore, disagreements with these parties could require or result in litigation or arbitration, which would be time-consuming and expensive. If any of these issues arise, it may delay the filing of our NDAs and, ultimately, our generation of product revenues.

We license some of our core technologies and drug candidates from third parties. If we default on any of our obligations under those licenses, we could lose our rights to those technologies and drug candidates.

We are dependent on licenses from third parties for some of our key technologies. These licenses typically subject us to various commercialization, reporting and other obligations. If we fail to comply with these obligations, we could lose important rights. For example, we have licensed indiplon from DOV Pharmaceutical, Inc. and IL-4 fusion toxin, which we call NBI-3001, from the National Institutes of Health, or NIH. In addition, we license some of the core research tools used in our collaborations from third parties, including the CRF receptor we license from The Salk Institute and use in our CRF program collaboration with GlaxoSmithKline and the excitatory amino acid transporters we license from Oregon Health Sciences University and use in our collaboration with Wyeth. Other in-licensed technologies, such as the GnRH receptor we license from Mount Sinai School of Medicine and melanocortin subtype 4 we license from the University of Michigan, will be important for future collaborations for our GnRH and melanocortin programs. If we were to default on our obligations under any of our product licenses, such as our license to indiplon, we could lose some or all of our rights to develop, market and sell the product. Likewise, if we were to lose our rights under a license to use proprietary research tools, it could adversely affect our existing collaborations or adversely affect our ability to form new collaborations. We also face the risk that our licensors could, for a number of reasons, lose patent protection or lose their rights to the technologies we have licensed, thereby impairing or extinguishing our rights under our licenses with them.

Because the development of our product candidates is subject to a substantial degree of technological uncertainty, we may not succeed in developing any of our product candidates.

All of our product candidates are in research or development and we do not expect any of our product candidates to be commercially available within a year, if at all. Only a small number of research and development programs

ultimately result in commercially successful drugs. Potential products that appear to be promising at early stages of development may not reach the market for a number of reasons. These reasons include the possibilities that the potential products may:

- § be found ineffective or cause harmful side effects during preclinical studies or clinical trials;
- § fail to receive necessary regulatory approvals on a timely basis or at all;
- § be precluded from commercialization by proprietary rights of third parties;
- § be difficult to manufacture on a large scale; or
- § be uneconomical or fail to achieve market acceptance.

If any of our products encounters any of these potential problems, we may never successfully market that product.

We are currently conducting Phase III clinical trials for indiplon. Since this is our most advanced product program, our business and reputation would be particularly harmed, and our stock price likely would be harmed, if the product does not prove to be efficacious in these clinical trials or we fail to receive necessary regulatory approvals on a timely basis or achieve market acceptance.

If we cannot raise additional funding, we may be unable to complete development of our product candidates.

We may require additional funding to continue our research and product development programs, including preclinical testing and clinical trials of our product candidates, for operating expenses and to pursue regulatory approvals for product candidates. We also may require additional funding to establish manufacturing and marketing capabilities in the future. We believe that our existing capital resources, together with interest income, and future payments due under our strategic alliances, will be sufficient to satisfy our current and projected funding requirements for at least the next 12 months. However, these resources might be insufficient to conduct research and development programs as planned. If we cannot obtain adequate funds, we may be required to curtail significantly one or more of our research and development programs or obtain funds through additional arrangements with corporate collaborators or others that may require us to relinquish rights to some of our technologies or product candidates.

Our future capital requirements will depend on many factors, including:

- § continued scientific progress in our research and development programs;
- § the magnitude of our research and development programs;
- § progress with preclinical testing and clinical trials;
- § the time and costs involved in obtaining regulatory approvals;
- § the costs involved in filing and pursuing patent applications and enforcing patent claims;
- § competing technological and market developments;
- § the establishment of additional strategic alliances;
- § the cost of commercialization activities and arrangements, including manufacturing of our product candidates; and
- § the cost of product in-licensing and any possible acquisitions.

We intend to seek additional funding through strategic alliances, and may seek additional funding through public or private sales of our securities, including equity securities. In addition, we have utilized debt financing for capital acquisitions and may continue to pursue opportunities to obtain additional debt financing in the future. However, additional equity or debt financing might not be available on reasonable terms, if at all, and any additional equity financings will be dilutive to our stockholders.

We have no marketing experience, sales force or distribution capabilities, and if our products are approved, we may not be able to commercialize them successfully.

Although we do not currently have any marketable products, our ability to produce revenues ultimately depends on our ability to sell our products if and when they are approved by the FDA. We currently have no experience in marketing or selling pharmaceutical products. We are currently initiating marketing activities for indiplon by hiring staff with experience in pharmaceutical sales, marketing and distribution. We will rely on Pfizer to co-promote indiplon with us in the United States and rely exclusively on Pfizer to market indiplon outside of the United States. We will also rely on Pfizer to provide distribution, customer service, order entry, shipping, billing, customer reimbursement assistance and managed care sales support related to indiplon. If we fail to establish successful marketing and sales capabilities or fail to enter into successful marketing arrangements with third parties, our product revenues will suffer.

The independent clinical investigators and contract research organizations that we rely upon to conduct our clinical trials may not be diligent, careful or timely, and may make mistakes, in the conduct of our trials.

We depend on independent clinical investigators and contract research organizations, or CROs, to conduct our clinical trials under their agreements with us. The investigators are not our employees, and we cannot control the amount or timing of resources that they devote to our programs. If independent investigators fail to devote sufficient time and resources to our drug development programs, or if their performance is substandard, it will delay the approval of our FDA applications and our introductions of new drugs. The CROs we contract with for execution of our clinical trials play a significant role in the conduct of the trials and the subsequent collection and analysis of data. Failure of the CROs to meet their obligations could adversely affect clinical development of our products. Moreover, these independent investigators and CROs may also have relationships with other commercial entities, some of which may compete with us. If independent investigators and CROs assist our competitors at our expense, it could harm our competitive position.

We have no manufacturing capabilities. If third-party manufacturers of our product candidates fail to devote sufficient time and resources to our concerns, or if their performance is substandard, our clinical trials and product introductions may be delayed and our costs may rise.

We have in the past utilized, and intend to continue to utilize, third-party manufacturers to produce the drug compounds we use in our clinical trials and for the potential commercialization of our future products. We have no experience in manufacturing products for commercial purposes and do not currently have any manufacturing facilities. Consequently, we depend on several contract manufacturers for all production of products for development and commercial purposes. If we are unable to obtain or retain third-party manufacturers, we will not be able to commercialize our products. The manufacture of our products for clinical trials and commercial purposes is subject to specific FDA regulations. Our third-party manufacturers might not comply with FDA regulations relating to manufacturing our products for clinical trials and commercial purposes or other regulatory requirements now or in the future. Our reliance on contract manufacturers also exposes us to the following risks:

§ contract manufacturers may encounter difficulties in achieving volume production, quality control and quality assurance, and also may experience shortages in qualified personnel. As a result, our contract manufacturers might not be able to meet our clinical schedules or adequately manufacture our products in commercial quantities when required;

§ switching manufacturers may be difficult because the number of potential manufacturers is limited. It may be difficult or impossible for us to find a replacement manufacturer quickly on acceptable terms, or at all;

- § our contract manufacturers may not perform as agreed or may not remain in the contract manufacturing business for the time required to successfully produce, store or distribute our products;

- § drug manufacturers are subject to ongoing periodic unannounced inspection by the FDA, the Drug Enforcement Agency, and corresponding state agencies to ensure strict compliance with good manufacturing practices and other government regulations and corresponding foreign standards. We do not have control over third-party manufacturers' compliance with these regulations and standards; and

- § if our primary contract manufacturer should be unable to manufacture indiplon for any reason, or should fail to receive FDA approval or Drug Enforcement Agency approval, commercialization of indiplon could be delayed, which would delay indiplon sales and negatively impact our business.

Our current dependence upon third parties for the manufacture of our products may harm our profit margin, if any, on the sale of our future products and our ability to develop and deliver products on a timely and competitive basis.

If we are unable to retain and recruit qualified scientists or if any of our key senior executives discontinues his or her employment with us, it may delay our development efforts.

We are highly dependent on the principal members of our management and scientific staff. The loss of any of these people could impede the achievement of our development objectives. Furthermore, recruiting and retaining qualified scientific personnel to perform research and development work in the future is critical to our success. We may be unable to attract and retain personnel on acceptable terms given the competition among biotechnology, pharmaceutical and health care companies, universities and non-profit research institutions for experienced scientists. In addition, we rely on members of our Scientific Advisory Board and a significant number of consultants to assist us in formulating our research and development strategy. All of our consultants and members of the Scientific Advisory Board are employed by employers other than us. They may have commitments to, or advisory or consulting agreements with, other entities that may limit their availability to us.

We may be subject to claims that we or our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

As is commonplace in the biotechnology industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Governmental and third-party payors may impose sales and pharmaceutical pricing controls on our products that could limit our product revenues and delay profitability.

The continuing efforts of government and third-party payors to contain or reduce the costs of health care through various means may reduce our potential revenues. These payors' efforts could decrease the price that we receive for any products we may develop and sell in the future. In addition, third-party insurance coverage may not be available to patients for any products we develop. If government and third-party payors do not provide adequate coverage and reimbursement levels for our products, or if price controls are enacted, our product revenues will suffer.

If physicians and patients do not accept our products, we may not recover our investment.

The commercial success of our products, if they are approved for marketing, will depend upon the acceptance of our products as safe and effective by the medical community and patients.

The market acceptance of our products could be affected by a number of factors, including:

- § the timing of receipt of marketing approvals;
- § the safety and efficacy of the products;
- § the success of existing products addressing our target markets or the emergence of equivalent or superior products; and
- § the cost-effectiveness of the products.

In addition, market acceptance depends on the effectiveness of our marketing strategy, and, to date, we have very limited sales and marketing experience or capabilities. If the medical community and patients do not ultimately accept our products as being safe and effective, we may not recover our investment.

Risks Related to Our Industry

We face intense competition, and if we are unable to compete effectively, the demand for our products, if any, may be reduced.

The biotechnology and pharmaceutical industries are subject to rapid and intense technological change. We face, and will continue to face, competition in the development and marketing of our product candidates from academic institutions, government agencies, research institutions and biotechnology and pharmaceutical companies. Competition may also arise from, among other things:

- § other drug development technologies;
- § methods of preventing or reducing the incidence of disease, including vaccines; and
- § new small molecule or other classes of therapeutic agents.

Developments by others may render our product candidates or technologies obsolete or noncompetitive.

We are performing research on or developing products for the treatment of several disorders including insomnia, anxiety, depression, various female and male disorders, multiple sclerosis, diabetes and other neuro-endocrine related diseases and disorders, and there are a number of competitors to products in our research pipeline. If one or more of our competitors' products or programs are successful, the market for our products may be reduced or eliminated.

Compared to us, many of our competitors and potential competitors have substantially greater:

- § capital resources;
- § research and development resources, including personnel and technology;
- § regulatory experience;
- § preclinical study and clinical testing experience;
- § manufacturing and marketing experience; and
- § production facilities.

Any of these competitive factors could reduce demand for our products.

If we are unable to protect our intellectual property, our competitors could develop and market products based on our discoveries, which may reduce demand for our products.

Our success will depend on our ability to, among other things:

- § obtain patent protection for our products;
- § preserve our trade secrets;
- § prevent third parties from infringing upon our proprietary rights; and
- § operate without infringing upon the proprietary rights of others, both in the United States and internationally.

Because of the substantial length of time and expense associated with bringing new products through the development and regulatory approval processes in order to reach the marketplace, the pharmaceutical industry places considerable importance on obtaining patent and trade secret protection for new technologies, products and processes. Accordingly, we intend to seek patent protection for our proprietary technology and compounds. However, we face the risk that we may not obtain any of these patents and that the breadth of claims we obtain, if any, may not provide adequate protection of our proprietary technology or compounds.

We also rely upon unpatented trade secrets and improvements, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, by confidentiality agreements with our commercial collaborators, employees and consultants. We also have invention or patent assignment agreements with our employees and some, but not all, of our commercial collaborators and consultants. However, if our employees, commercial collaborators or consultants breach these agreements, we may not have adequate remedies for any such breach, and our trade secrets may otherwise become known or independently discovered by our competitors.

In addition, although we own a number of patents, the issuance of a patent is not conclusive as to its validity or enforceability, and third parties may challenge the validity or enforceability of our patents. We cannot assure you how much protection, if any, will be given to our patents if we attempt to enforce them and they are challenged in court or in other proceedings. It is possible that a competitor may successfully challenge our patents or that challenges will result in limitations of their coverage. Moreover, competitors may infringe our patents or successfully avoid them through design innovation. To prevent infringement or unauthorized use, we may need to file infringement claims, which are expensive and time-consuming. In addition, in an infringement proceeding a court may decide that a patent of ours is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the ground that our patents do not cover its technology. Interference proceedings declared by the United States Patent and Trademark Office may be necessary to determine the priority of inventions with respect to our patent applications or those of our licensors. Litigation or interference proceedings may fail and, even if successful, may result in substantial costs and be a distraction to management. We cannot assure you that we will be able to prevent misappropriation of our proprietary rights, particularly in countries where the laws may not protect such rights as fully as in the United States.

The technologies we use in our research as well as the drug targets we select may infringe the patents or violate the proprietary rights of third parties.

We cannot assure you that third parties will not assert patent or other intellectual property infringement claims against us or our collaboration partners with respect to technologies used in potential products. Any claims that might be brought against us relating to infringement of patents may cause us to incur significant expenses and, if successfully asserted against us, may cause us to pay substantial damages. Even if we were to prevail, any litigation could be costly and time-consuming and could divert the attention of our management and key personnel from our business operations. Furthermore, if a patent infringement suit were brought against us or our collaboration partners, we or our collaboration partners could be forced to stop or delay developing, manufacturing or selling potential products that are claimed to infringe a third party’s intellectual property unless that party grants us or our collaboration partners rights to use its intellectual property. In such cases, we could be required to obtain licenses to patents or proprietary rights of others in order to continue to commercialize our products. However, we may not be able to obtain any licenses required under any patents or proprietary rights of third parties on acceptable terms, or at

all. Even if our collaboration partners or we were able to obtain rights to the third party's intellectual property, these rights may be non-exclusive, thereby giving our competitors access to the same intellectual property. Ultimately, we may be unable to commercialize some of our potential products or may have to cease some of our business operations as a result of patent infringement claims, which could severely harm our business.

We face potential product liability exposure far in excess of our limited insurance coverage.

The use of any of our potential products in clinical trials, and the sale of any approved products, may expose us to liability claims. These claims might be made directly by consumers, health care providers, pharmaceutical companies or others selling our products. We have obtained limited product liability insurance coverage for our clinical trials in the amount of $10 million per occurrence and $10 million in the aggregate. However, our insurance may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. We intend to expand our insurance coverage to include the sale of commercial products if we obtain marketing approval for product candidates in development, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, juries have awarded large judgments in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us would decrease our cash reserves and could cause our stock price to fall.

Our activities involve hazardous materials and we may be liable for any resulting contamination or injuries.

Our research activities involve the controlled use of hazardous materials. We cannot eliminate the risk of accidental contamination or injury from these materials. If an accident occurs, a court may hold us liable for any resulting damages, which may reduce our cash reserves and force us to seek additional financing.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

A discussion of our exposure to, and management of, market risk appears in Part I, Item 2 of this Quarterly Report on Form 10-Q under the heading “Interest Rate Risk.”

ITEM 4. CONTROLS AND PROCEDURES

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the timelines specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decision regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by SEC Rule 13a-15(b), the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Company's Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of the end of the quarter covered by this report. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

There has been no change in our internal controls over financial reporting during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

PART II: OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Salk Institute has notified us that it is the Salk's belief that we have not complied with certain milestone payments for our CRF antagonists under the 1993 license agreement between Salk and us. As a result, we and Salk have entered into arbitration. We believe that we have complied with the terms of the license agreement and that no additional milestone payments are owed to Salk. We intend to vigorously defend our interests in this matter. We expect that the resolution of this matter will not have a material adverse effect on our business, financial condition, or results of operations. However, due to the uncertainties inherent in these types of matters, no assurance can be given as to the outcome of these arbitration proceedings. Other than the above, we are not currently a party to any material legal proceedings.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(A) EXHIBITS.

Exhibit Number	Description
10.1	Employment Agreement dated as of September 1, 2003 between the Registrant and Wendell Wierenga
10.2	Construction Loan Agreement dated September 25, 2003 between San Diego National Bank and Science Park Center LLC
10.3	Loan Guaranty dated September 25, 2003 made by Neurocrine Biosciences, Inc in favor of San Diego National Bank
10.4	Lien Free Completion Guaranty dated September 25, 2003 made by Neurocrine Biosciences, Inc in favor of San Diego National Bank
10.5	Promissory Note dated September 25, 2003 by Science Park Center, LLC in favor of San Diego National Bank
10.6	Construction Agreement
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934.
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934.
32*	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

*These certifications are being furnished solely to accompany this quarterly report pursuant to 18. U.S.C. Section 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 Neurocrine Biosciences, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

(B) REPORTS ON FORM 8-K.

On July 24, 2003, the Company filed a report on Form 8-K, which reported under Item 5 the appointment of Wendell Wierenga to the position of Executive Vice President, Research and Development.

On September 11, 2003, the Company filed a report on Form 8-K which reported under Items 5 and 7, the Company's entering into the Underwriting Agreement dated September 11, 2003 by and among the Company and Morgan Stanley & Co. Incorporated, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., UBS Securities LLC, Bear, Stearns & Co. Inc., CIBC World Markets Corp., Banc

of America Securities LLC and Credit Suisse First Boston LLC, as representatives of the several underwriters, relating to the public offering of shares of the Company's common stock.

SIGNATURES

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

Dated: November 7, 2003

/s/ Paul W. Hawran

Paul W. Hawran
Executive Vice President and
Chief Financial Officer
(Duly authorized Officer and
Principal Financial Officer)

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated as of September 1, 2003 by and between NEUROCRINE BIOSCIENCES, INC., 10555 Science Center Drive, San Diego, California 92121 (hereinafter the "Company"), and Wendell Wierenga, Ph.D. (hereinafter "Executive").

R E C I T A L S

WHEREAS, the Company and Executive wish to set forth in this Agreement the terms and conditions under which Executive is to be employed by the Company on and after the date hereof; and

NOW, THEREFORE, the Company and Executive, in consideration of the mutual promises set forth herein, agree as follows:

ARTICLE 1

TERM OF AGREEMENT

1.1 Commencement Date. Executive's fulltime employment with the Company under this Agreement shall commence as of September 1, 2003 ("Commencement Date") and this Agreement shall expire after a period of three (3) years from the Commencement Date, unless renewed in accordance with paragraph 1.2 or terminated pursuant to Article 6.

1.2 Renewal. The term of this Agreement shall be automatically renewed for successive, additional three (3) year terms unless either party delivers written notice to the other at least ninety (90) days prior to the end of any term of an intention to terminate this Agreement or to renew it for a term of less than three (3) years but not less than (1) year. If the term of this Agreement is renewed for a term of less than three (3) years, then thereafter the term of this Agreement shall be automatically renewed for successive, additional identical terms unless either party delivers a written notice to the other of an intention to terminate this Agreement or to renew it for a different term of not less than one (1) year, such notice to be delivered at least ninety (90) days prior to the end of any term. The Company's failure to renew this Agreement at the end of any term shall be considered a termination without Cause as set forth in Section 6.4 below.

ARTICLE 2

EMPLOYMENT DUTIES

2.1 Title/Responsibilities. Executive hereby accepts employment with the Company pursuant to the terms and conditions hereof. Executive agrees to serve the Company as Executive Vice President, Research and Development reporting to the Chief Executive Officer. Executive shall have the powers and duties commensurate with such position, including but not limited to hiring personnel necessary to carry out the responsibilities for such position as set forth in the annual business plan approved by the Board of Directors.

2.2 Full Time Attention. Executive shall devote his best efforts and his full business time and attention to the performance of the services customarily incident to such office and to such other services as the President or Board may reasonably request.

2.3 Other Activities. Except upon the prior written consent of the President & Chief Executive Officer, Executive shall not during the period of employment engage, directly or indirectly, in any other business activity (whether or not pursued for pecuniary advantage) that is or may be competitive with, or that might place him in a competing position to that of the Company or any other corporation or entity that directly or indirectly controls, is controlled by, or is under common control with the Company (an "Affiliated Company"), provided that Executive may own less than two percent (2%) of the outstanding securities of any such publicly traded competing corporation.

ARTICLE 3

COMPENSATION

3.1 Base Salary. Executive shall receive a Base Salary at an annual rate of three hundred thousand dollars ($300,000), payable semi-monthly in equal installments in accordance with the Company's normal payroll practices. The Chief Executive Officer shall provide Executive with annual performance reviews, and, thereafter, Executive shall be entitled to such increase in Base Salary as the Chief Executive Officer and Board of Directors may from time to time establish in their sole discretion.

3.2 Signing Bonus. Executive will receive a signing bonus equal to (i) one hundred thousand dollars ($100,000) or (ii) an equivalent value in Company common stock valued at the closing price of the Company's common stock on the NASDAQ National Market System on the date Executive makes the election, provided however that such date shall not be prior to September 1, 2003 or after October 10, 2003. In the event Executive voluntarily terminates employment with the Company prior to September 1, 2004, Executive will repay the signing bonus to the Company on a prorata basis based on the uncompleted period of employment.

3.3 Incentive Bonus. In addition to any other bonus Executive shall be awarded by the Company's Board of Directors, the Company shall pay Executive an annual bonus as determined by the Chief Executive Officer and Company's Board of Directors based upon achievement of Executive in meeting personal goals approved by the Chief Executive Officer and Board of Directors and achievement by the Company of corporate goals approved by the Board of Directors annually. Executive's personal goals and the Company's corporate goals will be set forth in writing by Board of Directors within ninety (90) days after the start of the Company's fiscal year. The Chief Executive Officer and Board of Directors shall, in their sole discretion, determine whether Executive's personal goals have been obtained. The Board of Directors shall, in its sole discretion, determine whether the corporate goals have been obtained.

3.4 Equity. The Executive will receive 3000 shares of common stock that will vest 1/36 per month over a three year period. The Executive will also receive a stock option to purchase 100,000 shares of the Company's common stock with an exercise price equal to the closing price of the Company's common stock as quoted on the NASDAQ National Market System on September 2, 2003. Such option shall vest over a four-year period with 25% of such vesting occurring on September 1, 2004 and 1/48 per month thereafter in accordance with the terms of the Employment Commencement Nonstatutory Stock Option dated September 2, 2003. Each year starting in 2004 and continuing for the term of this Agreement, the Executive will be eligible to receive a Stock Option award under the Company's 2003 Incentive Stock Option Plan with the number of shares and exercise price as shall be determined by the Board of Directors.

3.5 Withholdings. All compensation and benefits payable to Executive hereunder and the Agreement shall be subject to all federal, state, local and other withholdings and similar taxes and payments required by applicable law.

ARTICLE 4

EXPENSE ALLOWANCES AND FRINGE BENEFITS

4.1 Vacation. Executive shall be entitled to the greater of three (3) weeks of annual paid vacation or the amount of annual paid vacation to which Executive may become entitled under the terms of Company's vacation policy for employees during the term of this Agreement.

4.2 Benefits. During the term of this Agreement, the Company shall also provide Executive with health insurance benefits comparable to those it generally provides to its other senior management employees. As Executive becomes eligible in accordance with criteria to be adopted by the Company, the Company shall provide Executive with the right to participate in and to receive benefit from life, accident, disability, medical, pension, bonus, stock, profit-sharing and savings plans and similar benefits made available generally to executives of the Company as such plans and benefits may be adopted by the Company. The amount and extent of benefits to which Executive is entitled shall be governed by the specific benefit plan as it may be amended from time to time.

4.3 Business Expense Reimbursement. During the term of this Agreement, Executive shall be entitled to receive proper reimbursement for all reasonable out-of-pocket expenses incurred by him (in accordance with the policies and procedures established by the Company for its senior executive officers) in performing services hereunder. Executive agrees to furnish to the Company adequate records and other documentary evidence of such expense for which Executive seeks reimbursement. Such expenses shall be reimbursed and accounted for under the policies and procedure established by the Company.

ARTICLE 5

CONFIDENTIALITY

5.1 Proprietary Information. Executive represents and warrants that he has previously executed and delivered to the Company the Company's standard Proprietary Information and Inventions Agreement in form acceptable to the Company's counsel.

5.2 Return of Property. All documents, records, apparatus, equipment and other physical property which is furnished to or obtained by Executive in the course of his employment with the Company shall be and remain the sole property of the Company. Executive agrees that, upon the termination of his employment, he shall return all such property (whether or not it pertains to Proprietary Information as defined in the Proprietary Information and Inventions Agreement), and agrees not to make or retain copies, reproductions or summaries of any such property.

5.3 No use of Prior Confidential Information. Executive will not intentionally disclose to the Company or use on its behalf any confidential information belonging to any of his former employers or any other third party.

ARTICLE 6

TERMINATION

6.1 By Death. The period of employment shall terminate automatically upon the death of Executive. In such event, all stock options held by Executive at the time of termination will continue to vest for a period of six (6) months following termination. All stock options held by Executive that are vested at the time of termination or within six (6) months thereafter will be exercisable in accordance with their terms for a period of one year. In addition, the Company shall pay to Executive's beneficiaries or his estate, as the case may be, any accrued Base Salary, any bonus compensation to the extent earned, any vested deferred compensation (other than pension plan or profit-sharing plan benefits which will be paid in accordance with the applicable plan), any benefits under any plans of the Company in which Executive is a participant to the full extent of Executive's rights under such plans, any accrued vacation pay and any appropriate business expenses incurred by Executive in connection with his duties hereunder, all to the date of termination (collectively Accrued Compensation), but no other compensation or reimbursement of any kind, including, without limitation, severance compensation, and thereafter, the Company's obligations hereunder shall terminate.

6.2 By Disability. If Executive is prevented from properly performing his duties hereunder by reason of any physical or mental incapacity for a period of one hundred twenty (120) consecutive days, or for one hundred and eighty (180) days in the aggregate in any three hundred and sixty-five (365) day period, then, to the extent permitted by law, the Company may terminate the employment of Executive at such time. In such event, all stock options held by Executive at the time of termination will continue to vest for a period of six (6) months following termination. All stock options held by Executive that are vested at the time of termination or within six (6) months thereafter will be exercisable in accordance with their terms for a period of one year following termination. In addition, the Company shall pay to Executive all Accrued Compensation, and shall continue to pay to Executive the Base Salary until such time, as Executive shall become entitled to receive disability insurance payments under the disability insurance policy maintained by the Company, but no other compensation or reimbursement of any kind, including without limitation, severance compensation, and thereafter the Company's obligations hereunder shall terminate. Nothing in this Section shall affect Executive's rights under any disability plan in which he is a participant.

6.3 By Company for Cause. The Company may terminate the Executive's employment for Cause (as defined below) without liability at any time with or without advance notice to Executive. The Company shall pay Executive all Accrued Compensation, but no other compensation or reimbursement of any kind, including without limitation, severance compensation, and thereafter the Company's obligations hereunder shall terminate. Termination shall be for "Cause" in the event of the occurrence of any of the following: (a) any intentional action or intentional failure to act by Executive which was performed in bad faith and to the material detriment of the Company; (b) Executive intentionally refuses or intentionally fails to act in accordance with any lawful and proper direction or order of the Chief Executive Officer; (c) Executive willfully and habitually neglects the duties of employment; or (d) Executive is convicted of a felony crime involving moral turpitude, provided that in the event that an of the foregoing events is capable of being cured, the Board of Directors shall provide written notice to Executive describing the nature of such event and Executive shall thereafter have ten (10) business days to cure such event.

6.4 Termination Without Cause. At any time, the Company may terminate the employment of Executive without liability other than as set forth below, for any reason not specified in Section 6.3 above, by giving thirty (30) days advance written notice to Executive. If the Company elects to terminate Executive pursuant to this Section 6.4,

(a) the Company shall pay to Executive all Accrued Compensation,

(b) the Company shall continue to pay to Executive as provided herein Executive's Base Salary over the period equal to nine (9)months from the date of such termination as severance compensation,

(c) the Company shall make a lump sum payment to Executive in an amount equal to a pro rata portion of the Executive's annual actual cash incentive bonus for Company's fiscal year preceding the year of termination based on the number of completed months of Executive's employment in the fiscal year plus nine (9);

(d) the vesting of all outstanding stock options held by Executive shall be accelerated so that the amount of shares vested under such option shall equal that number of shares which would have been vested if the Executive had continued to render services to the Company for nine (9) continuous months after the date of his termination of employment, and

(e) the Company shall pay all costs which the Company would otherwise have incurred to maintain all of Executive's health and welfare, and retirement benefits (either on the same or substantially equivalent terms and conditions) if the Executive had continued to render services to the Company for nine (9) continuous months after the date of his termination of employment.

The Company shall have no further obligations to Executive other than those set forth in the preceding sentence. During the period when such severance compensation is being paid to Executive, Executive shall not (i) engage, directly or indirectly, in providing services to any other business program or project that is competitive to a program or project being conducted by the Company or any Affiliated Company at the time of such employment termination (provided that Executive may own less than two percent (2%) of the outstanding securities of any publicly traded corporation), or (ii) hire, solicit, or attempt to solicit on behalf of himself or any other party or any employee or exclusive consultant of the Company. If the Company terminates this Agreement or the employment of Executive with the Company other than pursuant to Section 6.1, 6.2 or 6.3, then this section 6.4 shall apply.

6.5 Constructive Termination. A Constructive Termination shall be deemed to be a termination of employment of Executive without cause pursuant to Section 6.4. For Purposes of this Agreement, a "Constructive Termination" means that the Executive voluntarily terminates his employment except in connection with the termination of his employment for death, disability, retirement, fraud, misappropriation, embezzlement (or any other occurrence which constitutes "Cause" under section 6.3) or any other voluntary termination of employment by Executive other than a Constructive Termination after any of the following are undertaken without Executive's express written consent:

(a) the assignment to Executive of any duties or responsibilities which result in any diminution of position as judged against the duties and responsibilities assigned to executives with Executive's position in the Company's peer group of companies and shall not include (i) duties and responsibilities assigned to Executive with the understanding that as the Company grows and management staff increases in number, such duties and responsibilities will eventually be reassigned in a manner consistent with the Company's peer group of companies, (ii) change in reporting relationship that does not change in any material way the Executive's duties and responsibilities or (iii) any change in duties or responsibilities or reporting relationships that Executive does not identify as Constructive Termination to the Chief Executive Officer in writing within 15 days following the Chief Executive Officer's proposal of such change to Executive;

(b) a reduction by the Company in Executive's annual Base Salary by greater than five percent (5%);

(c) a relocation of Executive or the Company's principal executive offices if Executive's principal office is at such offices, to a location more than forty (40) miles from the location at which Executive is then performing his duties, except for an opportunity to relocate which is accepted by Executive in writing;

(d) any material breach by the Company of any provision of this Agreement; or

(e) any failure by the Company to obtain the assumption of this Agreement by any successor or assign of the Company.

6.6 Termination Following Change in Control. In the event of a termination Without Cause or Constructive Termination within six (6) months after a Change in Control (as defined below) or Executive's voluntary termination within thirty (30) days following the six (6) month anniversary of a Change in Control, the Company shall pay to Executive a lump sum severance payment in an amount equal to one (1.0) times (Executive's then Base Salary plus annual actual cash incentive bonus for Company's fiscal year preceding the year of termination). In addition, the Executive will receive at Executive's option (i) accelerated vesting of all stock options held by Executive by reason of the assumption or substitution of successor corporation stock options for the Executive's unvested Company stock options at the time of the Change in Control pursuant to the terms of the Company's Stock Incentive Plans or (ii) a cash payment equal to the cash value of all unvested Company stock options held by Executive at the time of the Change in Control. In addition, the Executive will be reimbursed for the increase in federal and state income taxes payable by Executive by reason of the benefits provided under this Section 6.6.

6.7 Change in Control. For purposes of this Agreement, a "Change in Control" shall have occurred if at any time during the term of Executive's employment hereunder, any of the following events shall occur:

(a) The Company is merged, or consolidated. or reorganized into or with another corporation or other legal person, and as a result of such merger, consolidation or reorganization less than fifty percent (50%) of the combined voting power of the then-outstanding securities of such corporation or person immediately after such transaction are held in the aggregate by the holders of voting securities of the Company immediately prior to such transaction;

(b) The Company sells all or substantially all of its assets or any other corporation or other legal person and thereafter, less than fifty percent (50%) of the combined voting power of the then-outstanding voting securities of the acquiring or consolidated entity are held in the aggregate by the holders of voting securities of the Company immediately prior to such sale;

(c) There is a report filed after the date of this Agreement on Schedule 13 D or schedule 14 D-1 (or any successor schedule, form or report), each as promulgated pursuant to the Securities Exchange Act of l934 (the “Exchange Act”) disclosing that any person (as the term “person” is used in Section 13(d)(3) or Section 14(d)(2) of the exchange Act) has become the beneficial owner (as the term beneficial owner is defined under Rule 13d-3 or any successor rule or regulation promulgated under the Exchange Act) representing fifty percent (50%) or more of the combined voting power of the then-outstanding voting securities of the Company;

(d) The Company shall file a report or proxy statement with the Securities and Exchange Commission pursuant to the Exchange Act disclosing in response to item 1 of Form 8-X thereunder or Item 5(f) of Schedule 14 A thereunder (or any successor schedule, form or report or item therein) that the change in control of the Company has or may have occurred or will or may occur in the future pursuant to any then-existing contract or transaction; or

(e) During any period of two (2) consecutive years, individuals who at the beginning of any such period constitute the directors of the Company cease for any reason to constitute at least a majority thereof unless the election to the nomination for election by the Company’s shareholders of each director of the Company first elected during such period was approved by a vote of at least two-thirds of the directors of the Company then still in office who were directors of the Company at the beginning of such period.

6.8 Termination by Executive. At any time, Executive may terminate his employment by giving thirty (30) days advance written notice to the Company. The Company shall pay Executive all Accrued Compensation, but no other compensation or reimbursement of any kind, including without limitation, severance compensation, and thereafter the Company’s obligations hereunder shall terminate.

6.9 Mitigation. Except as otherwise specifically provided herein, Executive shall not be required to mitigate the amount of any payment provided under this Agreement by seeking other employment or self-employment, nor shall the amount of any payment provided for under this Agreement be reduced by any compensation earned by Executive as a result of employment by another employer or through self-employment or by retirement benefits after the date of Executive’s termination of employment from the Company.

6.10 Coordination. If upon termination of employment, Executive becomes entitled to rights under other plans, contracts or arrangements entered into by the Company, this Agreement shall be coordinated with such other arrangements so that Executive’s rights under this Agreement are not reduced, and that any payments under this Agreement offset the same types of payments otherwise provided under such other arrangements, but do not otherwise reduce any payments or benefits under such other arrangements to which Executive becomes entitled.

ARTICLE 7

GENERAL PROVISIONS

7.1 Governing Law. The validity, interpretation, construction and performance of this Agreement and the rights of the parties thereunder shall be interpreted and enforced under California law without reference to principles of conflicts of laws. The parties expressly agree that inasmuch as the Company's headquarters and principal place of business are located in California, it is appropriate that California law govern this Agreement.

7.2 Assignment; Successors Binding Agreement.

(a) Executive may not assign, pledge or encumber his interest in this Agreement or any part thereof.

(b) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, by operation of law or by agreement in form and substance reasonably satisfactory to Executive, to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

(c) This Agreement shall inure to the benefit of and be enforceable by Executive's personal or legal representatives, executors, administrators, successors, heirs, distributee, devisees and legatees. If Executive should die while any amount is at such time payable to his hereunder, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to Executive's devisee, legates or other designee or, if there be no such designee, to his estate.

7.3 Certain Reduction of Payments. In the event that any payment or benefit received or to be received by Executive under this Agreement would result in all or a portion of such payment to be subject to the excise tax on "golden parachute payments" under Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), then Executive's payment shall be either (a) the full payment or (b) such lesser amount which would result in no portion of the payment being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable Federal, state and local employment taxes, income taxes, and the excise tax imposed by Section 4999 of the Code, results in the receipt by Executive on an after-tax basis, of the greatest amount of the payment notwithstanding that all or some portion of the payment may be taxable under Section 4999 of the Code.

7.4 Notice. For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

To the Company:

Neurocrine Biosciences, Inc.

10555 Science Center Drive
San Diego, CA 92121
Attn.: President & Chief Executive Officer

To Executive:

Wendell Wierenga, Ph.D.
10555 Science Center Drive
San Diego, CA 92121

7.5 Modification; Waiver; Entire Agreement. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by Executive and such officer as may be specifically designated by the Board of the Company. No waiver by either party hereto at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement.

7.6 Validity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

7.7 Controlling Document. Except to the extent described in Section 6.l0, in case of conflict between any of the terms and condition of this Agreement and the document herein referred to, the terms and conditions of this Agreement shall control.

7.8 Executive Acknowledgment. Executive acknowledges (a) that he has consulted with or has had the opportunity to consult with independent counsel of his own choice concerning this Agreement, and has been advised to do so by the Company, and (b) that he has read and understands the Agreement, is fully aware of its legal effect, and has entered into it freely based on his own judgment.

7.9 Remedies.

(a) **Injunctive Relief.** The parties agree that the services to be rendered by Executive hereunder are of a unique nature and that in the event of any breach or threatened breach of any of the covenants contained herein, the damage or imminent damage to the value and the goodwill of the Company's business will be irreparable and extremely difficult to estimate, making any remedy at law or in damages inadequate. Accordingly, the parties agree that the Company shall be entitled to injunctive relief against Executive in the event of any breach or threatened breach of any such provisions by Executive, in addition to any other relief (including damage) available to the Company under this Agreement or under law.

(b) **Exclusive.** Both parties agree that the remedy specified in Section 7.9(a) above is not exclusive of any other remedy for the breach by Executive of the terms hereof.

7.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same Agreement.

7.11 Prevailing Party Expenses. In the event that any action or proceeding is commenced to enforce the provisions of the Agreement, the court adjudicating such action or proceeding shall award to the prevailing party all costs and expenses thereof, including, but not limited to, all reasonable attorneys' fees, court costs, and all other related expenses.

Executed by the parties as of the day and year first above written.

WENDELL WIERENGA, PH.D.	**NEUROCRINE BIOSCIENCES, INC.**
/s/ WENDELL WIERENGA, PH.D.	By: /s/ GARY A. LYONS
	Gary A. Lyons, President and Chief Executive Officer

EXHIBIT 10.2

Loan No. 1686410

CONSTRUCTION LOAN AGREEMENT

Between

SAN DIEGO NATIONAL BANK,
a national banking association
("Lender")

And

SCIENCE PARK CENTER LLC,
a California limited liability company
("Borrower")

CONSTRUCTION LOAN AGREEMENT

IN CONSIDERATION of the covenants contained in this Agreement, Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, up to the full amount of the Loan hereinafter described, upon and subject to the following provisions and conditions.

ARTICLE 1 - FUNDAMENTAL PROVISIONS

1.1 Purpose. This Article 1 sets forth certain fundamental provisions for purposes of this Agreement. The captions of this Article are used as defined terms in this Agreement.

1.2 Date of this Agreement. September 25, 2003.

1.3 Lender. SAN DIEGO NATIONAL BANK, a national banking association.

1.4 Borrower. SCIENCE PARK CENTER LLC, a California limited liability company.

1.5 Peony. PEONY ACQUISITIONS LLC, a Delaware limited liability company.

1.6 Loan. A construction loan to be made by Lender to Borrower, in the principal amount of up to $60,600,000.00, together with any additional advances related thereto, upon and subject to the provisions and conditions of this Agreement and the other Loan Documents.

1.7 Guarantor. NEUROCRINE BIOSCIENCES, INC., a Delaware corporation.

1.8 Construction Loan Fee. A fee for the Loan in the amount of $518,250. $100,000 of the Construction Loan Fee has already been paid by Borrower to Lender pursuant to the provisions and conditions of Borrower's application letter to Lender.

1.9 Extension Fee. A fee payable by Borrower in consideration of the extension of the term of the Loan from the Initial Maturity Date to the First Extended Maturity Date, in the amount of one half of one percent (0.50%) of the sum of the principal balance outstanding as of the date the applicable Extension Notice is delivered.

1.10 Land. That certain real property located in San Diego, California, as more particularly described on Exhibit "A" attached hereto and incorporated by this reference, consisting of Parcel A and Parcel B.

1.11 Parcel A. That certain real property located in San Diego, California, as more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference, constituting a portion of the Land.

1.12 Parcel B. That certain real property located in San Diego, California, as more particularly described on Exhibit "C" attached hereto and incorporated herein by this reference, constituting a portion of the Land.

1.13 Improvements. A two-building, approximately 205,117 square foot office/lab/research and development project, with associated parking, common area and other improvements.

1.14 Closing Date. The date upon which all of the conditions set forth herein relating to and for the Initial Disbursement have been satisfied.

1.15 Commencement Date. The date upon which construction of the Improvements has commenced.

1.16 Completion Date. January 1, 2005.

1.17 Initial Maturity Date. September 25, 2005.

1.18 First Extended Maturity Date. The date which is twelve (12) months after the Initial Maturity Date.

1.19 Estimated Total Project Cost. $71,668,996.00

1.20 Required Borrower Invested Funds. An amount equal to the difference between the Estimated Total Project Cost and the amount of the Loan.

1.21 Borrower's Funds at Recordation. $ 0.

1.22 Change Order Amount. $100,000.

1.23 Aggregate Change Order Amount. $500,000.

1.24 Architect. Dowler-Gruman Architects.

1.25 General Contractor. Ledcor Petty Construction, L.P.

1.26 Title Insurer. Chicago Title Insurance Company.

1.27 Address for Notices to Lender.

San Diego National Bank
1420 Kettner Boulevard
San Diego, California 92101
Attention: Mr. James Holliman

1.28 Address for Notices to Borrower.

Science Park Center, LLC
10555 Science Center Drive
San Diego, California 92121
Attn: Paul Hawran

With a copy to:

Neurocrine Biosciences, Inc.
10555 Science Center Drive
San Diego, California 92121
Attn: Margaret E. Valeur-Jensen

1.29 Borrower's U.S. Taxpayer Identification Number: 33-0745791

ARTICLE 2 - ADDITIONAL DEFINED TERMS

2.1 Captions as Defined Terms. The captions appearing in Article 1 and in the balance of this Article 2 will be used as defined terms in this Agreement.

2.2 Applicable Interest Rate. The interest applicable to the Note, as specifically set forth therein.

2.3 Architect Contract. An architecture agreement between Architect and Owner for the design of the Improvements.

2.4 Architect Warranty, Agreement and Consent to Assignment. The Architect Warranty, Agreement and Consent to Assignment to be executed by Architect in favor of Lender with respect to the Project substantially in the form of Exhibit "D" attached hereto and incorporated herein by this reference with such modifications as may be approved by Lender in its reasonable discretion.

2.5 Assignment of Architect Contract. The Assignment of Architect Contract to be executed by Guarantor, as agent for Peony, in favor of Lender in connection with the Loan in the form of Exhibit "E" attached hereto and incorporated herein by this reference.

2.6 Assignment of Construction Contract. The Assignment of Construction Contract of even date herewith, executed by Peony in favor of Lender in connection with the Loan.

2.7 Assignment of Development Agreement. The Assignment of Development Agreement of even date herewith, executed by Peony and Guarantor in favor of Lender in connection with the Loan.

2.8 Assignment of Leases. The Assignment of Rents and Leases of even date herewith, executed by Peony in favor of Lender in connection with the Loan.

2.9 Assignment of Leases (Guarantor). The Assignment of Rents and Leases to be executed by Guarantor in favor of Lender in connection with the Loan in the form of Exhibit "F" attached hereto and incorporated herein by this reference.

2.10 Assignment of Permits and Deposits. The Assignment of Permits and Deposits of even date herewith, executed by Peony in favor of Lender in connection with the Loan.

2.11 Assignment of Plans and Specifications. The Assignment of Plans and Specifications of even date herewith, executed by Peony in favor of Lender in connection with the Loan.

2.12 Borrower's Funds. The funds, if any, required to be deposited by Borrower with Lender pursuant to this Agreement.

2.13 Borrower's Funds Account. A special interest-bearing account, with and controlled by Lender, into which all Borrower's Funds shall be deposited pending disbursement pursuant to this Agreement. All funds in the Borrower's Funds Account shall be disbursed prior to the disbursement of any funds then in the Undisbursed Loan Account, except as may otherwise be agreed by Lender in writing.

2.14 Business Day. Any day other than a Saturday or Sunday, which is not a legal holiday in the state of California and which is not a date on which national banks in the state of California are authorized to close.

2.15 Change Order. Any material amendment or modification of the Plans, the General Contract or any subcontract. All Change Orders shall be in writing. Certain Change Orders require Lender's prior written approval pursuant to this Agreement.

2.16 Completion. The date upon which all of the following conditions are met to the satisfaction of Lender: (a) Architect certifies that the Improvements have been substantially completed substantially in accordance with the Plans; and (b) a certificate of occupancy has been issued for the Improvements or other evidence of completion satisfactory to Lender in its sole discretion.

2.17 Completion Guaranty. The Lien-Free Completion Guaranty executed by Guarantor in favor of Lender, guaranteeing, without limitation, the lien-free completion of the Improvements.

2.18 Construction Contract. That certain Contract for Construction, AIA Document A201-1997 (1997 Edition), dated September 19, 2003 between Peony and General Contractor.

2.19 Construction Schedule. A construction progress schedule, in a form acceptable to Lender, showing the progress of construction and the projected sequencing and completion time for uncompleted work, all as of the date of such schedule, together with such updates thereof as Lender may request.

2.20 Cost Breakdown. The itemized schedule of costs on a line item basis set forth on Exhibit "G" attached hereto and incorporated herein by this reference, covering all costs of constructing and completing the Improvements, together with such amendments to the schedule as may have been approved in writing by Lender in accordance with this Agreement.

2.21 Deed of Trust. The Construction Deed of Trust, Security Agreement and Fixture Filing of even date herewith executed by Peony, as Trustor, in favor of Lender, as Beneficiary, encumbering the Property, given to secure the Note and other obligations of Borrower related thereto.

2.22 Deed of Trust (Guarantor). The Construction Deed of Trust, Security Agreement and Fixture Filing, executed by Guarantor in favor of Lender in connection with the Loan in the form of Exhibit "H" attached hereto and incorporated herein by this reference.

2.23 Deposits. Any and all of Borrower's rights to the reimbursement or payment of money, refunds, cost savings and deposits relating to the Property, whether now or later to be received from third parties or deposited by Borrower with third parties (including all utility deposits).

2.24 Disbursement or Disbursements. All advances made by Lender from time to time under the Loan.

2.25 Disbursement Schedule. The schedule set forth on Exhibit "I" attached hereto and incorporated herein by this reference, governing Disbursements from the Undisbursed Loan Account and Borrower's Funds Account.

2.26 Disclosure Re Hazard Insurance Coverage. The Disclosure Re Hazard Insurance Coverage of even date herewith executed by Borrower in favor of Lender in connection with the Loan.

2.27 Environmental Indemnity. The Unsecured Environmental Indemnity of even date herewith executed by Guarantor in favor of Lender with respect to the Project.

2.28 Environmental Indemnity-Borrower. The Unsecured Environmental Indemnity-Borrower of even date herewith executed by Borrower in favor of Lender with respect to the Project.

2.29 Environmental Laws. Any and all present and future federal, state and local laws, ordinances, regulations, permits, orders, rules, approvals, guidance documents, policies, and any other requirements of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states, and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to health, safety, the environment or to any Hazardous Substances or Hazardous Substances Activity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation Recovery Act ("RCRA"), the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Clean Water Act, the Endangered Species Act, the Clean Air Act, the Occupational Health and Safety Act and the applicable provisions of the California Health and Safety Code and the California Water Code, and the rules, regulations and guidance documents promulgated or published thereunder.

2.30 Environmental Losses. Losses suffered or incurred at any time by Lender arising out of or as a result of:

2.30.1 any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on or prior to the Transfer Date;

2.30.2 any violation on or prior to the Transfer Date of any applicable Environmental Laws relating to the Property or to the ownership, use, occupancy or operation thereof;

2.30.3 any demand, requirement, investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on or prior to the Transfer Date;

2.30.4 any investigation, monitoring and(or) clean-up activities conducted at any time by Guarantor and(or) Borrower upon the Property as part of its efforts to clean up any Hazardous Substance relating to or arising from any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on or prior to the Transfer Date;

2.30.5 personal injury or injury to property or natural resources occurring upon or off of the Property, including, without limitation, lost profits and the cost of demolition and rebuilding of any improvements on real property, relating to or arising from any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on or prior to the Transfer Date;

2.30.6 the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work in connection with any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on or prior to the Transfer Date and is required by any federal, state, or local Governmental Authority or political subdivision, or reasonably necessary to make full economic use of the Property or any other property;

2.30.7 diminution in the value of the Property, or the loss of business and(or) restriction on the use of, or adverse impact on the marketing of, rentable or usable space or of any amenity of the Property, relating to or arising from any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on or prior to the Transfer Date; or

2.30.8 any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any of the indemnified parties which directly or indirectly relates to, arises from or is based on any of the matters described in clauses 2.30.1, 2.30.2, 2.30.3, 2.30.4, 2.30.5, 2.30.6 or 2.30.7 or any allegation of any such matters.

Environmental Losses shall include Losses suffered or incurred by Lender or any of such other indemnified parties after the Transfer Date that would not have been incurred or suffered but for any matter described in clauses 2.30.1, 2.30.2, 2.30.3, 2.30.4, 2.30.5, 2.30.6, 2.30.7 or 2.30.8 or any allegation of any such matters, including, without limitation, Environmental Losses incurred by any of the Indemnified Parties arising out of or as a result of (i) the introduction or release of a Hazardous Substance which is discovered or released at the Property or any portion thereof after the Transfer Date, but which were introduced at the Property prior to the Transfer Date, and (ii) the continuing migration or release of any Hazardous Substance introduced in, on or under the Land or surrounding property prior to the Transfer Date; provided that Environmental Losses shall not include Losses arising from Lender's or an indemnified party's gross negligence or willful misconduct.

2.31 Estoppel Certificate. The Estoppel Certificate completed and executed by Guarantor in favor of Lender, on or before the Title Transfer Date in connection with the Property Lease, in the form of Exhibit "J" attached hereto and incorporated herein by this reference.

2.32 Event of Default. Any one of the events of default specified in Article 11 herein captioned "Default."

2.33 Extension Notice. Written notice delivered by Borrower to Lender pursuant to Paragraph 3.7, stating Borrower's election to exercise its Extension Option. The Extension Notice shall also contain Borrower's certification that all representations and warranties of Borrower in this Agreement are true and correct as of the date the Extension Notice is delivered and shall continue to be correct as of the Initial Maturity Date.

2.34 Extension Option. Borrower's right, upon and subject to the provisions and conditions set forth in Paragraph 3.7, to extend the term of the Loan from the Initial Maturity Date to the First Extended Maturity Date.

2.35 Extension Term. The period following the Initial Maturity Date until the First Extended Maturity Date.

2.36 Final Disbursement. The payment of sums retained from Disbursements to be made after the Completion of the Improvements and upon satisfaction of the conditions precedent set forth in Paragraph 4.4.

2.37 Financial Statements. Financial statements of Borrower, Guarantor and such other Persons as may be required by Lender, as more particularly set forth herein. So long as the Guarantor is subject to the reporting provisions of the Securities Exchange Act, as amended (the “Exchange Act”), the timely filing (including all permissible extension periods provided under Rule 12b-25 under the Exchange Act) on the Securities and Exchange Commission’s EDGAR system of the Guarantor’s quarterly report on Form 10-Q for such period and annual report on Form 10-K for such period will be deemed to satisfy all of the foregoing requirements of this Section.

2.38 Force Majeure. Only an action of the elements, war, riot, civil unrest, terrorism, flood, earthquake, other acts of God or labor strike; provided, however: (a) a delay caused by Force Majeure shall not be recognized unless Borrower notifies Lender in writing of the existence of the event of Force Majeure within ten (10) days after the commencement thereof, explaining in detail the nature of the event of Force Majeure and the manner in which the event of Force Majeure has prevented Borrower from performing its obligations, (b) in no event shall the cumulative periods of Force Majeure exceed ninety (90) days, and (c) in no event shall any Force Majeure event impair or relieve any payment obligation of Borrower, Peony, Guarantor, or any other Persons, as required by Lender under any of the documents listed in Paragraph 3.4 of this Agreement, or act to release or impair any security held by Lender under said documents.

2.39 GAAP. Generally accepted accounting principles.

2.40 General Contract. The applicable contracts between Peony and General Contractor for construction of the Improvements, as specifically identified in the Assignment of Construction Contract.

2.41 General Contractor Warranty, Agreement and Consent to Assignment. The General Contractor Warranty, Agreement and Consent to Assignment to be executed by General Contractor in favor of Lender with respect to the Project.

2.42 Governmental Authority. The United States, the State of California, the County of San Diego, the City of San Diego, and any other political subdivision located therein, and any agency, department, commission, board, bureau or instrumentality of any of them.

2.43 Governmental Requirement. Any law, ordinance, order, rule, regulation or requirement of a Governmental Authority.

2.44 Guaranty. The Guaranty executed by Guarantor in favor of Lender, guaranteeing the Borrower’s performance of its obligations under all of the Loan Documents.

2.45 Hazardous Substance.

2.45.1 any substance the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy, or common law;

2.45.2 any chemical, compound, material, mixture or substance that is now, or at any time in the future becomes, defined or listed in, or otherwise classified pursuant to any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "infectious waste," "biohazardous waste," "toxic substance," "pollutant," "toxic pollutant," "contaminant," or "waste," including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the California Health and Safety Code (§25281(f)), or the California Water Code (§13050(d));

2.45.3 any substance, chemical, compound, material, mixture or formulation which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is, or at any time in the future becomes, regulated by any Governmental Authority, agency, department, commission, board, or instrumentality of the United States, the State of California, or any political subdivision thereof;

2.45.4 any substance the presence of which on the Property causes or threatens to cause a nuisance, trespass, or waste upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property;

2.45.5 without limitation any substance which contains petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

2.45.6 asbestos in any form;

2.45.7 without limitation any substance which contains ureal formaldehyde foam insulation, polychlorinated biphenyls (PCBs), radon gas; and

2.45.8 any other chemical, material or substance that, because of its quantity, concentration or physical or chemical characteristics, is controlled or regulated for health and safety reasons by any Governmental Authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace, atmosphere, soil, surface waters, or groundwater.

2.46 Hazardous Substance Activity. Any actual, proposed or threatened use, storage, holding, existence, release (including any spilling, leaking, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water or groundwater), emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation to or from the Property of any Hazardous Substances from, under, in, into or on the Property or surrounding property, including, without limitation, the movement or migration of any Hazardous Substance from surrounding property or groundwater in, into, onto or under the Property or from the Property to surrounding property or groundwater.

2.47 Initial Disbursement. The Disbursement made upon the Closing Date which: (a) pays to Borrower these amounts consistent with the Cost Breakdown approved by Lender; and (b) pays to Lender the remaining amount of the Construction Loan Fee and Lender's fees and costs pursuant to Paragraph 3.3 hereof.

2.48 Inspection Agent. An inspecting architect, engineer or other agent of Lender's choice designated by Lender to perform, at Borrower's sole cost and expense, the inspection services set forth in Subparagraph 7.6.3. Lender has initially selected Real Estate Engineering, Inc., as its Inspection Agent, however Lender shall be entitled to replace such Inspection Agent as it deems appropriate in its sole discretion.

2.49 Interest Reserve Amount. The amount set forth on the Cost Breakdown, against which interest disbursements shall be drawn or credited as provided in the Disbursement Schedule.

2.50 List of Contractors. A complete list stating: (a) the name, address and telephone number of each contractor, subcontractor and supplier of materials and services to be employed or used in connection with the construction of the Improvements; (b) the dollar amount of each contract and subcontract, including any amendments thereto; and (c) the portion thereof paid through the date of such list.

2.51 Loan Documents. This Agreement, the Note, the Deed of Trust, the Environmental Indemnity and all other documents, if any, now or hereafter executed by Borrower, Guarantor, Peony or any surety (certain of which are secured and certain of which are unsecured) in connection with or to evidence or secure the payment of the Loan, any interest, costs and other charges associated therewith, or any performance required by this Agreement or any other such document.

2.52 Losses. Losses means any and all losses, liabilities (including strict liability), damages (whether actual, consequential, punitive or otherwise denominated), demands, claims, actions, judgments, good faith settlements, causes of action, assessments, penalties, fines, interest, encumbrances, liens, expenses of investigation, assessment or remediation, and any other costs and expenses (including, without limitation, attorneys' fees and expenses, expert and consultant fees, laboratory fees, and disbursements), of any and every kind or character, foreseeable or unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, any of the foregoing caused by the negligence of any indemnified party; provided, however, Losses shall not include any of the foregoing arising out of the gross negligence or willful misconduct of any indemnified party.

2.53 LTV Ratio. The loan-to-value ratio, which for purposes of this Agreement shall mean the percentage that the maximum principal amount of the Loan bears to the value of the Property, based on the Lender-approved appraisal, including a valuation estimate of the Property.

2.54 Manager Warranty, Agreement and Consent to Assignment. The Manager Warranty, Agreement and Consent to Assignment executed by Guarantor in favor of Lender with respect to the Project.

2.55 Note. The Promissory Note of even date herewith executed by Borrower in favor of Lender in the principal amount of the Loan.

2.56 Organizational Documents. With respect to any Person who is not a natural person, memorandum of association, articles of association, trust agreement, articles of incorporation, bylaws, partnership agreement, limited partnership agreement, certificate of partnership or limited partnership, limited liability company articles of organization, limited liability company operating agreement or any other organizational document, and all shareholder agreements, voting trusts and similar arrangements with respect to its stock, partnership interests, membership interests or other equity interest.

2.57 Pardee Homes Letter. The Pardee Homes Letter, which shall be delivered to Lender regarding the purchase option in favor of Pardee Homes, a California corporation, with respect to the Property, and which shall be in form and substance acceptable to Lender.

2.58 Permitted Encumbrances. (a) Claims, liens and encumbrances shown in the Title Policy, together with such other matters as Lender has specifically consented to in writing; (b) Impositions (as defined in the Deed of Trust) not yet due and payable or which are being contested in accordance with Paragraph 4.11(d) of the Deed of Trust; (c) liens for materials supplied or for labor or services performed not yet due or payable or which are being contested in good faith and, to the extent applicable, in accordance with Paragraph 4.20 of the Deed of Trust or secured by a bond or other security reasonably acceptable to Lender; (d) other liens incurred in the ordinary course of business that do not in the aggregate exceed $100,000 or materially impair the use, development, construction or operation of the Property or the value thereof; (e) any materialmen’s or mechanics’ lien or similar encumbrance that does not cause a breach of the covenant set forth in Paragraph 7.9 or is otherwise permitted under the Loan Documents; (f) applicable zoning and building regulations and ordinances in effect from time to time that do not materially effect the use of the Property; and (g) the claims, liens and encumbrances created by the Loan Documents.

2.59 Person. Any individual, general partnership, limited partnership, limited liability company, joint venture, trust, estate, corporation, association or other entity.

2.60 Personal Property. The personal property described as such in the Deed of Trust.

2.61 Plans. The plans and specifications for construction of the Improvements in their state of completion as of the Closing Date, approved as required in this Agreement, as the same may be modified, amended or supplemented in accordance with this Agreement.

2.62 Post-Closing Agreement. The Post-Closing Errors and Omissions Agreement of even date herewith executed by Borrower, Guarantor and Peony in favor of Lender.

2.63 Project. Borrower's development of the Property with a two-building, approximately 205,117 square foot office/lab/research and development building.

2.64 Project Costs. The amount required: (a) to pay all costs of acquisition of the Land and development and construction of the Improvements; (b) to pay all sums which may accrue under the Loan Documents before repayment of the principal amount of the Loan in full, including, without limitation, all interest, and the amount necessary to fund any account for Interest Reserve Amounts required by Lender in relation to the Loan; and (c) to enable Borrower to perform and satisfy all of its other covenants contained in the Loan Documents.

2.65 Project Cost Schedule. An itemized schedule on a line-item basis, covering the projected total Project Costs (including, without limitation, all cost items shown on the Cost Breakdown), specifying: (a) those portions of each Project Cost item which have been incurred; and (b) those portions of each Project Cost item which have been paid, all as of the date of such schedule, together with such updates thereof as Lender may request.

2.66 Property. The Land and the Improvements.

2.67 Property Lease. That certain Lease to be executed on or before the Title Transfer Date by Borrower, as landlord thereunder, and Guarantor, as tenant thereunder, which shall be on market terms and shall be subject to Lender's approval (which approval shall not be unreasonably withheld or delayed) (it being acknowledged that Borrower shall be responsible for Lender's attorneys' fees and costs for review of the Property Lease).

2.68 Recordation. The date on which the Deed of Trust is recorded in the Official Records of San Diego County as a first-priority lien upon the Property.

2.69 Remaining Costs. The amount that Lender from time to time determines, in its judgment, to be necessary to pay, through Completion, all unpaid Project Costs.

2.70 Security Agreement. The Security Agreement of even date herewith executed by Guarantor in favor of Lender.

2.71 Subordination and Standstill Agreement. The Subordination and Standstill Agreement executed by Guarantor, as second lender, and Lender, as first lender, in connection with the Loan.

2.72 Subordination, Non-Disturbance and Attornment Agreement. The Subordination, Non-Disturbance and Attornment Agreement executed by Lender, Borrower and Guarantor on or before the Title Transfer Date, in connection with the Property Lease, in the form of Exhibit "K" attached hereto and incorporated herein by this reference.

2.73 Subsequent Disbursements. Each Disbursement after the Initial Disbursement, except for the Final Disbursement, to be made upon satisfaction of the conditions precedent set forth in Paragraph 4.3.

2.74 Tangible Net Worth. Shall mean, at any date, the excess of total assets over total liabilities (other than contingent liabilities) of an individual or entity determined in accordance with sound accounting principles consistent with those applied in preparing the financial statements of such individual or entity delivered to Lender prior to the date of this Agreement, excluding from the determination of total assets all assets which would be classified as intangible assets under GAAP.

2.75 Title Policy. The policy of title insurance issued by Title Insurer to be provided by Borrower to Lender pursuant to Paragraph 10.1, together with all endorsements thereto required under this Agreement or any of the other Loan Documents.

2.76 Title Restrictions. All covenants, conditions, restrictions, reservations, easements, licenses, agreements and other matters, whether or not of record, affecting the condition of title to the Property.

2.77 Title Transfer Date. On or before November 26, 2003.

2.78 Transfer Date. Means the date on which Lender (or its affiliate) acquires fee title to the Land, the Improvements or any portion thereof pursuant to power of sale or judicial foreclosure of the lien of the Deed of Trust, or by receipt of a deed in lieu of such foreclosure, and all redemption rights which Borrower may have expired, so long as a period of ninety-one (91) days have elapsed since the date on which fee title vests in Lender (or its affiliate) and during such period no bankruptcy or other insolvency proceeding is filed by or against Borrower. If Borrower should remain in possession of the Property after the Transfer Date, or if Borrower should engage in any Hazardous Substance Activity on or at the Property after the Transfer Date, the Transfer Date shall be deemed to be the date after which Borrower is no longer in possession of the Property and has ceased to engage in any Hazardous Substance Activity on or at the Property.

2.79 UCC-1 Financing Statement. Prior to the Title Transfer Date, the Form UCC-1 Financing Statement of even date herewith, naming Peony, as debtor thereunder, and Lender, as secured party thereunder, in connection with the Loan, which shall be replaced by a Form UCC-1 Financing Statement no later than the Title Transfer Date, naming Borrower, as debtor thereunder, and Lender, as secured party thereunder, in connection with the Loan.

2.80 Undisbursed Loan. The amount of the Loan that has not been disbursed.

2.81 Undisbursed Loan Account. An internal bookkeeping entry of Lender for Loan proceeds maintained by Lender for administration pursuant to this Agreement.

ARTICLE 3 - THE LOAN

3.1 Application. Borrower proposes to construct, or provide funds for Peony to construct, the Improvements on the Land in accordance with the Plans, and has applied to Lender for the Loan for that purpose.

3.2 Loan; Consent for Peony. Lender hereby agrees to lend to Borrower, and Borrower hereby agrees to borrow from Lender, up to the full amount of the Loan, to finance the construction of the Improvements and for other purposes specified in the Loan Documents, upon and subject to the provisions, conditions, representations, warranties and covenants contained in this Agreement. Borrower hereby consents to Peony's encumbrance and record legal ownership of the Property in connection with the Loan.

3.3 Loan Fees. In consideration of Lender's agreement to make the Loan, upon and subject to the provisions and conditions hereof, the Construction Loan Fee shall be due and payable to Lender upon execution of this Agreement by Borrower and Lender. Lender allowing the collection of the Construction Loan Fee to be deferred, for a limited period of time, until the Closing Date shall not limit Borrower's obligation to pay the Construction Loan Fee. In addition, Borrower shall also pay Lender's appraisal fee, title insurance and recording fees, cost analysis fees, survey fees, property inspection fees, all costs of Lender's legal counsel in preparing loan documentation and any and all other out-of-pocket costs incurred by Lender. Lender acknowledges receipt of the amount of $100,000 from Borrower under the Borrower's loan application to pay for said out-of-pocket costs incurred by Lender. To the extent that Lender's out-of-pocket costs then exceed the amount so deposited by Borrower with Lender, then Lender is authorized to reimburse itself for the same from the Initial Disbursement.

3.4 Conditions Precedent to Closing Date. Prior to the Closing Date and the concurrent funding of the Initial Disbursement, and as conditions precedent thereto, Lender shall have received (each executed, acknowledged and(or) certified by the applicable parties thereto, where required as the case may be) and Lender, in its sole discretion, shall have approved the content of the following documentation:

3.4.1 This Agreement.

3.4.2 The Note.

3.4.3 The Deed of Trust.

3.4.4 The Assignment of Leases.

3.4.5 The Environmental Indemnity.

3.4.6 The Environmental Indemnity - Borrower.

3.4.7 The Guaranty.

3.4.8 The Completion Guaranty.

3.4.9 The Security Agreement.

3.4.10 The Assignment of Construction Contract.

3.4.11 The Assignment of Development, Construction and Property Management Agreement.

3.4.12 The General Contractor Warranty, Agreement and Consent to Assignment.

3.4.13 The Manager Warranty, Agreement and Consent to Assignment.

3.4.14 The Assignment of Permits and Deposits.

3.4.15 The Assignment of Plans and Specifications.

3.4.16 The Subordination and Standstill Agreement.

3.4.17 The Post-Closing Agreement.

3.4.18 The Disclosure Re Hazard Insurance Coverage.

3.4.19 The Pardee Homes Letter.

3.4.20 Attornment Agreement (Purchase Agreement).

3.4.21 Collateral Assignment (Deed of Trust).

3.4.22 Collateral Assignment (Purchase Agreement).

3.4.23 Estoppel Certificate (Peony - Parcel A Lease).

3.4.24 Estoppel Certificate (Borrower - Development Agreement).

3.4.25 Estoppel Certificate (Neurocrine International - Parcel B Lease).

3.4.26 Estoppel Certificate (Neurocrine - Parcel A Lease).

3.4.27 Estoppel Certificate (Neurocrine - Purchase Agreement).

3.4.28 Estoppel Certificate (Pardee - Parcel B Lease).

3.4.29 Estoppel Certificate (Pardee - Purchase Agreement).

3.4.30 Estoppel Certificate (Peony - Parcel B Sublease) With Landlord Consent.

3.4.31 Estoppel Certificate (Peony - Development Agreement).

3.4.32 Leasehold Deed of Trust, Security Agreement and Fixture Filing.

3.4.33 Leasehold Assignment of Rents and Leases.

3.4.34 Subleasehold Deed of Trust, Security Agreement and Fixture Filing.

3.4.35 Subleasehold Assignment of Rents and Leases.

3.4.36 Subordination Agreement (Development Agreement).

3.4.37 Subordination Agreement (Parcel A Lease).

3.4.38 Subordination Agreement (Call and Put Option Agreement).

3.4.39 A set of the Plans.

3.4.40 Original insurance certificates satisfactory to Lender for the insurance required by Article 10. Original insurance policies for said insurance shall be provided by Borrower to Lender within ninety (90) days of the Closing Date.

3.4.41 A current ALTA survey of the Property, including dimensions, delineations and locations of all easements thereon, satisfactory to Title Insurer.

3.4.42 As applicable to Borrower and Guarantor, an opinion from Borrower’s and Guarantor’s counsel addressing the matters set forth in Paragraphs 6.2 through 6.10 of this Agreement and such other matters as may be required by Lender.

3.4.43 Letters from local utility companies or applicable Governmental Authorities (or other evidence satisfactory to Lender in its sole discretion) stating that electric, gas, sewer, water, telephone and other utility services and facilities necessary for the development of the Land will be available to the Land upon Completion of the Improvements.

3.4.44 A soils investigation report from a soils engineer acceptable to Lender.

3.4.45 An environmental site assessment of the Land from an environmental or hazardous materials consultant acceptable to Lender and reviewed by Lender's environmental risk management staff.

3.4.46 An appraisal of the Property from an appraiser acceptable to Lender documenting a minimum value for the Property upon Completion of not less than $67,000,000.

3.4.47 Evidence satisfactory to Lender, including without limitation an independent cost review of the same undertaken at Borrower's expense, that the Cost Breakdown accurately reflects all costs associated with the Improvements and that the Loan will be no greater than the lesser of: (a) $60,600,000; or (b) ninety percent (90%) of the Project Costs.

3.4.48 Certified copies of Borrower's, Peony's and Guarantor's Organizational Documents, evidence satisfactory to Lender that Borrower and Guarantor have been duly organized and are validly existing, and borrowing authorizations and(or) resolutions as specified by Lender.

3.4.49 All zoning and land use approvals, building permits, construction licenses and all other approvals required to undertake and complete construction of the Improvements and the occupancy thereof by Guarantor in accordance with the Plans, Construction Schedule and Cost Breakdown, excluding any building permits that are not required for any stage of construction that is underway.

3.4.50 The license, financial statements and resume of General Contractor.

3.4.51 Copies of Borrower's contracts with General Contractor.

3.4.52 The 2002 Federal tax return of each of Borrower and Guarantor.

In addition, on or prior to the Closing Date and the concurrent funding of the Initial Disbursement, and as a condition precedent thereto, Title Insurer shall have issued or committed to issue the Title Policy.

3.5 Undisbursed Loan Account. Upon the Closing Date, Lender is authorized to create the Undisbursed Loan Account, from which Lender shall disburse the Loan proceeds at the time, in the manner and subject to the limitations set forth in this Agreement. Interest shall accrue on such Loan proceeds at the rate specified in the Note with respect to each Disbursement from and after the date on which such Disbursement is made. Until disbursed, Loan proceeds shall neither bear nor earn interest. All Loan proceeds shall be evidenced by the Note, and shall be secured by the Deed of Trust and other applicable Loan Documents.

3.6 Term of Loan. The Loan shall mature, and all amounts due from Borrower to Lender shall be due and payable in full on or before: (a) the Initial Maturity Date, if the Extension Option is not validly exercised; or (b) the First Extended Maturity Date, if the Extension Option is validly exercised. Borrower acknowledges and agrees that subject to its valid exercise of its Extension Option pursuant to Paragraph 3.7 below, Borrower is and shall be solely responsible for arranging funds necessary to pay Lender in full on or before: (a) the Initial Maturity Date, if the Extension Option is not validly exercised; or (b) the First Extended Maturity Date, if the Extension Option is validly exercised.

3.7 Extension Option. Borrower shall have the right to exercise its Extension Option at its sole option, but subject to the satisfaction or waiver of each of the following conditions precedent, which are solely for the benefit of, and may be waived solely by, Lender:

3.7.1 Borrower shall exercise the Extension Option, if at all, by delivery of the Extension Notice to Lender no later than thirty (30) days prior to the Initial Maturity Date.

3.7.2 Borrower shall pay the Extension Fee to Lender concurrently with delivery of the Extension Notice. The Extension Fee shall be fully earned by Lender for its commitment to extend the Loan and shall not be applicable to principal or interest outstanding under the Loan.

3.7.3 No uncured Event of Default shall have occurred on or before the date of the Extension Notice and no event or circumstance shall exist as of the date of the Extension Notice which with notice, passage of time or both would constitute an Event of Default.

3.7.4 No material adverse change shall have occurred in the financial condition of the Borrower or the Guarantor, as determined in the sole and absolute discretion of Lender.

3.7.5 Title Insurer shall have issued, at Borrower's sole cost and expense, such endorsements as are satisfactory to Lender in its sole discretion to insure the continuing validity and first priority of the lien of the Deed of Trust.

3.7.6 Borrower shall have paid all costs and expenses incurred by Lender, including without limitation any attorneys' and appraisers' fees, in connection with the Borrower's exercise of the Extension Option, whether or not the term of the Loan is in fact extended beyond the Initial Maturity Date.

3.8 Disbursements After Initial Maturity Date. There shall be no further disbursements under the Loan after the Initial Maturity Date.

ARTICLE 4 - CONDITIONS PRECEDENT TO DISBURSEMENTS

4.1 General Conditions Applicable to All Disbursements. Lender shall not be obligated to make any Disbursement, or take any other action under the Loan Documents, unless and until all of the following conditions precedent are satisfied at the time of the proposed action:

4.1.1 All of the conditions precedent set forth in Paragraph 3.4 hereto have been satisfied.

4.1.2 Recordation shall have taken place.

4.1.3 On or before the Initial Disbursement, Peony shall have delivered to Lender a UCC-1 Financing Statement; Lender shall thereafter cause the same to be filed with the Secretary of State for the State of Delaware.

4.1.4 For Disbursements after the Title Transfer Date, Borrower shall have delivered to Lender a UCC-1 Financing Statement; Lender shall thereafter cause the same to be filed with the Secretary of State for the State of California.

4.1.5 There shall exist no uncured Event of Default or any event, omission or failure of a condition which would constitute an Event of Default after notice or the lapse of time or both.

4.1.6 All representations and warranties of Borrower made in this Agreement or in any of the other Loan Documents shall be true and correct in all material respects as of the date of the proposed action with the same effect as if made on such date.

4.1.7 Except for the Initial Disbursement and any Subsequent Disbursements of Interest Reserve Amount only, the aggregate amount of the Undisbursed Loan and the amount in the Borrower's Funds Account as of the date of the proposed action shall be not less than the amount which Lender then determines to be required to pay for all Remaining Costs.

4.1.8 Borrower shall have delivered to Lender all funds, documents, instruments, policies, evidence of satisfaction of conditions and other materials required by Lender under the provisions and conditions of this Agreement or any of the other Loan Documents.

4.1.9 As applicable, requirements for Disbursement set forth in the Disbursement Schedule shall have been satisfied.

4.1.10 As applicable, requirements for Disbursement set forth elsewhere in this Agreement shall have been satisfied.

4.1.11 There shall have been no material adverse change in the financial condition of Borrower, Guarantor or the condition of the Property, or the ability of Borrower to complete the Project in accordance with the Plans and the Loan Documents.

4.1.12 Neither the Property, nor any part thereof, shall have suffered any casualty (with a cost of repair and(or) replacement, net of any reasonably expected insurance proceeds, equal to or greater than $3,000,000) or be subject to any existing condemnation or taking by eminent domain proceeding or otherwise which would have a material adverse effect on the Property.

4.1.13 There shall be no pending or threatened litigation, arbitration, or investigation against Borrower, or involving the Property, which has not been previously disclosed to Lender and approved by Lender in writing.

4.1.14 The Property, Borrower and Guarantor shall be in compliance with all zoning, building, Environmental Laws and the laws, ordinances, rules, regulations, decisions and other requirements of any Governmental Authority, except where the failure to do so would not have a material adverse effect on the Borrower, the Guarantor or the Property.

4.1.15 There shall be no Hazardous Substance Activity, except as fully disclosed to and approved by Lender in its sole discretion.

4.2 Initial Disbursement. Lender shall fund the Initial Disbursement, when the conditions precedent set forth in Paragraph 4.1 have been satisfied.

4.3 Subsequent Disbursements. Prior to each Subsequent Disbursement, and as conditions precedent thereto:

4.3.1 All conditions precedent set forth in Paragraphs 3.4 and 4.1 shall have been satisfied.

4.3.2 If required by Lender, Title Insurer shall have agreed to issue an endorsement to the Title Policy insuring Lender that: (a) since the previous disbursement by Lender or issuance of insurance related thereto, there has been no change in the condition of title except as may be provided by this Agreement or as may be consented to in writing by Lender; (b) there are no intervening liens or encumbrances which may then or thereafter take priority over the Disbursement to be made; and (c) there are no survey exceptions not theretofore approved by Lender. Lender hereby acknowledges and approves that some of the Improvements will be constructed on two separate lots.

4.3.3 Prior to the first Subsequent Disbursement for any purpose other than the Interest Reserve Amount, Borrower shall have deposited with Lender, as Borrower’s Funds, cash or collateral satisfactory to Lender, in the amount estimated by Lender to be necessary to pay for all Remaining Costs, to the extent that the aggregate amount of the Undisbursed Loan and the amount in the Borrower’s Funds Account is insufficient therefor, in Lender’s reasonable judgment.

4.3.4 Prior to the first Subsequent Disbursement, Borrower shall have provided to Lender an executed copy of the architect’s contract for services in a form reasonably approved by Lender, together with an Assignment of Architect Contract and an Architect Warranty, Agreement and Consent to Assignment.

4.3.5 Lender shall have satisfied itself that the Improvements with respect to which the Disbursement has been requested have been constructed substantially in accordance with the Plans.

4.3.6 Either Lender shall have received unconditional lien releases in accordance with California law from the General Contractor and from each other contractor, subcontractor and supplier of materials and services with respect to whom any previous Disbursement has been made by Lender, confirming each such Person's receipt of its proper share of each such previous Disbursement and its waiver of any further claim to the extent thereof, or the aggregate value of unconditional lien releases outstanding (the amount paid to each subcontractor or material supplier for whom an unconditional lien release is outstanding since the date of the last such lien release) is less than fifty percent (50%) of the aggregate retainage under the Construction Contract; provided, however, in lieu of any such unconditional lien release, Borrower may provide to Lender a bond that is reasonably acceptable to Lender in form and amount.

4.3.7 Borrower shall acquire the Property from Peony on or before the Title Transfer Date (time being of the essence with respect thereto), and any failure to satisfy such obligation shall constitute an Event of Default under this Agreement. Borrower's acquisition of the Property shall require Borrower to satisfy the following provisions: (a) Borrower shall pay Lender all out-of-pocket costs and expenses incurred by Lender in connection with the acquisition transaction and the assignment and assumption transaction, including, without limitation, the cost of any title insurance policies and(or) title insurance endorsements required by Lender; (b) Borrower, Peony and(or) Guarantor shall execute and(or) deliver such documents and agreements as Lender shall reasonably require in connection with the acquisition transaction and the assignment and assumption transaction, including, without limitation, an assumption agreement, financing statements, and new or reaffirmed guaranties or indemnities, all in form and substance satisfactory to Lender in Lender's sole discretion; (c) Borrower shall deliver to Lender a UCC-1 Financing Statement to be filed with the Secretary of State for the State of California; (d) Borrower shall assume Peony's obligations under the Deed of Trust; (e) Borrower shall deliver fully-executed assignments to Lender of all of its rights and interests in and to the Construction Contract and the Architect Contract; (f) Guarantor, as tenant, and Borrower, as landlord, shall execute the Property Lease and deliver a complete and accurate copy of the same to Lender; (g) Borrower shall deliver to Lender fully-executed copies of the Estoppel Certificate, the Subordination, Non-Disturbance and Attornment Agreement and the Assignment of Leases; (h) Borrower shall pay Lender all attorneys' fees and costs incurred by Lender in connection with the acquisition transaction and the assignment and assumption transaction; (i) to the extent Peony has collaterally assigned to Lender its rights to any collateral, Borrower shall confirm its ownership of said collateral and execute such documentation required by Lender to collaterally assign the collateral to Lender; (j) as applicable to Borrower and Guarantor, an opinion from Borrower's and Guarantor's counsel addressing the matters set forth in Paragraphs 6.2 through 6.10 of this Agreement and such other matters as may be required by Lender; (k) Guarantor shall reaffirm its obligations under the Guaranty, the Completion Guaranty, the Environmental Indemnity and the Security Agreement; and (l) Borrower shall reaffirm its representations and warranties under this Agreement.

4.4 Final Disbursement. Prior to the Final Disbursement, and as conditions precedent thereto:

4.4.1 All conditions precedent set forth in Paragraphs 4.1 through 4.3 shall have been satisfied.

4.4.2 Lender shall have received evidence satisfactory to it that the Improvements have reached Completion.

4.4.3 Borrower shall have filed a notice of completion of the Improvements necessary to establish the commencement of the shortest statutory period for the filing of mechanics' and materialmen's liens.

4.4.4 Either Lender shall have received conditional lien releases on final payment from the General Contractor and from each other contractor, subcontractor and supplier of materials and services with respect to whom any previous disbursement has been made or from whom any pre-lien notice has been received, or the aggregate value of unconditional lien releases outstanding (the amount paid to each subcontractor or material supplier for whom an unconditional lien release is outstanding since the date of the last such lien release) is less than fifty percent (50%) of the aggregate retainage under the Construction Contract.

4.4.5 Such additional policies or endorsements shall have been issued by Title Insurer as Lender may reasonably require, with a liability limit of not less than the principal amount of the Note, and with coverage and in form satisfactory to Lender, insuring Lender's interest under the Deed of Trust as a first lien on the Property, excepting only such matters as shall have been approved in writing by Lender.

4.4.6 Lender shall have received and approved an executed copy of the Property Lease.

4.5 Stored Materials. Lender shall have the right to specifically approve or disapprove, in its absolute judgment, all Disbursements for Stored Materials. For the purposes of this Section, "Stored Materials" shall mean materials purchased or to be purchased by Borrower or the General Contractor or any subcontractor at the date of a request for Disbursement but not yet installed or incorporated into the Project. Without limiting Lender's approval rights as set forth above in this Section, Lender will not approve disbursements for Stored Materials until Borrower supplies to Lender: (a) evidence satisfactory to Lender that the Stored Materials are or shall be included in the coverage of the insurance policies required by the Loan Documents;

(b) evidence satisfactory to Lender from the seller or fabricator of the Stored Materials certifying that upon payment, ownership thereof will vest in Borrower free of any liens or claims of third parties; and (c) (i) evidence satisfactory to Lender that the Stored Materials are or shall be satisfactorily stored on the Project to protect against theft or damage, or (ii) if the Stored Materials are not stored or shall not be stored on the Project, then (A) evidence satisfactory to Lender that the Stored Materials are or shall be stored in a bonded warehouse or storage yard approved by Lender, and that the warehouse yard has been notified that Lender has a security interest in the subject Stored Materials, and (B) Lender shall have or will have received from Borrower the original warehouse receipt. With Lender's prior written approval, which approval shall not be unreasonably withheld, Stored Materials for which funds have been disbursed by Lender hereunder may be stored in the yard or warehouse of the seller or fabricator, subject to satisfaction of conditions (a) and (b) in this Paragraph 4.5, and provided further that Lender receives satisfactory evidence that the Stored Materials are protected against theft and damage and have been suitably identified as belonging to Borrower for use in the Project, and that such seller has been notified of the security interest of Lender therein.

ARTICLE 5 - OTHER DISBURSEMENT PROVISIONS

5.1 Use of Proceeds. All Loan proceeds and Borrower's Funds shall be disbursed as provided in this Agreement and used only for payment of the costs of construction of the Improvements in accordance with the Plans and for other purposes specified in the Loan Documents.

5.2 Manner of Disbursement. Disbursements shall be made by Lender in accordance with the applicable provisions of the Disbursement Schedule. The Disbursements shall be made to the General Contractor or other Persons who have actually supplied labor, material or services in connection with or incident to the construction of the Improvements (including Lender), or to such other accounts as may have been approved in writing by Lender, at Lender's option; provided, however, that Disbursements shall be made directly by Lender to Borrower for those items that have been previously paid for by Borrower or its Affiliates and for Borrower's overhead and administration.

5.3 Disbursement Limitations. Notwithstanding any other provision in this Agreement to the contrary:

5.3.1 Lender shall not be required to disburse, for any line item shown on the Cost Breakdown, any amount in excess of the scheduled amount for such line item.

5.3.2 Lender shall not be required to disburse any amount that, in its judgment, will reduce the aggregate amount of the Undisbursed Loan and the amount in Borrower's Funds Account to less than the amount needed to pay for all Remaining Costs.

ARTICLE 6 - BORROWER'S REPRESENTATIONS AND WARRANTIES

6.1 Inducement to Lender. As a material inducement to Lender to enter into this Agreement and to make the Loan to Borrower, Borrower, and each signatory who signs on its or their behalf hereby unconditionally represents and warrants to Lender each of the matters set forth in this Article 6.

6.2 Due Organization. Borrower is duly organized, validly existing and in good standing under the laws of the state of its organization, and is qualified to do business and is in good standing in the state in which the Land is located, with full power and authority to consummate the transaction contemplated hereby.

6.3 Borrower's Powers. Borrower has full power and authority to execute and enter into this Agreement, the Note, and all of the other Loan Documents, as applicable to it, to undertake and consummate the transactions contemplated thereby, to pay, perform and observe all of the conditions, covenants, agreements and obligations contained therein, and to acquire the Property on or before the Title Transfer Date.

6.4 Completion Guaranty. The Completion Guaranty has been duly authorized, executed and delivered by Guarantor.

6.5 Guaranty. The Guaranty has been duly authorized, executed and delivered by Guarantor.

6.6 Environmental Indemnity. The Environmental Indemnity has been duly authorized, executed and delivered by Guarantor.

6.7 Security Agreement. The Security Agreement has been duly authorized, executed and delivered by Guarantor and Lender has a fully perfected security interest in the collateral described in the Security Agreement.

6.8 Litigation. Except as may have been disclosed in a public filing in writing on or before the date of this Agreement, there are no actions, suits or proceedings pending, or to the best knowledge of Borrower threatened, against or affecting Borrower, the Property, the collateral described in the Security Agreement in which Lender has a fully perfected security interest, or involving the validity or enforceability of the Deed of Trust, the priority of the lien thereof, or the validity or enforceability of any of the other Loan Documents or the Guaranty or the Completion Guaranty, at law or in equity, or before or by any Governmental Authority. Except as may have been disclosed in a public filing in writing on or before the date of this Agreement, there are no actions, suits or proceedings pending, or to the best knowledge of Borrower threatened, against Guarantor which would, if determined adversely to Guarantor, have a material adverse effect on Guarantor or Guarantor's ability to perform its obligations under the Completion Guaranty or the Guaranty. To the best of its knowledge, Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or other Governmental Authority. To the extent any such matters are contained in a public filing, Borrower shall be obligated to provide Lender with written notice identifying the specific public filing and the specific location within said public filing of any such matters within ten (10) days after the public filing is made.

6.9 No Violation. The consummation of the transaction contemplated by this Agreement, and the payment and performance of all of the obligations set forth in this Agreement, the Note, the Deed of Trust and the other Loan Documents, will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement or other instrument to which Borrower is a party or by which Borrower or the Property may be bound or affected.

6.10 Binding Obligations. This Agreement, the Note, the Deed of Trust, the other Loan Documents, the Guaranty, the Completion Guaranty and the Property Lease (which Lender shall permit as the only approved lease for the Property) each constitutes a legal and binding obligation of, and is valid and enforceable against, each party thereto other than Lender, in accordance with the terms thereof, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles.

6.11 No Default. There is no default on the part of Borrower under this Agreement, the Note, the Deed of Trust, or any of the other Loan Documents or under the Property Lease, and, to Borrower's knowledge, no event has occurred and is continuing which with notice or the lapse of time or both would constitute a default thereunder.

6.12 Financial Statements. All Financial Statements delivered to Lender are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied unless otherwise noted therein, and fairly present the respective financial conditions of Borrower and Guarantor and the subjects thereof as of their respective dates. No materially adverse change has occurred in the financial conditions reflected in the Financial Statements, and no additional borrowings have been made by Borrower, other than borrowings approved by Lender, since the Financial Statements' respective dates, and as otherwise expressly permitted under the Loan Documents.

6.13 Title to Land. Until Borrower acquires title to Parcel A, Peony, and thereafter Borrower, is the sole legal and beneficial owner of Parcel A, free and clear of all claims, liens and encumbrances other than Permitted Encumbrances.

6.14 Title to Personal Property. Other than the collateral under the Security Agreement, all Personal Property granted as security for the Note under the Deed of Trust is vested solely in Peony until Borrower acquires title to the Personal Property, and thereafter in Borrower, free and clear of all claims, liens and encumbrances, other than Permitted Encumbrances, and the security interest of Lender in the Personal Property is a first lien thereon.

6.15 Plans. Peony or Borrower has all rights in and to the Plans necessary to use the same for construction of the Improvements. The Plans are satisfactory to Peony and Borrower and General Contractor, and have been approved by Peony, Borrower, Guarantor and the beneficiaries of any applicable Title Restrictions. There are no structural defects in the Improvements as shown in the Plans, and no violation of any Governmental Requirement exists with respect thereto, except any structural defect or violation that would not have a material adverse effect.

6.16 Permits. Until Borrower acquires title to the Land, Peony or Borrower, and thereafter Borrower, has: (a) received all requisite building permits and approvals from all applicable Governmental Authorities related to the work being performed as of the Closing Date, (b) filed or recorded all subdivision maps, plats and other instruments required in connection therewith, and (c) complied with all other Governmental Requirements related thereto except where the failure to do so would not reasonably be expected to have a material adverse effect. Once the Plans have been finalized as set forth herein, Peony and thereafter Borrower shall obtain all requisite building permits and approvals from all applicable Governmental Authorities relating to the Plans.

6.17 Utilities. All utility services, including, without limitation, gas, electric, water, storm and sanitary sewer and telephone facilities, necessary for the construction of the Improvements and the operation thereof for their intended purposes are available at or within the boundaries of the Land.

6.18 Roads. All roads necessary for the full utilization of the Improvements for their intended purposes have been completed.

6.19 Proper Subdivision. The Land consists of Parcel A and Parcel B. The Land is currently taxed separately without regard to any other real property. The Land may currently be mortgaged, conveyed and otherwise dealt with as a separate legal lot or parcel.

6.20 Compliance. The construction, use and occupancy of the Property comply in full with all Governmental Requirements and Title Restrictions except where the failure to do so would not reasonably be expected to have a material adverse effect. Neither the zoning nor any other right to construct or use the Improvements is to any extent dependent upon or related to any real property other than the Land. All approvals, licenses, permits, certifications, filings and other actions normally accepted as proof of compliance with all Governmental Requirements by prudent lending institutions that make investments secured by real property in the general area of the Land, to the extent available as of the date of this Agreement, have been duly given or taken.

6.21 No Prior Liens or Claims. The Deed of Trust is a valid first lien on the Project, subject only to the Permitted Encumbrances. Borrower and Guarantor shall be solely responsible for any indemnity agreements or other arrangements relating to mechanics' liens and similar claims that may be required by Title Insurer as a condition to issuance of the Title Policy.

6.22 Adequacy of Loan. The aggregate amount of all Loan proceeds and any Borrower's Funds heretofore delivered to Lender is sufficient to pay all costs of construction of the Improvements in accordance with the Plans and all Remaining Costs related thereto, except as has been specifically disclosed to and approved in writing by Lender.

6.23 Other Financing. Borrower has not received other financing for either the acquisition of the Land or the construction of the Improvements, except as has been specifically disclosed to and approved by Lender in writing, or is going to be paid off, prior to or concurrent with Recordation.

6.24 Taxes. Borrower has filed all required federal, state, county and city tax returns and has paid all taxes that are required to be paid under Paragraph 9.3. Borrower knows of no basis for any material additional assessments against it in respect of such taxes.

6.25 Broker's Fees. Borrower has not dealt with any Person who is or may be entitled to any brokerage commission, finder's fee, loan commission or other sum in connection with signing and entering into this Agreement, the consummation of the transaction contemplated hereby or the making of the Loan by Lender to Borrower, and Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all losses, costs, liabilities and expenses, including attorneys' fees, that Lender may suffer or sustain should such representation or warranty prove to be inaccurate in whole or in part.

6.26 Application of Disbursements. All Loan proceeds and Borrower's Funds heretofore disbursed to Borrower pursuant to this Agreement, if any, have been used only for payment of those items specified in the Disbursement request for which the particular Disbursement was made. Except as permitted in Sections 5.2, Borrower has not applied any such Disbursement to pay or reimburse itself, directly or indirectly, for any of Borrower's Funds required to be deposited by the terms of this Agreement, or for any other amounts paid by Borrower or any other Person but not included in the Cost Breakdown.

6.27 Accuracy. All reports, documents, instruments, information and forms of evidence delivered to Lender concerning the Loan or required by this Agreement or any of the other Loan Documents are accurate, correct and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make the same not materially misleading.

6.28 Non-Foreign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended, provides a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform Lender that the withholding of tax will not be required in the event of the disposition of the Property pursuant to the Deed of Trust, Borrower hereby certifies, under penalty of perjury, that:

(a) Borrower is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder); (b) Borrower's U.S. taxpayer identification number is that set forth in Article 1 above; and (c) Borrower's principal place of business is at the address set forth in Article 1 above. Borrower understands that this certification may be disclosed to the Internal Revenue Service by Lender and that any false statement contained herein could be punishable by fine, imprisonment, or both. Borrower agrees to execute such further certificates in connection therewith, which shall also be signed under penalty of perjury, as Lender shall reasonably require.

6.29 Employee Plans. Borrower neither maintains nor participates in any pension, retirement, profit-sharing or similar employee benefit plan.

6.30 Natural Hazard Zones and Wetlands. Except as disclosed in writing by Borrower to Lender prior to the execution hereof, no portion of any of the Project is located in any of the following areas, as defined under California law:

(i) in an area designated as a "Dam Failure Inundation Area;"

(ii) in an area designated as a "Special Flood Hazard Area;"

(iii) in an area designated as a "High Fire Severity Zone;"

(iii) in an area designated as a "High Fire Severity Zone;"

(iv) in an area designated as a "Wildland Fire Area;"

(v) in an area designated as a "Earthquake Fault Zone;"

(vi) in an area designated as a "Seismic Hazard Zone;" or

(vii) in an area designated as a "Wetlands."

6.31 Nature of Representations and Warranties. Borrower certifies to Lender that all representations and warranties made in this Agreement and all other Loan Documents are true and correct in all material respects and do not contain any untrue statement of a material fact or omit any material fact necessary to make such representations and warranties not materially misleading. Any such representations and warranties shall remain true and correct in all material respects on the date of each request for a Disbursement and shall survive so long as any of Borrower's obligations under this Agreement have not been satisfied or the Loan or any part thereof remains outstanding, and for any applicable statute of limitations period thereafter. Each representation and warranty made in this Agreement, in any other Loan Document, and in any other document delivered to Lender by Borrower, Peony or Guarantor shall be deemed to have been relied upon by Lender, notwithstanding any investigation, inspection or inquiry theretofore or thereafter made by or on behalf of Lender, or any disbursement made by Lender related thereto. The representations and warranties contained in this Agreement which are made to the best knowledge of Borrower have been made after commercially reasonable inquiry calculated to ascertain the truth and accuracy of the subject matter of each such representation and warranty.

ARTICLE 7 - BORROWER'S CONSTRUCTION COVENANTS

7.1 Commencement and Completion. Borrower agrees to commence and complete the construction of the Improvements as follows:

7.1.1 As of the Closing Date, Borrower shall have commenced construction of the Improvements.

7.1.2 Borrower shall cause construction of the Improvements to be prosecuted to Completion within the time frames in the Construction Schedule, and to be completed on or before the Completion Date.

7.2 Construction. Borrower shall cause the Improvements to be constructed in a good and workmanlike manner according to the Plans and the recommendations of any soils or engineering report approved by Lender. In constructing the Improvements, Borrower shall cause all applicable Governmental Requirements and Title Restrictions to be complied with. If necessary, the Plans shall be modified to comply with the Governmental Requirements and Title Restrictions, subject to the provisions of the following Paragraph 7.3.

7.3 Plans. There shall be no material change, amendment or modification of the Plans, the General Contract or any subcontract without the prior written approval of Lender, which approval shall not be unreasonably withheld, as follows:

7.3.1 A material change for purposes of this Paragraph shall include, without limitation, any change that: (a) involves a cost of more than the Change Order Amount, whether such change increases or decreases the total cost of the Improvements; (b) together with costs associated with prior changes, results in an increase in the total cost of changes of more than the Aggregate Change Order Amount; (c) materially changes the square footage of the Improvements; (d) constitutes a material change in the building material, equipment specifications, architectural or structural design, value or character of any of the Improvements; (e) would affect the structural integrity, quality or overall efficiency of the Improvements, its operating or utility systems; (f) requires the approval of any Person other than the parties to the General Contract or subcontract or Lender; or (g) might adversely affect the value of Lender's security for the Loan. Notwithstanding the foregoing, it is acknowledged by the parties hereto that the Plans are still being prepared as of the Closing Date, and that once the Plans for the shell and the tenant improvements have been completed, the same shall be subject to review and approval by Lender, which approval shall not be unreasonably withheld, if such Plans are a logical evolution of and consistent with the Plans as of the date hereof.

7.3.2 Requests for approval shall be submitted on a Change Order form acceptable to Lender signed by Borrower and, if required by Lender, the General Contractor, accompanied by working drawings and a written narrative of the proposed change. Lender shall not be required to consider approval of any change unless all other approvals that are required from other Persons have been obtained. As conditions to its approval, (a) Lender may require satisfactory evidence of the cost and of the time necessary to complete the proposed change, and (b) to the extent Lender determines that the proposed change may result in any increased cost, Lender may make written demand upon Borrower to deliver the amount of the increased costs to Lender as Borrower's Funds for deposit into the Borrower's Funds Account. Lender is under no duty to review or inform Borrower of the quality or suitability of the Plans, the General Contract, any other contract or subcontract or any changes thereto.

7.3.3 Borrower acknowledges that the process of obtaining the information needed to put Lender in a position to approve a proposed change may cause delays. Borrower consents to such delays and agrees to cooperate diligently with Lender in gathering the information required by Lender with respect to any such proposed change. All contracts hereinafter entered into by Borrower, the General Contractor, and other contractors and subcontractors after the date of this Agreement related to the Property shall contain covenants to the same effect as the covenants made by Borrower in this Paragraph 7.3.3. Lender agrees to review, and approve or disapprove, proposed changes in the Plans and Change Orders on a reasonably diligent and timely basis.

7.4 Cost Breakdown. There shall be no change in the Cost Breakdown without Lender's prior written approval, which may be given or withheld at Lender's sole discretion. Without limiting the generality of the foregoing, there shall be no re-allocation of amounts between line items without such prior written approval. Requests for approval shall be submitted on a form acceptable to Lender, signed by Borrower and accompanied by a written narrative of the proposed change. As conditions to its approval, (a) Lender may require satisfactory evidence of the reasons for the proposed change, and (b) to the extent Lender determines that the proposed change may result in an increase in any cost item, Lender may make written demand upon Borrower to deliver the amount of the increased cost to Lender as Borrower's Funds for deposit into the Borrower's Funds Account. On the Closing Date, a portion of the Project Costs set forth in Cost Breakdown may be attributable to the cost of grading and other site work on Parcel B (the "Parcel B Site Work") that is unrelated to the construction of the Improvements. If Borrower provides Lender with a revised Cost Breakdown that excludes the costs of the Parcel B Site Work from the amount of Project Costs set forth on such revised Cost Breakdown, the amount of Project Costs is not reduced below $67,333,170, and Lender acting in its reasonable discretion delivers approval of such revisions, then Lender should make Disbursement to Borrower in an amount equal to the reduction in the amount of Project Costs that is shown on such Cost Breakdown.

7.5 Construction Information. Lender shall have the right to obtain information regarding the construction of the Improvements, and to take action with respect thereto, as follows:

7.5.1 From time to time, and within ten (10) days after receipt from Lender of a request therefor, Borrower shall deliver to Lender: (a) a List of Contractors, together with copies of each contract and subcontract identified therein and all amendments thereto; (b) a Project Cost Schedule; (c) a Construction Schedule; and (d) with respect to any item designated above which has been previously delivered, such updates thereof as Lender may request.

7.5.2 Borrower expressly authorizes Lender to contact any contractor, subcontractor or supplier of materials or services, and at all reasonable times to enter the Land and inspect the Improvements and work of construction, in order to verify information disclosed pursuant to this Paragraph 7.5.2 or for any other purpose. All contracts hereinafter entered into by Borrower, the General Contractor, and other contractors and subcontractors after the date of this Agreement related to the Property shall require the disclosure to Lender of information sufficient to make such verification.

7.5.3 Lender has approved General Contractor. Lender retains the right to disapprove of any replacement General Contractor. Lender’s approval of General Contractor shall not constitute a representation, warranty or acknowledgment by Lender that General Contractor is in fact qualified.

7.6 Inspections. Borrower shall or Borrower shall cause Peony to permit Lender to make inspections and to obtain other information related to the Loan, the Land and the Improvements, as follows:

7.6.1 Lender shall have the right at all reasonable times to enter upon the Land, to inspect the Improvements and all materials to be used in the construction thereof, and to examine the Plans and all shop drawings which are or may be kept at the construction site. Borrower shall cooperate with Lender and shall cause the General Contractor and all other contractors, subcontractors and suppliers of materials or services to cooperate with Lender toward that end.

7.6.2 Lender shall have the right at all reasonable times to examine, copy and make extracts of the books, records, accounting data and other documents of Borrower, the General Contractor, and all other contractors, subcontractors and suppliers of materials or services in connection with the work of constructing the improvements, including, without limitation, all permits, licenses, consents and approvals related thereto; provided, however, Lender shall have such right only to the extent the General Contractor or the respective subcontractor or supplier is paid on a time and materials basis. To the extent within Borrower’s control, such books, records, accounting data and other documents shall be made available to Lender promptly upon written demand therefor. All contracts hereinafter entered into by Borrower, the General Contractor, and other contractors and subcontractors after the date of this Agreement relating to the construction of the Improvements shall require agreement to the foregoing inspection rights; provided, however, Lender shall have such right only to the extent the General Contractor or the respective subcontractor or supplier is paid on a time and materials basis.

7.6.3 Without in any way limiting the generality of the foregoing, Lender may require an inspection of the Property by any Inspection Agent: (a) prior to each Disbursement; (b) at least once each month during the course of construction, whether or not any Disbursement is to be made for that month; (c) upon Completion of construction of the Improvements; and (d) at least annually thereafter so long as any of Borrower's obligations under this Agreement have not been satisfied or the Loan or any part thereof remains outstanding, and for any applicable statute of limitations period thereafter. Borrower shall pay the Inspection Agent's standard fee for its inspections, other than inspections occurring after payment of the Loan in full, reserving to Lender, however, all rights under the Environmental Indemnity, the Environmental Indemnity-Borrower, the Guaranty and the Completion Guaranty.

7.6.4 Lender is under no duty to supervise or to inspect the work of construction or any books, records, accounting data or other documents. Lender's failure to inspect, discover or disclose any information available to Lender in connection with any such inspection shall not constitute a waiver of any of Lender's rights under this Agreement. Lender's inspection not followed by notice of an Event of Default shall not constitute a waiver of any Event of Default then existing. Any such inspection by Lender shall be for the sole purpose of protecting the security of Lender, and shall in no way be construed as a representation, warranty or acknowledgment by Lender that there has been or will be compliance with the Plans or that the construction is or will be free from faulty materials or workmanship.

7.7 Approved Contracts Only. Borrower shall not sign or enter into any contract or become a party to any arrangement for the performance of work on the Land except as may be approved by Lender or with respect to which Lender has waived the requirement for approval. Unless and until Lender so informs Borrower to the contrary, the approval requirement shall be deemed waived for any contracts of less than $500,000 in the aggregate.

7.8 No Conditional Sales. Borrower shall not install any personal property, materials, equipment or fixtures subject to any security agreement or other contract wherein the right is reserved to any Person to remove or repossess any such personal property, material, equipment or fixtures, or whereby title to the same is not completely vested in Borrower at the time of installation, without Lender's written consent; provided, however, Borrower shall not be required to obtain Lender's consent for the acquisition or the installation of laboratory equipment on the Property so long as Loan proceeds are not utilized for said equipment; provided, further, this Section 7.8 shall not apply to furniture, trade fixtures or equipment that are owned by or leased to Guarantor.

7.9 Liens and Stop Notices. If any claim of lien is recorded which affects the Property (other than a Permitted Encumbrance) or a stop notice is served upon Lender which affects the Loan or Borrower's Funds, Borrower shall, or Borrower shall cause Peony to, within thirty (30) days after such recording or service: (a) pay and discharge the same; (b) effect the release thereof by recording or delivering to Lender a surety bond in form and amount satisfactory to Lender; or

(c) provide Lender with other assurance which Lender, in its sole discretion, deems to be satisfactory for the payment of such lien or stop notice and for the full and continuous protection of Lender from the effect thereof. If Borrower fails to remove any lien on the Improvements or bonded stop notice against the Loan or Borrower's Funds, and fails to provide satisfactory security in lieu of removal of such lien or stop notice as provided in "(b)" above and fails to provide Lender with the assurances as provided in "(c)" above, Lender may pay such lien or stop notice, or may contest the validity thereof, paying all costs and expenses of contesting the same, including attorneys' fees, and may debit Borrower's Funds or the Undisbursed Loan Account, as applicable, for all payments made and costs and expenses incurred by Lender in doing so.

7.10 Delay. Borrower shall promptly notify Lender in writing of any event causing material delay or interruption of the construction or its timely completion. The notice shall specify the particular work delayed, and the cause and period of each delay.

7.11 Surveys. At Lender's request, Borrower shall deliver to Lender: (a) a perimeter survey of the Land; (b) upon completion of the foundations for the Improvements, a survey showing the location of the Improvements on the Land and showing that the Improvements are located entirely within the Land and do not encroach upon any easement or breach or violate any Governmental Requirements or Title Restrictions; and (c) upon Completion of the Improvements, an "as-built" survey acceptable to Title Insurer as an ALTA survey. All such surveys shall be made and certified by a licensed engineer or surveyor.

7.12 Correction of Defects. If in Lender's opinion any work is not in substantial conformance with the Plans or is otherwise defective or unsatisfactory to Lender, Lender shall have the right to stop such non-conforming work and any other work that may be affected thereby and order its replacement, whether or not such non-conforming work has theretofore been incorporated into the Improvements. Failure within thirty (30) days from the date Lender notifies Borrower of such non-conforming work to diligently endeavor to correct, or cause the respective contractor to correct, non-conforming work shall constitute an Event of Default under this Agreement. The advance of any Loan proceeds or Borrower's Funds shall not constitute a waiver of Lender's right to require compliance with this covenant.

7.13 Construction Responsibilities. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property, including, but not limited to, the quality and suitability of the Plans, their compliance with all Governmental Requirements and Title Restrictions, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants and property managers, the accuracy of all applications for payment, and the proper application of all Disbursements. Lender is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction of the Improvements or any other matter referred to above. Any inspection or review by Lender is to determine whether Borrower is properly discharging its obligations to Lender and may not be relied upon by Borrower or any third party. Lender owes no duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or construction of the Improvements.

ARTICLE 8 - HAZARDOUS SUBSTANCES

8.1 Borrower's Representation and Warranty. Before signing this Agreement, Borrower researched and inquired into the previous uses and ownership of the Land. Based on that due diligence, Borrower represents and warrants that no Hazardous Substances have been discharged, disposed of or released or otherwise exists in, on, under or to the Land, except as Borrower has disclosed to Lender in writing as Exhibit "L" attached hereto and incorporated herein by this reference.

8.2 Borrower's Indemnity. Borrower shall indemnify, hold harmless, protect and defend Lender and its directors, officers, employees, partners, attorneys, agents, participants, successors and assigns, and each of them, from and against any and all Environmental Losses.

8.3 Compliance With Environmental Laws. Borrower has complied, and shall comply and cause all occupants of the Land and the Improvements to comply, with all Environmental Laws which apply or pertain to the Land, the Improvements or the uses thereon or therein by Borrower or any tenant or other occupant. Borrower acknowledges that Hazardous Substances may permanently and materially impair the value and use of real property and that breach of this covenant constitutes willful misconduct and intentional waste of the Land.

8.4 Notices to Lender. Borrower shall give immediate written notice to Lender of: (a) any proceeding, inquiry, notice or other communication by or from any Governmental Authority, including, but not limited to, the California State Department of Health Services and the Environmental Protection Agency, regarding the presence, release, discharge or existence of any Hazardous Substance on, under or about the Land or any migration thereof from or to the Property or any actual or alleged violation of any Environmental Laws; (b) all claims made or threatened against Borrower or the Property relating to any damage, liability, potential liability, loss or injury resulting from or pertaining to any Hazardous Substance Activity or violation of any Environmental Laws; (c) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Land that could cause the Land or the Improvements or any part thereof to be subject to any restrictions on ownership, occupancy, transferability or use, or subject the owner or any person having any interest in the Property to any liability, penalty or disability under any Environmental Law, including, but not limited to, any that could cause the Land or any part thereof to be classified as "border-zone property" under the provisions of California Health & Safety Code §§ 25220, et seq. or any regulation thereunder or in connection therewith; and (d) Borrower's receipt of any notice or discovery of any information regarding any actual, alleged or potential use, manufacture, production, storage, spillage, seepage, release, discharge, disposal or any other presence or existence of any Hazardous Substances

on, under or about the Property (except as permitted under Paragraph 8.7), or any violation of any Environmental Laws pertaining to Borrower or the Land. Immediately upon receipt of any of the following, Borrower shall deliver copies to Lender: any and all orders, notices, permits, applications, reports and other communications, documents and instruments pertaining to any Hazardous Substance Activity or the violation of any Environmental Laws pertaining to Borrower or the Property. Lender shall have the right, but not the obligation, to join and participate in as a party if it so elects, any legal proceedings or actions in connection with the Property involving any Hazardous Substance Activity or any Environmental Laws, and Borrower shall reimburse Lender upon demand for all of Lender's costs and expenses in connection therewith, including attorneys' fees.

8.5 Site Visits, Observations and Testing. Lender and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Land, taking and removing soils or groundwater samples, and conducting tests on any part of the Property. Lender is under no duty, however, to visit or observe the Land or to conduct tests, and any such acts by Lender shall be solely for the purpose of protecting Lender's security and preserving Lender's rights under the Loan Documents. No site visit, observation or testing by Lender shall result in a waiver of any default of Borrower or impose any liability on Lender. In no event shall any site visit, observation or testing by Lender be a representation that Hazardous Substances are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Borrower nor any other party is entitled to rely on any site visit, observation or testing by Lender. Lender owes no duty of care to protect Borrower or any other party against, or to inform Borrower or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. Lender shall not be obligated to disclose to Borrower or any other party any report or findings made as the result of, or in connection with, any site visit, observation or testing by Lender. In each instance, Lender shall give Borrower reasonable notice before entering the Property. Lender shall make reasonable efforts to avoid interfering with Borrower's use of the Property in exercising any rights provided in this Paragraph 8.5, and shall cooperate as reasonably requested by Borrower to avoid delay in construction of the Improvements. To the extent any such delay cannot be avoided, the Completion Date shall be extended as Lender deems reasonably appropriate in view of all the circumstances.

8.6 Clean-Up. Borrower agrees, at its sole cost and expense and upon the demand of Lender, to promptly take all actions to remediate the Property, as validly required by any federal, state, or local government agency, which remediation is necessitated from the presence upon or beneath the Property of Hazardous Substances. Such actions shall include, but not be limited to, the investigation of Hazardous Substances on, about, or under the Property, the preparation of any feasibility studies, reports, or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring, or restoration work, whether on or off the Property, relating to said Hazardous Substances. Borrower shall promptly provide to Lender copies of all testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and(or) remediation, Borrower shall

permanently seal, cap, or properly abandon all monitoring wells and test holes to industrial standards in compliance with applicable federal, state, and local laws and regulations, remove all associated equipment, and restore the Property to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation and(or) remediation provided hereunder.

8.7 Exception for Ordinary and Reasonable Use of Hazardous Substances Permitted by Law. Nothing in this Article shall preclude the use by Borrower or General Contractor, subcontractors, tenants and agents from using materials that may be classified Hazardous Substances, so long as such use is permitted by applicable law and is of such types and in such quantities as is ordinary and reasonable in the construction and operation of the Project.

ARTICLE 9 - BORROWER'S OTHER COVENANTS

9.1 Deposit of Borrower's Funds; Loan Balancing. From time to time, and within ten (10) days after receipt from Lender of written demand therefor, Borrower shall deliver Borrower's Funds to Lender for deposit into the Borrower's Funds Account, as and to the extent expressly required by this Agreement. If Borrower's Funds shall be located in the Borrower's Funds Account such amounts shall be disbursed before the disbursement of any Loan proceeds, except as may otherwise be agreed by Lender in writing. If at any time in Lender's reasonable judgment, the Loan is out of a balance, Lender may make such a demand upon Borrower and, within such ten (10) day period, Borrower shall deliver to Lender as Borrower's Funds an amount equal to the deficiency set forth in the demand for deposit into the Borrower's Funds Account. The Loan shall be deemed "out of balance," if either: (a) the amount required at that time to complete and pay for the construction of the Improvements and the other items contemplated by the Cost Breakdown (excluding the amount of interest Lender estimates shall accrue on the Loan prior to the Initial Maturity Date) is more than the Undisbursed Loan (except the Interest Reserve Amount) and the amounts then on deposit in the Borrower's Funds Account allocated for such costs; or (b) the amount of interest Lender estimates to accrue on the Loan from the time of calculation to the Initial Maturity Date is more than the undisbursed Interest Reserve Amount. If Lender determines at any time that the Loan is out of balance, then, in addition to all other rights and remedies of Lender, Lender may decline to make further Disbursements under the Loan unless and until Borrower has made the deposit set forth in this Paragraph.

9.2 Maintain Records. Borrower shall keep and maintain full and accurate accounts and records of its operations according to generally accepted accounting principles and practices for its type of business. Borrower shall provide Lender with financial information for Borrower and Guarantor in a format acceptable to Lender, at least quarterly, delivered within forty-five (45) days of the end of each such quarter, or as otherwise required by Lender. All financial statements of Borrower and Guarantor

delivered annually shall be delivered within ninety (90) days of the end of each such fiscal year. All financial statements of Borrower and Guarantor shall be internally prepared on a consolidated basis and certified to Lender by the senior management of Borrower. Borrower shall also provide to Lender, after Completion of the Improvements, quarterly operating statements for the Property, delivered within forty-five (45) days of the end of each such quarter. At the request of Lender, Borrower shall deliver to Lender copies of all financial information to be delivered to its members pursuant to the provisions and conditions of Borrower's operating agreement. So long as the Guarantor is subject to the reporting provisions of the Exchange Act, the timely filing (including all permissible extension periods provided under Rule 12b-25 under the Exchange Act) on the Securities and Exchange Commission's EDGAR system of the Guarantor's quarterly report on Form 10-Q for such period and annual report on Form 10-K for such period will be deemed to satisfy all of the foregoing requirements of this Paragraph.

9.3 Taxes. Borrower shall pay and discharge all lawful claims, including taxes, assessments and governmental charges or levies, imposed upon Borrower, Borrower's income or profits and upon all properties belonging to Borrower, before the date upon which penalties attach thereto; provided, however, that Borrower shall not be required to pay any such tax, assessment, charge or levy, the payment of which is being contested in good faith and by proper proceedings as provided in the Deed of Trust. Borrower shall also provide Lender with copies of its Federal tax returns at the time of filing, if any.

9.4 Notification of Default. Borrower shall promptly notify Lender in writing of the occurrence of any Event of Default as defined in this Agreement, or of any facts then in existence that would constitute an Event of Default upon the giving of notice or the lapse of time or both.

9.5 Payment of Costs. Borrower shall bear all costs and expenses required to satisfy the provisions and conditions of this Agreement, including, without limitation, the costs and expenses of Lender's counsel in connection with the Loan. Lender is hereby authorized to disburse the same upon the Closing Date and from time to time thereafter, directly to such Persons, including Lender, as may be entitled thereto pursuant to this Agreement.

9.6 Additional Financial Information. All financial information delivered by Borrower to Lender shall be in a form acceptable to Lender, and shall be the most recent that has been prepared by or for the subjects thereof. Lender may rely thereon until otherwise notified in writing by Borrower, and may, but shall not be obligated to, verify the information contained therein. From time to time, Lender may receive financial information about Borrower from others, and may answer consistent with standard banking practices questions and requests from others seeking credit and experience information about Borrower and its relationships with Lender. So long as the Guarantor is subject to the reporting provisions of the Exchange Act, the timely filing (including all permissible extension periods provided under Rule 12b-25 under the Exchange Act) on

the Securities and Exchange Commission's EDGAR system of the Guarantor's quarterly report on Form 10-Q for such period and annual report on Form 10-K for such period will be deemed to satisfy all of the foregoing requirements of this Paragraph.

9.7 Leasing. Without the prior written consent of Lender, which shall be granted or denied by Lender in its sole discretion, Borrower shall not: (a) amend, modify or terminate the Property Lease once it has been executed; or (b) enter into any lease or other occupancy or use agreement for the Property or any portion thereof. All easements, declarations, covenants, conditions, restrictions and dedications affecting the Land shall be submitted to Lender for its written approval, accompanied by a drawing or survey showing the precise location thereof, and such approval (in Lender's sole discretion) shall be obtained prior to Borrower's signing, entering into or granting the same. Notwithstanding the foregoing, Guarantor or Borrower shall be entitled to enter into a sublease for up to 10% of the aggregate square footage of the structures on the Property for an individual sublease, or up to 20% of the aggregate square footage of the structures on the Property for subleases in the aggregate, on terms consented to by Lender, which consent shall not be unreasonably withheld.

9.8 Compliance. Except for Civil Code Section 3110.5, and subject to the provisions and conditions of Paragraph 9.17, Borrower shall comply promptly with all Governmental Requirements and Title Restrictions, shall cause all conditions in this Agreement to be satisfied at the time and in the manner provided in this Agreement, and, if payment of the Note is to be insured or guaranteed by any Governmental Authority or private insurer, shall comply with all statutes, rules, regulations and requirements related thereto or provided in any commitment issued by such Governmental Authority or insurer.

9.9 Disbursements in Trust. Funds disbursed to Borrower under this Agreement shall be received by Borrower in trust, and Borrower agrees that the same shall be used only for payment of the items specified in the Disbursement request for which the particular Disbursement was made. Except as permitted in Section 5.2, Borrower shall not apply any such Disbursement to pay or reimburse itself, directly or indirectly, for any Borrower's Funds required to be deposited by the terms of this Agreement, or for any other amounts paid by Borrower or any other Person but not included in the Cost Breakdown.

9.10 Occupancy Permits. Borrower shall obtain and deliver to Lender evidence of approval of the Improvements in their entirety for permanent occupancy by all applicable Governmental Authorities, and by any applicable Board of Fire Underwriters or its equivalent, to the extent that any such approval is a condition to the lawful use and occupancy thereof, or other evidence thereof satisfactory to Lender in its sole discretion.

9.11 Bill of Sale. If requested by Lender, Borrower shall promptly deliver to Lender any bills of sale, statements, receipts, contracts or agreements under which Borrower claims title to any materials, fixtures or articles incorporated into the Improvements.

9.12 Improvement District. Without Lender's prior written approval, which may be granted or denied in Lender's sole discretion, Borrower shall not, directly or indirectly, advocate or assist in the incorporation of any of the Property into any improvement or other assessment district.

9.13 Lender's Signs. Borrower shall erect or cause to be erected a Lender-furnished sign or signs in a size and at a location desired by Lender on the Land, identifying Lender as the construction lender, provided that such signs do not interfere with the reasonable course of construction of the Improvements. The size and placement of such signs shall be such as to notify as many contractors, subcontractors, and suppliers of materials and services on the job as is reasonably possible of the name, address and telephone number of Lender. Borrower shall exercise due care, and shall cause the General Contractor and other contractors, subcontractors and suppliers to exercise due care, to protect such sign or signs from damage.

9.14 Property Manager. Except as permitted under Paragraph 4.4 of the Deed of Trust, Borrower shall obtain Lender's prior written approval, which approval may be granted or denied in Lender's sole discretion, of the identity of the Property manager for the Property and the terms of the applicable property management agreement.

9.15 Security Interest. As additional security for the obligations of Borrower contained in this Agreement and all of the other Loan Documents, Borrower hereby grants to Lender a security interest in funds and instruments of Borrower on deposit with Lender or at any branch of Lender.

9.16 Title Transfer Date. Borrower covenants that it shall satisfy all of the conditions precedent to its purchase of the Property from Peony on or before the Title Transfer Date, including, without limitation, the conditions precedent set forth in Paragraph 4.3.7.

9.17 Civil Code Section 3110.5. If at any time General Contractor demands that Borrower or Peony comply with Civil Code Section 3110.5 or Guarantor's Tangible Net Worth falls below $150,000,000, then Borrower shall within ten (10) days of the occurrence of either such event, obtain and thereafter maintain a sufficient bond or letter of credit necessary to satisfy such statute, or establish and thereafter maintain the requisite funds in an escrow account necessary to satisfy the statute.

ARTICLE 10 - INSURANCE

10.1 Title Insurance. At Recordation, Borrower shall at its expense deliver or cause to be delivered to Lender a Title Policy, which shall be an ALTA LP-10 policy of title insurance or its equivalent, with a liability limit of not less than the principal amount of the Note, issued by Title Insurer, insuring Lender as to the validity and priority of the Deed of Trust as a first lien on the Land, together with such endorsements and reinsurance or co-insurance agreements as Lender may require. The Title Policy shall contain only such exceptions from its coverage as shall have been approved in writing by Lender. After the Closing Date, Borrower shall, at its expense, deliver or cause to be

delivered to Lender from time to time, within five (5) Business Days after Lender's request therefor, such additional endorsements to the Title Policy as Lender may require. Borrower shall furnish to Title Insurer all surveys and any other information required to enable it to issue the Title Policy and such endorsements.

10.2 Insurance. Before the Closing Date, Borrower shall procure, and at the Closing Date deliver to Lender and thereafter maintain, policies of insurance in form and content and issued by insurers satisfactory to Lender, as follows:

10.2.1 Until completion of the Improvements, a policy or policies of builder's "all risk" insurance in an amount not less than the full insurable value of the Improvements, with lender's loss payable endorsement satisfactory to Lender.

10.2.2 At any time when Borrower does not maintain the insurance described in Subparagraph 10.2.1, policies of insurance insuring the Property against loss or damage by risks embraced in coverage of the type now known as the broad form of all-risk, extended coverage, in an amount not less than the full replacement cost of the Improvements, and with not more than $250,000.00 deductible. The policies of insurance shall contain the "replacement cost endorsement".

10.2.3 Commercial general liability insurance, including coverage for any elevators and escalators occupying a portion of the Improvements, on an "occurrence basis" against claims for "personal injury," including, without limitation, bodily injury or death, or "property damage" occurring on, in or about the Property or the adjoining streets or sidewalks, or arising from or connected with the use, conduct or operation of Borrower's business or interests, in the amount of $10,000,000 per occurrence with respect to personal injury, death of any one person and property damage. Lender shall have the right from time to time to require an increase in the amount of coverage based on the standard practices in Borrower's industry in the general geographic area of the Land and the risks involved in Borrower's business, operations or interests.

10.2.4 Workers' compensation insurance to the extent required by law.

10.2.5 At any time when Borrower does not maintain the insurance described in Subparagraph 10.2.1, insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as the broad form of all-risk, extended coverage.

10.2.6 Insurance against flood damage, including surface waters, if the Land is located in an area considered a flood risk by the United States Department of Housing and Urban Development, in an amount not less than the full replacement cost of the Improvements and the Personal Property.

10.2.7 Such other insurance against such risks or hazards, and in such amounts, as may from time to time be reasonably required by Lender.

10.3 Form of Policies. Each policy of insurance required under the preceding Paragraph shall be with a company approved by Lender, shall contain the "standard non-contributory mortgagee clause" and the "standard lenders' loss-payable clause," or their equivalents, in favor of Lender, and shall provide that it shall not be modified or canceled without thirty (30) days' prior written notice to Lender (ten (10) days for cancellation for non-payment). Lender shall be furnished with the original or a certified copy of the original of each such policy. Borrower shall also furnish Lender with receipts for the payment of premiums on such policies or other evidence of such payment reasonably satisfactory to Lender. If Borrower does not provide Lender with evidence of renewal of an existing policy or a new policy of insurance at least two (2) days before the expiration of any expiring policy, then Lender may, but shall not be obligated to, procure such insurance, and Borrower shall pay the premiums thereon to Lender promptly upon demand.

10.4 Insurance Responsibility. Lender shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any such insurance, incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurers or payment of losses, and Borrower hereby expressly assumes full responsibility therefor and all liability related thereto, if any.

ARTICLE 11 - DEFAULT

11.1 Events of Default. At the option of Lender, each of the following events shall constitute an Event of Default under this Agreement (including, if Borrower consists of more than one Person, the occurrence of any of such events with respect to any one or more of such Persons).

11.2 Payment. Borrower's failure to pay when due any sum payable under the Note or Borrower's failure to pay, in each case within ten (10) days after the due date thereof, any other sum payable under any of the other Loan Documents.

11.3 Borrower's Funds. Borrower's failure to deliver any Borrower's Funds to Lender for deposit into the Borrower's Funds Account as and when required by this Agreement.

11.4 Performance. Borrower's failure to perform any of its obligations under any covenant or agreement set forth in this Agreement, if such failure is not cured within thirty (30) days after written notice from Lender (or such longer period as is reasonably determined by Lender to be necessary for completion of the cure, so long as Borrower begins promptly and thereafter diligently continues to cure the failure).

11.5 Other Loan Documents. Borrower's failure to perform any of its obligations under any covenant or agreement set forth in the Note, Deed of Trust (after the Title Transfer Date), or any of the other Loan Documents, if such failure is an event of default thereunder and is not cured within the applicable cure period (if any).

11.6 Governmental Requirements. Borrower's failure to comply with any Governmental Requirements within the applicable cure period (if any), where such failure could be expected to have a material adverse effect on the Borrower or the Project, as determined by Lender in its sole discretion and is not cured within the earlier of thirty (30) days after written notice from Lender or the cure period under the applicable Governmental Requirement.

11.7 Title Restrictions. Borrower's failure to comply with any Title Restrictions within the applicable cure period (if any), where such non-compliance could be expected to have an adverse effect on the Project, as determined by Lender in its sole discretion.

11.8 Representations and Warranties. The failure of any of Borrower's representations or warranties contained in this Agreement or in any of the other Loan Documents to be true, if such failure continues for a period of thirty (30) days after written notice by Lender to Borrower of such failure.

11.9 Expiration of Permits. Borrower's neglect, failure or refusal to keep in full force and effect any permit, license, consent or approval required for the then current stage of construction, occupancy or use of the Improvements, if such neglect, failure or refusal continues for a period of thirty (30) days after written notice by Lender to Borrower of such failure, it being acknowledged that certain permits, licenses, consents and approvals will only be obtained after the Closing Date.

11.10 Junior Encumbrances. The imposition, voluntarily or involuntarily, of any lien or encumbrance upon Project, other than Permitted Encumbrances, without Lender's prior written consent, which Lender may grant or deny in its sole discretion.

11.11 Construction. Any material deviation in the work of construction from the Plans, or the appearance or use of defective workmanship or materials in the construction of the Improvements, if Borrower fails to remedy the same to Lender's satisfaction within thirty (30) days after Lender's written demand to do so (or such longer period as is reasonably determined by Lender to be necessary for completion of the cure, so long as Borrower begins promptly and thereafter diligently continues to cure the failure).

11.12 Construction Schedule. Subject to Force Majeure, Borrower's failure either: (a) to complete the construction of the Improvements by the Completion Date; or (b) to complete any material portion of such construction substantially within the time projected for such Completion on any Construction Schedule provided to Lender pursuant to this Agreement.

11.13 Condemnation. Unless the conditions set forth in Paragraph 4.8(a) of the Deed of Trust for the Trustor to utilize Net Claims Proceeds (as defined in the Deed of Trust) have been satisfied within ninety days after the conclusion of such proceedings, the commencement of proceedings by any Governmental Authority for the condemnation, seizure or appropriation of any material portion of the Property.

11.14 Destruction of Improvements. Unless the conditions set forth in Paragraph 4.8(a) of the Deed of Trust for the Trustor to utilize Net Claims Proceeds (as defined in the Deed of Trust) have been satisfied within ninety days after such demolition, destruction or substantial damage, the demolition, destruction or substantial damage of the Improvements, if Lender determines that the Improvements cannot be restored or rebuilt within a reasonable time, at a cost not exceeding the aggregate amount of the Undisbursed Loan, the available insurance proceeds and the amount (if any) in the Borrower's Funds Account.

11.15 Uninsured Casualty. Unless the conditions set forth in Paragraph 4.8(a) of the Deed of Trust for the Trustor to utilize Net Claims Proceeds (as defined in the Deed of Trust) have been satisfied within ninety days after such uninsured casualty, the occurrence of an uninsured casualty with respect to any material portion of the Property, unless: (a) Lender determines that the Property so affected can be restored or rebuilt within a reasonable time; and (b) Borrower promptly following the casualty delivers Borrower's Funds in the amount necessary to pay all costs and expenses associated with such restoration or rebuilding.

11.16 Liens and Stop Notices. The filing of any lien or stop notice against the Property, if the claim of lien or stop notice continues for thirty (30) days without discharge, satisfaction or the making of provision for payment to the satisfaction of Lender, in its sole discretion.

11.17 Property Lease Default. A default under the Property Lease, and without regard to any notice and cure periods, by either Borrower, as landlord, or Guarantor, as tenant, under the Property Lease if such failure is not cured within thirty (30) days after written notice thereof (or such longer period as is reasonably determined by Borrower or Guarantor to be necessary for completion of the cure, so long as Borrower or Guarantor begins promptly and thereafter diligently continues to cure the failure).

11.18 Attachment. The attachment, levy, execution or other judicial seizure of any portion of the Property or any other collateral provided by Borrower under any of the Loan Documents which is not released, expunged, discharged or dismissed before the earlier of: (a) thirty (30) days after such attachment, levy, execution or seizure; or (b) the sale of the assets affected thereby.

11.19 Voluntary Bankruptcy. Borrower's filing of a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified, or under any other present or future federal or state law regarding bankruptcy, reorganization or other relief to debtors, or Borrower's insolvency or inability to pay its debts as they mature, or Borrower's making a general assignment for the benefit of creditors, or Borrower's applying for a receiver, trustee, custodian or liquidator for Borrower or any of its property, or the filing by or against Borrower of a petition or the commencement of any other procedure to liquidate or dissolve Borrower.

11.20 Involuntary Bankruptcy. Borrower's failure to effect a full dismissal of any involuntary petition, under the Bankruptcy Reform Act of 1978, as amended or recodified, or under any other present or future federal or state law regarding bankruptcy, reorganization or other relief to debtors, that is filed against Borrower or that in any way restrains or limits Borrower or Lender regarding the Loan, the Property or the Project, before the earlier of (a) the entry of any order granting relief sought in the involuntary petition, or (b) sixty (60) days after the date of filing of the petition, or Borrower's filing of any pleading in any such involuntary proceeding which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency.

11.21 Change in Borrower. The sale, assignment, pledge, hypothecation, mortgage or transfer, in each case by Guarantor, of the beneficial equity interests of Borrower if immediately thereafter Guarantor shall own, subject to no lien or security interest, less than fifty-one percent (51%) of the beneficial equity interests in Borrower, without the prior written consent of Lender; or the occurrence of any material management, organizational or other such change in Borrower, including, without limitation, the occurrence of any material partnership or joint venture dispute, which Lender determines, in its reasonable discretion, will have a material adverse effect on the Loan, the Property, or on Borrower's ability to perform its obligations under the Loan Documents; or any amendment or modification of the articles of incorporation, bylaws, operating agreement, partnership agreement, trust agreement or other charter document of Borrower, which Lender determines, in its reasonable discretion, will have a material adverse effect on the Loan, or on Borrower's ability to perform its obligations under the Loan Documents. Notwithstanding the foregoing, any transfer of interests in Borrower or its constituent members that is expressly permitted by the Deed of Trust shall not be an Event of Default under this Paragraph 11.21.

11.22 Guarantor. The occurrence of any of the events enumerated in Paragraphs 11.18 through 11.20 with respect to Peony or Guarantor. The failure of Guarantor to fulfill its obligations under the Security Agreement, the Environmental Indemnity, Guaranty or Completion Guaranty.

11.23 Cross Default. The occurrence of an event of default by Borrower under (and as defined in) any other loan made by Lender to Borrower.

11.24 Cross Default – Guarantor. The occurrence of any event of default by Guarantor under (and as defined in) any other loan made by Lender to Guarantor.

11.25 Title Transfer Date. The failure of Borrower to acquire the Property from Peony on or before the Title Transfer Date.

ARTICLE 12 - REMEDIES

12.1 Optional Remedies. Upon the occurrence of any Event of Default as defined in this Agreement, in addition to its other rights set forth in this Agreement or in

any of the other Loan Documents, at law or in equity, Lender may, at its option, without prior demand, exercise any one or more of the following rights and remedies:

12.1.1 Terminate its obligation to make further disbursements under this Agreement.

12.1.2 Declare the Note and all other sums owing to Lender with respect to the other Loan Documents immediately due and payable in full.

12.1.3 Make any Disbursements after the happening of any one or more Events of Default, without thereby waiving its right to demand payment of the Note and all other sums owing to Lender with respect to the other Loan Documents or any other rights or remedies described in this Agreement, and without liability to make any other or further Disbursements, notwithstanding Lender’s previous exercise of any such rights and remedies.

12.1.4 Proceed as authorized at law or in equity with respect to such an Event of Default, and in connection therewith remain entitled to exercise all other rights and remedies described in this Agreement.

12.1.5 Take possession of all funds and deposits of Borrower on hand or on deposit in any account with Lender or any other Person or at any branch of Lender, and apply said funds in satisfaction of Borrower’s obligations to Lender, in such order and priority as Lender may elect.

12.1.6 Make any payment from Undisbursed Loan proceeds, Borrower’s Funds or other funds of Lender. If any such payment is made from Undisbursed Loan proceeds or Borrower’s Funds, Borrower shall deposit with Lender, upon written demand issued pursuant to Paragraph 9.1, an amount equal to such payment. If any such payment is made from other funds of Lender, Borrower shall repay such funds to Lender upon written demand issued pursuant to Paragraph 12.2. In either case, the Event of Default with respect to which any such payment has been made by Lender shall not be deemed cured until such deposit or repayment, as the case may be, has been made by Borrower.

12.1.7 Upon five (5) Business Days’ written notice to Borrower, and with or without legal process, take possession of the Property, remove Borrower and all employees, contractors and agents of Borrower therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Property.

12.1.8 If Lender determines that the Improvements are not being constructed in accordance with the Plans, Governmental Requirements, Title Restrictions or the Loan Documents, Lender may order all construction on any of the Improvements affected by the condition of non-conformance immediately stopped. After such an order, Borrower shall not allow any construction work, other than corrective work, to be performed on any of the Improvements affected by the condition of non-conformance until Lender notifies Borrower in writing that the non-conforming condition has been corrected.

12.2 Repayment of Funds Advanced. If Lender spends its funds in exercising or enforcing any of its rights or remedies under the Loan Documents, the amount of funds spent shall be payable to Lender upon written demand, together with interest at the rate applicable to the principal balance of the Note, from the date such funds were spent until repaid. Such amounts shall be deemed secured by the Deed of Trust and other applicable Loan Documents.

12.3 Rights Cumulative; No Waiver. All of Lender's rights and remedies provided in this Agreement, in any of the other Loan Documents, at law, in equity or otherwise, are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy shall not constitute a cure of any Event of Default unless all sums then due and payable to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default. No waiver shall be implied from Lender's failure to take, or delay in taking, any action concerning any Event of Default, or from any previous waiver of any similar or unrelated Event of Default. Any waiver under any of the Loan Documents must be in writing and shall be limited to its specific terms.

12.4 Disclaimer. Whether or not Lender elects to employ any or all of the remedies available to it in connection with an Event of Default, Lender shall not be liable for: (a) the construction of or failure to construct, complete or protect the Improvements; (b) the payment of any expense incurred in connection with the exercise of any remedy available to Lender or the construction or Completion of the Improvements; or (c) the performance or non-performance of any other obligation of Borrower.

12.5 Waiver of Trial By Jury. Lender and Borrower each knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in respect of any claim or controversy arising out of the Loan, this Agreement or any of the other Loan Documents.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 Lot Line Adjustment. Notwithstanding any other provision of this Agreement, if at any time Borrower is able to effect a lot line adjustment for the Land such that all of the Improvements are or may be lawfully situated on Parcel A only, Lender shall partially reconvey Parcel B and each and all of the interests therein from the lien and security of any and all of the instruments and documents that secure the Loan, but subject to the satisfaction or waiver of each of the following conditions precedent, which are solely for the benefit of, and may be waived solely by, Lender:

13.1.1 No uncured Event of Default shall then exist and no event or circumstance shall exist as of the date of the Extension Notice which with notice, passage of time or both would constitute an Event of Default.

13.1.2 No material adverse change shall have occurred in the financial condition of the Borrower or the Guarantor, as determined in the sole and absolute discretion of Lender.

13.1.3 Title Insurer shall have issued, at Borrower's sole cost and expense, such endorsements as are satisfactory to Lender in its sole discretion to insure the continuing validity and first priority of the lien of the Deed of Trust.

13.1.4 Borrower shall have paid all costs and expenses incurred by Lender, including without limitation any attorneys' and appraisers' fees, in connection with the partial reconveyance of the Deed of Trust.

13.1.5 Borrower and Guarantor and Peony shall execute, acknowledge and deliver such documents as Lender may require, in its reasonable discretion, to evidence and to continue to secure the Loan.

13.2 Parcel B. It is anticipated that Guarantor shall acquire Parcel B from Pardee Homes. Concurrently with the acquisition of Parcel B, Borrower shall satisfy the following provisions: (a) Borrower shall pay Lender all out-of-pocket costs and expenses incurred by Lender in connection with the acquisition transaction, including, without limitation, the cost of any title insurance policies and(or) title insurance endorsements required by Lender; (b) Guarantor shall execute and(or) deliver such documents and agreements as Lender shall reasonably require in connection with the acquisition transaction and the right of Lender to have a first lien security interest in Parcel B and all interests appurtenant thereto, including applicable personal property, including, without limitation, the Deed of Trust (Guarantor), Assignment of Leases (Guarantor), and UCC-1 Financing Statement in the form of Exhibit "M" attached hereto and incorporated herein by this reference, all in form and substance satisfactory to Lender in Lender's sole discretion; (c) to the extent there are any leases and(or) subleases in favor of Borrower, Guarantor and(or) their affiliates with respect to Parcel B, said leases and(or) subleases shall be subordinated to the Parcel B Deed of Trust and Lender, in its sole discretion, shall be entitled to take a security interest in said leases and(or) subleases, and require the delivery of estoppel certificates from the Borrower and its affiliates, as applicable; (d) Borrower shall pay Lender all attorneys' fees and costs incurred by Lender in connection with the foregoing transaction; (e) Title Insurer shall issue to Lender such title insurance coverage as Lender shall require in its sole discretion, and only with such exceptions for Permitted Encumbrances, and such other exceptions as may be approved by Lender, in its sole discretion, insuring the first lien priority of the Deed of Trust (Guarantor) and of the Assignment of Lease (Guarantor).

In the event the lot line adjustment described in Paragraph 13.1 shall have occurred prior to or concurrently with Guarantor's acquisition of Parcel B as described above, then this Paragraph shall be of no further force or effect.

13.3 Power of Attorney. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable upon the occurrence of an Event of Default, to act for Borrower in its name, place and stead as follows:

13.3.1 To take possession of the Property, remove all employees, contractors and agents of Borrower therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Property.

13.3.2 To make such additions, changes and corrections in the Plans as may be necessary or desirable, in Lender's reasonable discretion, or as it deems proper to complete the Improvements.

13.3.3 To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Lender, in its reasonable discretion, deems proper for the Completion of the Improvements, for the protection or clearance of title to the Property or Personal Property, or for the protection of Lender's interests with respect thereto.

13.3.4 To employ watchmen to protect the Property from injury.

13.3.5 To pay, settle or compromise all bills and claims then existing or thereafter arising against Borrower, which Lender, in its reasonable discretion, deems proper for the Completion of the Improvements, for the protection or clearance of title to the Property or Personal Property, or for the protection of Lender's interests with respect thereto.

13.3.6 To prosecute and defend all actions and proceedings in connection with the Property.

13.3.7 To execute, acknowledge and deliver all other instruments and documents in the name of Borrower that are necessary or desirable, to exercise Borrower's rights under all contracts concerning the Property, and to do all other acts with respect to the Property that Borrower might do on its own behalf as Lender, in its reasonable discretion, deems proper.

13.4 Expenses. Borrower shall pay to Lender, within ten (10) days after demand by Lender or within such shorter period of time as may be provided elsewhere in this Agreement, all necessary expenses incurred by Lender incidental to the Loan, including, without limitation, commitment fees, architectural and engineering review expenses, appraisal fees, construction inspection fees and attorneys' fees. The foregoing expenses shall be payable whether the labor, materials or services giving rise to such expenses are provided by Lender's employees, by its agents or by independent contractors. Any amounts not timely paid by Borrower shall thereafter bear interest at the rate applicable to the principal balance under the Note, from the date such expenses were paid by Lender until repaid.

13.5 Indemnity. Borrower hereby agrees to defend, indemnify and hold Lender and its directors, officers, employees, partners, attorneys, agents, participants, successors and assigns harmless from and against all Losses which may be imposed upon, incurred by or asserted against Lender and the other indemnified parties as a direct or indirect consequence of: (a) the construction of the Improvements on the Land; (b) any capital improvements, other work or things done in, on or about the Property or any part thereof; (c) any use, nonuse, misuse, possession, occupation, alteration, operation, maintenance or management of the Property or any part thereof, or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto; (d) any negligence or willful act or omission on the part of Borrower, Peony, or its or their agents, contractors, servants, employees, licensees or invitees; (e) any accident, injury (including death) or damage to any person or property occurring in, on or about the Property or any part thereof; (f) any lien or claim which may be alleged to have arisen on or against the Property or any part thereof under the laws of the local or state government or any other governmental or quasi-governmental authority or any liability asserted against Lender with respect thereto; (g) any tax attributable to the execution, delivery, filing or recording of the Deed of Trust or the Note; (h) any contest due to Borrower's actions or failure to act, permitted pursuant to the provisions of the Loan Documents; (i) any Event of Default; or (j) any claim by or liability to any contractor or subcontractor performing work or any party supplying materials in connection with the Improvements or the Land. Borrower shall pay immediately upon Lender's and(or) any other named indemnified party's demand any amounts owing under this indemnity, together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note. Borrower's duty to indemnify Lender and(or) any other named indemnified party shall survive the release and cancellation of the Note and the reconveyance or partial reconveyance of the Deed of Trust. Notwithstanding the foregoing, Borrower shall have no obligation to defend, indemnify or hold harmless Lender or any other indemnified party from and against any such Loss that results from the gross negligence or willful misconduct of any indemnified party.

13.6 Lender Right to Re-Appraise Property. Lender shall have the right to appraise the Property, or to cause the Property to be appraised, (a) at Borrower's expense at such times as an Event of Default may exist; and (b) at Lender's expense at such other and additional times as Lender may determine.

13.7 Further Assurances. At Lender's request and at Borrower's expense, Borrower shall execute, acknowledge and deliver all other instruments and perform all other acts necessary, desirable or proper to carry out the purposes of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.

13.8 Form of Documents. The form and substance of all documents, instruments and forms of evidence to be delivered to Lender under the terms of any of the Loan Documents shall be subject to Lender's approval, and shall not be modified, superseded or terminated in any respect without Lender's prior written approval.

13.9 Not Assignable. Except as expressly provided in paragraph 5.4 of the Deed of Trust, neither this Agreement nor any rights of Borrower to receive any sums, proceeds or disbursements under this Agreement or under the Note may be assigned, pledged, hypothecated or otherwise encumbered by Borrower, without the prior written consent of Lender, which consent may be granted or withheld by Lender in its sole discretion. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of Lender, Borrower and their respective successors and assigns, and shall bind Lender and Borrower and their respective permitted heirs, executors, administrators, successors and assigns.

13.10 Attorneys' Fees. If Lender refers this Agreement or any of the other Loan Documents to an attorney to enforce, construe or defend the same, or as a consequence of any Event of Default as defined in this Agreement, with or without the filing of any legal action or proceeding, Borrower shall pay to Lender, immediately upon demand, the amount of all attorneys' fees and costs incurred by Lender in connection therewith, together with interest thereon from the date of such demand at the rate of interest applicable to the principal balance of the Note. The reference to "attorneys' fees" in this Paragraph, elsewhere in this Agreement and in all of the other Loan Documents shall include, without limitation, fees charged by Lender for the services furnished by attorneys who are in its employ, at rates not exceeding those that would be charged by outside attorneys for comparable services.

13.11 Participations. Lender may at any time sell or grant up to three (3) participations in, or otherwise dispose of in anyway, all or any part of the Loan. Lender shall provide Borrower with notice of any such participations or dispositions. Borrower shall, on Lender's request, sign and deliver such further instruments as may in Lender's reasonable opinion be necessary or advisable to effect such disposition, including, without limitation, new notes to be issued in exchange for any note(s) required under this Agreement. If Lender does elect to sell participations in the Loan, Lender may forward to each participant and prospective participant all documents and information related to the Loan in Lender's possession, including, without limitation, all Financial Statements, whether furnished by Borrower or otherwise. Except as may be required by any rule, law or regulation of any Governmental Authority that is adopted after the date hereof, all recipients of participations must be affiliated with Lender, unless a change in control of Lender occurs, in which case the foregoing restrictions shall not apply.

13.12 Notices. All notices and demands under this Agreement shall be in writing, and shall be deemed served upon delivery, or if mailed, upon the first to occur of receipt thereof or three (3) days after deposit thereof in the United States Postal Service, certified mail, postage prepaid, addressed to the address of Borrower or Lender appearing in Article 1. Notices of change of address may be given in the same manner. Notices and demands under the other Loan Documents shall be given and shall be deemed served in the same manner as notices and demands under this Agreement, except as may otherwise be specifically provided therein.

13.13 Lender’s Agents. Lender may upon written notice to Borrower designate agents or independent contractors to exercise any of Lender’s rights under the Loan Documents. Any reference to Lender in any of the Loan Documents shall include Lender’s employees, agents and independent contractors.

13.14 Integration and Interpretation. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated in this Agreement and supersede all prior negotiations and the loan application. The Loan Documents shall not be modified except by written instrument signed by Borrower and Lender. Any reference to the Property in any of the Loan Documents shall include all or any portion thereof. Any reference to the Loan Documents themselves in any of the Loan Documents shall include all amendments, renewals or extensions approved by Lender.

13.15 Governing Law. The Loan Documents shall be governed by and construed in accordance with the laws of the State of California, except to the extent preempted by federal law. Borrower and all Persons and entities in any manner obligated to Lender under the Loan Documents hereby consent to the jurisdiction of any federal or state court within the State of California and also consent to service of process by any means authorized by California or federal law.

13.16 No Third Parties Benefited. No Person other than Lender and Borrower and their permitted successors and assigns shall have any right of action under any of the Loan Documents.

13.17 Time of the Essence. Time is hereby declared to be of the essence of this Agreement and of every part of this Agreement.

13.18 Supplement to Loan Documents. The provisions of this Agreement are not intended to supersede the provisions of any other Loan Documents, but shall be construed as supplemental thereto.

13.19 Severability. If any provision of the Loan Documents is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from the Loan Documents, and all remaining parts shall continue in full force as though the invalid, illegal or unenforceable portion had never been part of the Loan Documents.

13.20 Gender. When the context and construction so require, all words used in the singular in this Agreement shall be deemed to have been used in the plural, the masculine shall include the feminine and neuter, and vice versa.

13.21 Headings. All headings appearing in any of the Loan Documents are for convenience only and shall be disregarded in construing the Loan Documents.

13.22 Consent. Whenever the consent or approval of either party is required pursuant to this Agreement, such consent or approval shall not be unreasonably delayed, nor (except where a provision of this Agreement expressly refers to sole discretion)shall such consent or approval be unreasonably conditioned or withheld.

13.23 Incorporation. The following Exhibits attached to this Agreement are incorporated in this Agreement by this reference:

A	Legal Description of the Land
B	Legal Description of Parcel A
C	Legal Description of Parcel B
D	Architect Warranty, Agreement and Consent to Assignment
E	Assignment of Architect Contract
F	Assignment of Leases (Guarantor)
G	Cost Breakdown
H	Deed of Trust (Guarantor)
I	Disbursement Schedule
J	Estoppel Certificate
K	Subordination, Non-Disturbance and Attornment Agreement
L	Disclosures Regarding Hazardous Substances
M	UCC-1 Financing Statement (Guarantor)

13.24 WAIVER OF RIGHT OF TRIAL BY JURY. EACH OF BORROWER AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE (INCLUDING BY WAY OF JURY TRIAL) IN RESOLVING ANY DISPUTE OR LITIGATION (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT AND THE LOAN DOCUMENTS OR ACTIONS OF BORROWER OR LENDER RELATING TO THE LOAN AND(OR) THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT. THIS PROVISION AND THE WAIVER SET FORTH HEREIN ARE MATERIAL INDUCEMENTS TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN AND IN THE LOAN DOCUMENTS.

13.25 Addendum I. Addendum I attached hereto is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have signed and entered into this Agreement as of the day and year first above written.

LENDER:	SAN DIEGO NATIONAL BANK, a national banking association
	By: /s/ James W. Holliman
	Name: James W. Holliman
	Its: Senior Vice President
	By:
	Name:
	Its:
BORROWER:	SCIENCE PARK CENTER LLC, a California limited liability company
	By: /s/ Paul W. Hawran
	Name: Paul W. Hawran
	Its: Executive Vice President & CFO
	By:
	Name:
	Its:

EXHIBIT "A"

Legal Description of the Land

Parcel A and B Legal Description

PARCEL 1 OF PARCEL MAP NO. 19130, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 20, 2002.

EXCEPTING THEREFROM ALL OIL RIGHTS ON HEREIN DESCRIBED PROPERTY TO BE RESERVED BY THE GRANTOR, HER HEIRS AND ASSIGNS, FOREVER, AND FURTHER THAT THE SAID GRANTOR, HER HEIRS OR ASSIGNS AGREE TO PAY A REASONABLE COMPENSATION TO THE SAID GRANTEE OR THEIR ASSIGNS, SHOULD THE GRANTOR, HER HEIRS OR ASSIGNS, ENTER THE HEREIN DESCRIBED LAND FOR THE PURPOSE OF DIGGING OR DRILLING FOR OIL, AS RESERVED IN DEED FROM TILLIE M. LACY, ALSO KNOWN AS TILLIE WATERS LACY TO MEAD-HASKELL COMPANY, DATED JULY 29, 1919 AND RECORDED JULY 29, 1919 IN BOOK 789, PAGE 78 OF DEEDS.

(ASSESSOR'S PARCEL NO. 304-070-50 & 51)

PARCEL 2:

LOT 17 OF EMPLOYMENT CENTER DEVELOPMENT UNIT NO. 28, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 10945, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MAY 21, 1984.

EXCEPTING THEREFROM ALL OIL RIGHTS ON HEREIN DESCRIBED PROPERTY TO BE RESERVED BY THE GRANTOR, HER HEIRS AND ASSIGNS, FOREVER, AND FURTHER THAT THE SAID GRANTOR, HER HEIRS OR ASSIGNS AGREE TO PAY A REASONABLE COMPENSATION TO THE SAID GRANTEE OR THEIR ASSIGNS, SHOULD THE GRANTOR, HER HEIRS OR ASSIGNS, ENTER THE HEREIN DESCRIBED LAND FOR THE PURPOSE OF DIGGING OR DRILLING FOR OIL, AS RESERVED IN DEED FROM TILLIE M. LACY, ALSO KNOWN AS TILLIE WATERS LACY TO MEAD-HASKELL COMPANY, DATED JULY 29, 1919 AND RECORDED JULY 29, 1919 IN BOOK 789, PAGE 78 OF DEEDS.

(APN. NO. 307-010-23)

EXHIBIT “B”

Legal Description of Parcel A

PARCEL 1 OF PARCEL MAP NO. 19130, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 20, 2002.

EXCEPTING THEREFROM ALL OIL RIGHTS ON HEREIN DESCRIBED PROPERTY TO BE RESERVED BY THE GRANTOR, HER HEIRS AND ASSIGNS, FOREVER, AND FURTHER THAT THE SAID GRANTOR, HER HEIRS OR ASSIGNS AGREE TO PAY A REASONABLE COMPENSATION TO THE SAID GRANTEE OR THEIR ASSIGNS, SHOULD THE GRANTOR, HER HEIRS OR ASSIGNS, ENTER THE HEREIN DESCRIBED LAND FOR THE PURPOSE OF DIGGING OR DRILLING FOR OIL, AS RESERVED IN DEED FROM TILLIE M. LACY, ALSO KNOWN AS TILLIE WATERS LACY TO MEAD-HASKELL COMPANY, DATED JULY 29, 1919 AND RECORDED JULY 29, 1919 IN BOOK 789, PAGE 78 OF DEEDS.

(ASSESSOR'S PARCEL NO. 304-070-50 & 51)

EXHIBIT "C"

Legal Description of Parcel B

LOT 17 OF EMPLOYMENT CENTER DEVELOPMENT UNIT NO. 28, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 10945, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MAY 21, 1984.

EXCEPTING THEREFROM ALL OIL RIGHTS ON HEREIN DESCRIBED PROPERTY TO BE RESERVED BY THE GRANTOR, HER HEIRS AND ASSIGNS, FOREVER, AND FURTHER THAT THE SAID GRANTOR, HER HEIRS OR ASSIGNS AGREE TO PAY A REASONABLE COMPENSATION TO THE SAID GRANTEE OR THEIR ASSIGNS, SHOULD THE GRANTOR, HER HEIRS OR ASSIGNS, ENTER THE HEREIN DESCRIBED LAND FOR THE PURPOSE OF DIGGING OR DRILLING FOR OIL, AS RESERVED IN DEED FROM TILLIE M. LACY, ALSO KNOWN AS TILLIE WATERS LACY TO MEAD-HASKELL COMPANY, DATED JULY 29, 1919 AND RECORDED JULY 29, 1919 IN BOOK 789, PAGE 78 OF DEEDS.

(APN. NO. 307-010-23)

EXHIBIT “D”

Architect Warranty, Agreement and Consent to Assignment

EXHIBIT “E”

Assignment of Architect Contract

EXHIBIT "F"

Assignment of Leases (Guarantor)

EXHIBIT “G”

Cost Breakdown

EXHIBIT "H"

Deed of Trust (Guarantor)

EXHIBIT "I"

Disbursement Schedule

A. Timing of Disbursements. Unless another provision of this Agreement specifies otherwise, on or about the seventh (7th) day of each month, or at such other time each month as Lender may deem appropriate, Borrower shall cause to be submitted to Lender a written itemized statement ("Request for Disbursement") setting forth:

1. A description of the work performed, material supplied and(or) costs incurred or due with respect to each item listed on the Cost Breakdown for which Disbursement is requested; and

2. the total amount incurred, expended and(or) due for each requested item less prior Disbursements.

Each Request for Disbursement by Borrower shall constitute a representation and warranty by Borrower that Borrower is in compliance with all conditions precedent to the Disbursement as set forth in Article 4 of the Agreement.

B. Lender''s Right to Condition Disbursements. In addition to the conditions precedent to Disbursement provided in Article 4 of the Agreement, Lender shall have the right to condition any Disbursement upon Lender's receipt and approval of any or all of the following: setting forth:

1. The Request for Disbursement.

2. Bills, invoices, documents of title, vouchers, statements, payroll records, receipts and any other documents evidencing the total amount expended, incurred or due for any requested items.

3. Use of an unconditional lien release, joint check and voucher system acceptable to Lender for payments or disbursements to any contractor, subcontractor, materialman, supplier or lien claimant.

4. The Inspection Agent's periodic certifications of the percentage and(or) state of construction that has been completed and its conformance to the Plans and Governmental Requirements based upon the Inspection Agent's physical inspections of the Property.

5. Statutory Waiver and release of mechanics' liens, stop notice claims, equitable lien claims or other lien claim rights, as required by Section 4.3.6 of this Agreement.

6. A written release signed by an authorized representative of the surety, if any, to whom Lender has issued or will issue a set-aside letter.
7. Any other document, requirement, evidence or information that Lender may request under any provision of the Loan Documents.

No later than five (5) Business Days after satisfaction of all conditions precedent to Disbursements, Lender shall disburse funds as set forth in this Disbursement Schedule and in the body of the Agreement.

C. Disbursement of Lender's Fees and Costs. The portions of the Cost Breakdown allocated for payment of the Construction Loan Fee, and for the costs and expenses of Lender's legal counsel and other fees and costs incidental to the Loan, shall be disbursed directly as and when due, without the prior written instruction or request of Borrower. Lender shall provide a summary of all such expenses, and copies of invoices (except for the Construction Loan Fee and legal fees) for all such expenses.

D. Periodic Disbursement of Interest Reserve Amount. Lender shall disburse amounts up to the Interest Reserve Amount from time to time, directly to Lender in payment of interest which accrues and becomes due under the Note. Lender is hereby authorized to charge the Loan and Borrower's Funds Account directly for such interest payments as they become due. Lender shall provide Borrower with a monthly interest statement. Depletion of the Interest Reserve Amount shall not release Borrower from any of Borrower's obligations under the Loan Documents, including, without limitation, the obligation to pay the interest accruing under the Note and the obligation to deposit Borrower's Funds with Lender. Without limiting the generality of the foregoing, Borrower acknowledges that following the depletion of the Interest Reserve Amount or the Final Disbursement, whichever comes first, Borrower shall be obligated to pay interest directly to Lender as it becomes due under the Note.

E. Contingency Reserve. If the actual cost or a revised guaranteed cost of an item on the Cost Breakdown is less than the maximum amount allocated to such item on the Cost Breakdown, then any such excess amounts may be reallocated to the Contingency Reserve of that portion of the Cost Breakdown (i.e., Hard Contingency Reserve or General Contingency Reserve) from time to time upon Borrower's written request and Lender's approval, which approval shall not be unreasonably withheld or delayed. The portion of the Cost Breakdown allocated to the Contingency Reserve and any increases in the Contingency Reserve pursuant to this Disbursement Schedule shall be reallocated to such other items of the Cost Breakdown as Borrower shall from time to time request in writing and Lender shall approve. After any such reallocation, the portion of the Contingency Reserve that has been reallocated will be disbursed in accordance with the provisions governing the disbursement of the item(s) to which such portion of the Contingency Reserve has been reallocated. The reallocation or depletion or refusal of Lender to increase, reallocate or deplete the Contingency Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents. Borrower shall have the right to utilize the Hard Contingency Reserve to satisfy Change Orders that are less than or equal to the Change Order Amount and which, in total, do not exceed the Aggregate Change Order Amount, provided notification is expressly given to Lender in the then current Request for Disbursement.

F. Periodic Disbursement of Construction Costs. Lender may in its discretion withhold from Disbursements any amounts on account of retainage under the Construction Contract that Owner is not then required to disburse to Contractor.

EXHIBIT "J"

Estoppel Certificate

EXHIBIT “K”

Subordination, Non-Disturbance and Attornment Agreement

EXHIBIT “L”

Disclosures Regarding Hazardous Substances

EXHIBIT "M"

UCC-1 Financing Statement (Guarantor)

ADDENDUM I

No provision of any Loan Document is intended to restrict the sale of the stock of Guarantor (or any other entity by virtue of its ownership interest in Guarantor) or mergers involving Guarantor (or any other entity by virtue of its ownership interests in Guarantor) as a party, and any such transaction is permitted hereby.

Exhibit 10.3

Loan No. 1686410

GUARANTY

THIS GUARANTY (the “Guaranty”) is made as of September 25, 2003, by NEUROCRINE BIOSCIENCES, INC., a Delaware corporation (“Guarantor”), with reference to the facts set forth below.

A. SAN DIEGO NATIONAL BANK, a national banking association (“Lender”), has entered into a Construction Loan Agreement of even date herewith (the “Loan Agreement”), with SCIENCE PARK CENTER LLC, a California limited liability company (“Borrower”). (Except as otherwise provided in this Guaranty, terms with initial capital letters herein shall have the same meanings as set forth in the Loan Agreement.)

B. Pursuant to the Loan Agreement, Lender will make to Borrower a loan in an original amount not to exceed the principal sum of up to $60,600,000.00 (“Loan”). The Loan is to be used by Borrower to construct certain improvements on the Property described in the Loan Agreement, and is to be secured by the Property. The Loan is to be evidenced and secured by the Note and the other Loan Documents.

C. As an essential inducement of the making of the Loan and in consideration therefor, Guarantor has agreed to execute this Guaranty. The obligations guarantied pursuant to Section 1 below are referred to collectively herein as the “Guarantied Obligations”.

D. Guarantor will obtain substantial direct and indirect benefits from the making of the Loan.

NOW, THEREFORE, in consideration of the premises, and to induce and in consideration for the making of the Loan, Guarantor agrees as set forth below.

1. Guaranty.

1.1 Guarantor hereby unconditionally and irrevocably guaranties to Lender the full and prompt payment and performance of all indebtedness and obligations, of any nature whatsoever, of Borrower under the Note and all other Loan Documents and any and all extensions, renewals, substitutions, replacements, and modifications thereof, whether now in existence or hereafter created, including, without limitation, (a) all principal of and interest on the Note and (b) all fees, charges, costs, and other amounts payable by Borrower under the Note and other Loan Documents (all of the foregoing obligations collectively, the “Guarantied Obligations”).

1.2 This is a guaranty of all Guarantied Obligations, including, without limitation, obligations and liabilities arising under successive and future transactions that either increase, decrease, or continue the Guarantied Obligations, or, from time to time, renew Guarantied Obligations that have been satisfied, independent of and in addition to any guaranty, endorsement, or collateral now or hereafter held by Lender, whether or not furnished by Guarantor. This Guaranty shall be irrevocable, and Guarantor waives any right to revoke this Guaranty and the benefits of California Civil Code Section 2815.

2. Rights of Lender. Guarantor authorizes Lender at any time in its sole discretion to take any of the following actions on such terms and conditions as Lender may elect, without giving notice to Guarantor or any other person or obtaining the consent of Guarantor or any other person and without affecting Guarantor's obligations under this Guaranty:

2.1 Alter any of the terms and(or) documentation of any of the Guarantied Obligations or Loan Documents, including renewing, amending, releasing, waiving, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the Guarantied Obligations or the rate of interest on, the Guarantied Obligations;

2.2 accept new or additional documents, instruments or agreements relative to the Guarantied Obligations;

2.3 consent to the change, restructure or termination of the individual, partnership, limited liability company, corporate or other organizational structure or existence of Borrower, Guarantor or any other person or any affiliate of Borrower, Guarantor or any other person, and correspondingly restructure the Guarantied Obligations;

2.4 accept partial payments on the Guarantied Obligations;

2.5 take and hold any security or additional guaranties for the Guarantied Obligations and amend, alter, exchange, substitute, transfer, enforce, perfect or fail to perfect, waive, subordinate, terminate, compromise, or release any such security or guaranties;

2.6 apply any security, and direct the order and manner of sale thereof as Lender in its sole discretion may determine;

2.7 settle, release on terms satisfactory to Lender or by operation of law or otherwise, compound, compromise, collect or otherwise liquidate the Guarantied Obligations and(or) the security or any guaranty therefor in any manner;

2.8 release Borrower or any other person of its liability for all or any of the Guarantied Obligations;

2.9 participate in any settlement offered by Borrower, any guarantor or any other person, whether in liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding or otherwise;

2.10 exercise or not exercise rights available to it in any liquidation, reorganization receivership, bankruptcy, assignment for benefit of creditors or other debtor-relief proceeding, including voting or not voting to accept a plan and filing or not filing a proof of claim;

2.11 release, substitute or add any one or more guarantors or endorsers; and

2.12 assign its rights under this Guaranty in whole or in part.

3. Independent Obligations. Guarantor shall pay to (in immediately available funds) and perform for the benefit of Lender, when due, on demand of Lender, all Guarantied Obligations. This Guaranty is a guaranty of payment and performance and not of collectability. Guarantor’s obligations under this Guaranty are independent of those of Borrower and those of any other guarantor or other person. Lender may bring a separate action against Guarantor without proceeding against Borrower or any other guarantor or other person or any security held by Lender and without pursuing any other remedy.

4. Waiver of Defenses. Guarantor waives and agrees not to assert or take advantage of:

4.1 Any right to require Lender to proceed against Borrower, any other guarantor or any other person or any security now or hereafter held by Lender or to pursue any other remedy whatsoever, including any such right or any other right set forth in or arising out of Sections 2845, 2848, 2849, 2850, 2899 or 3433 of the California Civil Code;

4.2 any defense based upon any legal disability of Borrower or any guarantor or other person, or any discharge or limitation of the liability of Borrower or any guarantor or other person to Lender (except on satisfaction of all of Borrower’s obligations with respect to the Loan and Loan Documents), or any restraint or stay applicable to actions against Borrower or any guarantor or other person, whether such disability, discharge, limitation, restraint or stay is consensual, or arising by order of a court or other Governmental Authority, or arising by operation of law or any liquidation, reorganization, insolvency, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding, whether or not Lender consents to such treatment in such proceeding, or from any other cause, including any defense to the payment of interest, attorneys’ fees and costs, and other charges that otherwise would accrue or become payable in respect to the Guarantied Obligations after the commencement of any such proceeding;

4.3 setoff, counterclaim, presentment, demand, protest, notice of protest, notice of nonpayment, or other notice of any kind;

4.4 any defense based upon the modification, renewal, extension or other alteration of any of the Guarantied Obligations, or of the documents executed in connection therewith;

4.5 any defense based upon the negligence of Lender, including the failure to record an interest under a deed of trust, the failure to perfect any security interest, or the failure to file a claim in any bankruptcy of Borrower or any guarantor or other person;

4.6 any defense based upon a statute of limitations to the fullest extent permitted by law and any defense based upon Lender’s delay in enforcing this Guaranty or any other agreement;

4.7 all rights of subrogation, reimbursement, indemnity and contribution, all rights to enforce any remedy that Lender may have against Borrower or other person, and all rights to participate in any security held by Lender for the Guarantied Obligations, including any such right or any other right set forth in Sections 2848 or 2849 of the California Civil Code, until

the Guarantied Obligations have been paid and performed in full, and any defense based upon the impairment of any subrogation, reimbursement, indemnity or contribution rights that Guarantor might have, including any defense or right based upon the acceptance by Lender or an affiliate of Lender of a deed in lieu of foreclosure without extinguishing the Guarantied Obligations, even if such acceptance destroys, alters or otherwise impairs subrogation rights of Guarantor, the right of Guarantor to proceed against Borrower or any other person for reimbursement, or both;

4.8 any defense based upon or arising out of any defense which Borrower or any other guarantor or other person may have to the performance of any part of the Guarantied Obligations;

4.9 any defense to recovery by Lender of a deficiency after non-judicial foreclosure sale of real or personal property; any defense based upon unavailability to Lender of a deficiency judgment after nonjudicial sale of real or personal property; and any defense based upon or arising out of any of Sections 580a (which might limit the amount of any deficiency judgment which might be recoverable following the occurrence of a trustee's sale under a deed of trust), 580b and 580d (which may limit the right to recover a deficiency judgment with respect to purchase money obligations and after a non-judicial foreclosure sale, respectively), or 726 (which, among other things, may require the exhaustion of security before a personal judgment may be obtained for a deficiency) of the California Code of Civil Procedure (including but not limited to any fair value limitations under Sections 580a or 726 of such Code) or based upon or arising out of Divisions 8 or 9 or other applicable divisions of the California Uniform Commercial Code;

4.10 any defense based upon the death, incapacity, lack of authority or termination of existence of, or purported revocation or rescission of this Guaranty or any of the Guarantied Obligations by, any person, or the substitution of any party hereto or thereto;

4.11 any defense based upon or related to Guarantor's lack of knowledge as to Borrower's financial condition;

4.12 any right to revoke this Guaranty or obligations hereunder and all rights and benefits of Section 2815 of the California Civil Code;

4.13 any right to designate the application of any sums or property received by Lender, and in connection therewith, Guarantor agrees that any amounts or sums received by Lender from any source on account of the Guarantied Obligations may be applied by Lender toward payment thereof in such order of application as Lender may from time to time elect, notwithstanding any contrary designation by Borrower, Guarantor or any other person;

4.14 any defense based upon any action taken or omitted by Lender in any bankruptcy or other insolvency proceeding involving Borrower or any other person, including any election to have Lender's claim allowed as secured, partially secured or unsecured, any extension of credit by Lender to Borrower in any such proceeding, and the taking and holding by Lender of any security for any such extension of credit; and

4.15 any right or defense that is or may become available to Guarantor by reason of California Civil Code Sections 2787 to and including 2855, 2899 and 3433.

5. Borrower’s Financial Condition. Guarantor acknowledges that it is relying upon its own knowledge of and is fully informed with respect to Borrower’s financial condition. Guarantor assumes full responsibility for keeping fully informed of Borrower’s financial condition and all other circumstances affecting Borrower’s ability to perform the Guarantied Obligations, and agrees that Lender will have no duty to report to Guarantor any information which Lender receives about Borrower’s financial condition or any circumstances bearing on Borrower’s ability to perform all or any portion of the Guarantied Obligations, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor.

6. Impairment of Subrogation Rights.

6.1 Upon a default of Borrower or an Event of Default, Lender may elect to foreclose nonjudicially or judicially against any real or personal property security it holds for any of the Guarantied Obligations, exercise any other remedy against Borrower or any security or any guarantor or other person, and(or) take a deed or assignment of security in lieu of foreclosure. No such action by Lender will release or limit the liability of Guarantor, even if the effect of that action is to deprive Guarantor of the right or ability to collect reimbursement from or assert subrogation, indemnity or contribution rights against Borrower or any other guarantor or other person for any sums paid to Lender, or to obtain reimbursement by means of any security held by Lender for the Guarantied Obligations.

6.2 Guarantor acknowledges that if Lender elects to foreclose nonjudicially against any real property security it holds for the Guarantied Obligations or any part thereof, Guarantor may have subrogation rights that might be destroyed by virtue of application of Section 580d of the California Code of Civil Procedure and will or may have a defense to its liability under this Guaranty. Without in any way limiting any other waiver, consent or acknowledgment contained in this Guaranty and in addition thereto, Guarantor hereby waives and agrees not to assert or take advantage of any defense based upon such Section 580d of the California Code of Civil Procedure or any loss or impairment of subrogation or other rights against Borrower or any other person or entity, and no such nonjudicial foreclosure by Lender shall release or limit the liability of Guarantor under this Guaranty.

6.3 Guarantor waives all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as nonjudicial foreclosure with respect to security for the Guarantied Obligations, has destroyed Guarantor’s rights of subrogation and(or) reimbursement against Borrower or other person by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

6.4 Guarantor waives all rights and defenses arising out of the operation of Section 580a of the California Code of Civil Procedure, and further waives its right to a fair value hearing under such Section 580a to determine the size of a deficiency judgment following any foreclosure sale on encumbered real property.

6.5 Guarantor waives all rights and defenses that Guarantor may have because the Guarantied Obligations are secured by real property. This means, among other things: (a) Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower or otherwise; and (b) if Lender forecloses on any real property collateral, (i) the amount of the Guarantied Obligations may be reduced only by the price for which that collateral was sold at the foreclosure sale, even if the collateral is worth more than the sale price and (ii) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower or other person. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guarantied Obligations or portions thereof are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

7. Security Interest. Guarantor grants to Lender a security interest in all moneys, securities and other property of Guarantor now or hereafter in Lender's possession, and all present and future deposit accounts of Guarantor with Lender to secure Guarantor's performance hereunder.

8. Default. Each of the following shall constitute a default of Guarantor under this Guaranty, entitling Lender, at its option and in addition to its other remedies, to accelerate all of Guarantor's Obligations hereunder and to collect immediately from Guarantor the full amount of the Guarantied Obligations:

8.1 The failure of Guarantor to perform any of its obligations under this Guaranty;

8.2 the commencement of any liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding by Borrower or Guarantor;

8.3 any representation or warranty made by Guarantor hereunder shall be false in any material respect;

8.4 Guarantor shall fail to comply with any of the other terms or provisions of this Guaranty;

8.5 the occurrence of an Event or Default under any of the other Loan Documents; and

8.6 the revocation or purported revocation by Guarantor of this Guaranty.

9. Bankruptcy.

9.1 The obligations of Guarantor under this Guaranty shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Borrower, or by any defense Borrower may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. In furtherance of the foregoing,

Guarantor agrees that if acceleration of the time for payment of any amount payable by Borrower under the Note or in respect of the other Guarantied Obligations is stayed for any reason, all such amounts otherwise subject to acceleration shall nonetheless be payable by Guarantor hereunder forthwith upon demand.

9.2 Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantor may have against Borrower relating to any indebtedness of Borrower to Guarantor, and will assign to Lender all rights of Guarantor thereunder. If Guarantor does not file any such claim at least ten (10) days prior to any deadline thereof, then to the extent allowed by law, Lender, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Lender's discretion, to assign the claim to a nominee, and to cause such proof of claim to be filed in the name of Lender's nominee. The foregoing power of attorney is coupled with an interest and is irrevocable until after the indefeasible payment and performance in full of all of the Guarantied Obligations. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Lender the amount payable on such claim. Guarantor hereby assigns to Lender all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Lender receives cash by reason of any such payment or distribution. If Lender receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

10. Continuance of Guaranty. The liability of Guarantor hereunder shall continue in effect notwithstanding any payment or performance of the Guarantied Obligations by Borrower, such that, if any such payment or performance is avoided or recovered from Lender or Lender is otherwise required to restore or return any such payment or performance in connection with the bankruptcy, insolvency or reorganization of Borrower or otherwise, Guarantor shall remain liable hereunder as though such payment or performance had not occurred. The determination as to whether any such payment or performance must be restored or returned may be made by Lender in its sole discretion; provided, however, that if Lender chooses in its discretion to contest any such matter, Guarantor agrees to indemnify, defend and hold harmless Lender from all costs and expenses (including, without limitation, legal fees and disbursements) of such litigation. Lender shall be under no obligation to return or deliver this Guaranty to Guarantor, notwithstanding the payment or performance of the Guarantied Obligations. If this Guaranty is nevertheless returned to Guarantor or is otherwise released, then the provisions herein shall survive such return or release, and the liability of Guarantor under this Guaranty shall survive such return or release, and Guarantor shall remain liable under this Guaranty under the circumstances provided herein notwithstanding such return or release.

11. Subordination.

11.1 All existing and future obligations of Borrower to Guarantor (including, without limitation, any obligations arising by reason of any payment by Guarantor hereunder) are hereby subordinated to the full and indefeasible payment and performance of the Guarantied Obligations.

11.2 Upon any default under any of the Guarantied Obligations or hereunder, all obligations of Borrower to Guarantor shall be collected, enforced and received by Guarantor as trustee for Lender, and all amounts received shall be paid over to Lender, for application to the Guarantied Obligations. In the event of a bankruptcy case against Borrower, Lender shall, at its option, be entitled to file a proof of claim on behalf of Guarantor under the Bankruptcy Rule 3001. Lender shall be entitled to all voting rights and distributions on account of such claim until full and complete performance of the Guaranteed Obligations.

12. Representations and Warranties. Guarantor represents and warrants as follows:

12.1 Guarantor is a corporation duly incorporated, validly existing, and is in good standing under the laws of the jurisdiction of its incorporation and is duly qualified to do business in Delaware, California and all other states, if any, in which it is required to be qualified;

12.2 Guarantor has the requisite power and authority to own and manage its properties, to carry on its business as now being conducted and to perform its obligations hereunder;

12.3 The individual(s) executing this Guaranty on behalf of Guarantor or any person comprising a part of Guarantor is authorized and empowered by his/her or their signatures alone to bind Guarantor;

12.4 Guarantor has the full right, power and authority to execute and deliver this Guaranty and any other Loan Document to be executed and delivered by it, consummate the transactions contemplated hereby and thereby, and perform its obligations hereunder and thereunder. This Guaranty and the other Loan Documents to be executed and delivered by Guarantor have been duly authorized, executed and delivered, and do not and will not require any consent or approval of any person or entity other than that which has been heretofore obtained;

12.5 Guarantor is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it;

12.6 The execution, delivery and performance by Guarantor of this Guaranty (a) have been duly authorized by all necessary action, (b) are within the power of Guarantor, (c) have received all necessary governmental approvals, and (d) do not and will not (i) contravene Guarantor's corporate charter, bylaws, or any other of Guarantor's Organizational Documents, (ii) violate any provision of any law, rule or regulation or any order, judgment or decree of any court or agency of government, or any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or its property is bound, (iii) result in a breach of or constitute (with due notice and(or) lapse of time) a default under any such indenture, agreement or other instruments, (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever under any agreement, mortgage, deed of trust, lease, loan or security agreement, partnership agreement, corporate charter, bylaws or other document, agreement or instrument to which Guarantor is a party or by which it or its property or assets may be bound or affected; and Guarantor is not in default under any such law, rule, regulation, order, judgment, decree, indenture, agreement or instrument;

12.7 This Guaranty has been duly executed by Guarantor and, when delivered to Lender, will constitute a legal, valid and binding obligation enforceable against Guarantor in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles;

12.8 All financial statements and data that have been given to Lender by Guarantor with respect to Guarantor (a) are complete and correct in all material respects as of the date given; (b) accurately present the financial condition of Guarantor on each date as of which, and the results of Guarantor's operations for the periods for which, the same have been furnished; and (c) have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby;

12.9 All balance sheets and the notes thereto with respect to Guarantor furnished to Lender disclose all material liabilities of Guarantor, fixed and contingent, as of their respective dates;

12.10 There has been no material adverse change in the financial condition or operations of Guarantor since (a) the date of the most recent financial statement given to Lender with respect to Guarantor, or (b) the date of the financial statements given to Lender immediately prior to the date hereof, other than changes in the ordinary course of business, none of which changes has been materially adverse individually or in the aggregate;

12.11 All other reports, papers and written data and information given to Lender by Guarantor with respect to Guarantor are accurate and correct in all material respects;

12.12 To the best of Guarantor's knowledge, Guarantor is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any material agreement or instrument to which Guarantor is a party;

12.13 Except as disclosed to Lender in writing and approved by Lender, there is not now pending against or affecting Guarantor, nor to the knowledge of Guarantor is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency that, if adversely determined, would materially impair or affect the financial condition or operations of Guarantor; Guarantor is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority;

12.14 Guarantor has filed all federal, state, provincial, county, municipal and other income tax returns legally required to have been filed by Guarantor and has paid all taxes that have become due pursuant to such returns or pursuant to any assessments received by Guarantor, and Guarantor does not know of any basis for any material additional assessment against it in respect of such taxes;

12.15 Guarantor is not insolvent, and will not be rendered insolvent hereunder, and no bankruptcy or insolvency proceedings are pending or to the best of Guarantor's knowledge contemplated by or against Guarantor;

12.16 Guarantor represents and warrants to Lender that the Loan benefits Guarantor;

12.17 The value of the consideration received and to be received by Guarantor in connection with the Guarantied Obligations or transactions contemplated thereby is reasonably worth at least as much as the liability and obligations of Guarantor incurred or arising under this Guaranty. Guarantor has had full and complete access to the Loan Agreement, the Note, the Deed of Trust and all other Loan Documents relating to the Guarantied Obligations, has reviewed them and is fully aware of the meaning and effect of their contents. Guarantor is fully informed of all circumstances which bear upon the risks of executing this Guaranty and which a diligent inquiry would reveal. Guarantor has adequate means to obtain from Borrower on a continuing basis information concerning Borrower's financial condition, and is not depending on Lender to provide such information, now or in the future. Guarantor agrees that Lender shall not have any obligation to advise or notify Guarantor or to provide Guarantor with any data or information;

12.18 Guarantor has all requisite power and authority to transact any other business with Lender as necessary to fulfill the terms of this Guaranty; and

12.19 Guarantor and Borrower are not the alter ego of the other.

13. Covenants. Guarantor agrees that, so long as any part of the Guarantied Obligations shall remain to be performed or paid, Guarantor will, unless Lender shall otherwise consent in writing:

13.1 File all federal, state, provincial, county, municipal and other income tax returns required to be filed by it and pay before the same become delinquent all taxes that become due pursuant to such returns or pursuant to any assessments received by it, except such taxes as are being contested in good faith by appropriate proceedings;

13.2 Promptly and faithfully comply with all laws, ordinances, rules, regulations and requirements, both present and future, of every duly constituted Governmental Authority or agency having jurisdiction that may be applicable to it or its property or assets;

13.3 Maintain full and complete books of account and other records reflecting the results of its operations, and furnish to Lender such information about the financial condition and operations of Guarantor as Lender shall reasonably request, including, but not limited to, the following information which shall be furnished without request: (a) copies of filed tax returns and annual operating statements, balance sheets, statements of changes in financial position and related notes and such other financial statements and reports in such form and content as Lender may require on or before 120 days following the end of each applicable fiscal year, which financial statements may be internally prepared and certified under penalty of perjury to Lender by an authorized member of senior management; (b) copies of all project-specific financial statements, reports and notices delivered by Borrower or any of its members on its behalf to Guarantor as provided in any of Borrower's Organizational Documents; (c) copies of interim operating statements, balance sheets, statements of change of financial position and such other financial reports as Lender may require on or before the tenth (10th) Business Day following Lender's demand; and (d) such other information, report or data as Lender may reasonably

request; provided so long as the Guarantor is subject to the reporting provisions of the Securities Exchange Act, as amended (the "Exchange Act"), the timely filing (including all permissible extension periods provided under Rule 12b-25 under the Exchange Act) on the Securities and Exchange Commission's EDGAR system of the Guarantor's quarterly report on Form 10-Q for such period and annual report on Form 10-K for such period will be deemed to satisfy all of the foregoing requirements of this Section 13.3.

13.4 Take all steps necessary to maintain its existence and continue to be in good standing in the state of its incorporation and remain qualified to do business in the State of California;

13.5 Except as approved in writing by Lender, Guarantor shall not incur indebtedness or other liabilities if the same will or is reasonably likely to have a material adverse effect upon the financial condition or operations of Guarantor; and

13.6 Guarantor shall not, without Lender's prior written consent which shall not be unreasonably withheld: (a) amend, modify or change any of its Organizational Documents; (b) change its fiscal year; or (c) change its principal place of business, name, organizational identity, organizational structure or state of organization.

14. Costs and Expenses. In the event Lender takes any action to enforce the Guarantied Obligations or this Guaranty, either by legal proceedings or otherwise, Lender shall be reimbursed immediately by Guarantor for reasonably-incurred attorneys' fees (including fees for Lender's in-house attorneys) and other costs and expenses. Guarantor shall also immediately reimburse Lender for all attorneys' fees and costs reasonably incurred in connection with the representation of Lender in any liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding of or relating to Borrower, Guarantor, or the Property. Until paid to Lender, all such sums will bear interest from the date incurred at the rate set forth in the Note.

15. Delay; Cumulative Remedies. No delay or failure by Lender to exercise any right or remedy against Borrower or Guarantor or any other guarantor or other person shall be construed as a waiver of that right or remedy. All remedies of Lender against Borrower, Guarantor and any other person are cumulative.

16. Severability. The invalidity or unenforceability of any one or more provisions of this Guaranty will not affect the validity or enforceability of any other provision.

17. Controlling Law; Venue; Interpretation.

17.1 This Guaranty shall be governed by and construed in accordance with the internal laws of the State of California, except to the extent federal law applies. Venue for any action brought under this Guaranty will be at Lender's option, in the Superior Court of the State of California for the County of San Diego. Guarantor hereby accepts for itself and in respect to its property, generally and unconditionally, the exclusive jurisdiction of the foregoing court. Guarantor irrevocably consents to the service of process in any action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at its

address for notices pursuant to this Guaranty. Nothing contained herein shall affect the right of Lender to serve process in any other manner permitted by law.

17.2 As used herein, the terms “include,” “including” and forms thereof are nonexclusive.

17.3 As used herein, the term “day” means calendar day, except when used in the defined term “Business Day.”

17.4 As used herein, the term “person” means any individual, corporation partnership, limited liability company, trust, Governmental Authority, or other entity of any kind.

17.5 Singular words shall connote the plural as well as the singular and vice versa as the context requires.

17.6 Each gender will include any other gender.

18. Binding Effect. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor and Lender. The term “Borrower” will mean both the named Borrower and any other person or entity at any time assuming or otherwise becoming primarily liable for all or any part of the Guarantied Obligations. The term “Lender” will mean both Lender named herein and any future owner or holder, including pledgees and participants, of the Note, or any interest therein.

19. Joint and Several Liability. The liability of multiple guarantors is joint and several. If Guarantor is a partnership, such Guarantor and all general partners therein shall be jointly and severally liable hereunder. Any married person who executes this Guaranty agrees that recourse may be had against his or her separate property.

20. Modification or Waiver. No provision of this Guaranty or Lender’s rights hereunder can be waived or modified nor can Guarantor be released from its obligations hereunder except by a writing executed by Lender. No such waiver shall be applicable except in the specific instance for which given.

21. Entire Agreement. This Guaranty constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior or contemporaneous agreements, representations and understandings. No supplement to or modification of this Guaranty shall be binding unless executed in writing by all the parties.

22. Headings. All headings in this Guaranty are for convenience in reference only and do not define or limit the scope of provisions of this Guaranty.

23. Notice. All notices, demands and other communications required or permitted hereunder shall be in writing, addressed to the appropriate party as its address appears below, or to such other address as may be designated from time to time by notice to the other party in the manner set forth herein, and shall be effective upon the earliest of (a) actual delivery if delivered by personal delivery or certified postage-prepaid mail, (b) three (3) Business Days following deposit, first class postage prepaid, with the United States Mail, or (c) the next Business Day

after timely and proper deposit with an overnight air courier with request for delivery on the next Business Day.

24. Financial Reporting Requirements. Guarantor acknowledges that the Loan Agreement requires that Lender be provided, upon demand, with reports and other materials relating to Guarantor's financial condition, including tax returns, operating statements, balance sheets, statements of changes in financial position, and such other financial statements and reports as Lender may require. Guarantor agrees to provide such materials as specified in the Loan Agreement except where the failure to do so would not result in a material adverse effect.

25. WAIVER OF RIGHTS OF TRIAL BY JURY. EACH OF GUARANTOR AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE (INCLUDING BY WAY OF JURY TRIAL) IN RESOLVING ANY DISPUTE OR LITIGATION (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG GUARANTOR AND LENDER, ARISING OUT OF OR IN ANY WAY RELATED TO THIS GUARANTY, THE LOAN, THE LOAN DOCUMENTS OR ACTIONS OF GUARANTOR OR LENDER RELATING TO THE GUARANTY, LOAN AND(OR) THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THE LOAN DOCUMENTS OR THIS AGREEMENT. THIS PROVISION AND THE WAIVER SET FORTH HEREIN ARE MATERIAL INDUCEMENTS TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN AND IN THE LOAN DOCUMENTS.

26. Counterparts. This Guaranty may be signed in counterparts, which together shall constitute the agreement of the parties when each party has signed a counterpart.

27. Secured Obligations. This Guaranty and the Guarantor's performance of its obligations hereunder are secured by that certain Security Agreement (the "Security Agreement"), of even date herewith, executed by Guarantor in favor of Lender. Reference is made to the Security Agreement for a specific description of the security given to Lender by Guarantor thereunder.

28. Obligations Continue in Full Force and Effect. Borrower is obligated to acquire the Property from Peony Acquisitions LLC, a Delaware limited liability company ("Peony"), on or before November 26, 2003. Notwithstanding Borrower's acquisition of the Property and the assumption by Borrower of certain obligations of Peony under certain Loan Documents securing the Loan, all of Guarantor's obligations hereunder will continue to remain in full force and effect and for the benefit of Lender.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the day and year first written above.

GUARANTOR:

NEUROCRINE BIOSCIENCES, INC.,
a Delaware corporation

By:	/s/ Margaret Valeur-Jensen
Name:	Margaret Valeur-Jensen
Its:	Senior Vice President, Gen. Counsel & Secretary
By:	
Name:	
Its:	

Address of Guarantor:

NEUROCRINE BIOSCIENCES, INC.
10555 Science Center Drive
San Diego, CA 92121
Attn: Paul Hawran

With a copy to:

Margaret E. Valeur-Jensen
NEUROCRINE BIOSCIENCES, INC.
10555 Science Center Drive
San Diego, CA 92121

Address of Lender:

SAN DIEGO NATIONAL BANK
1420 Kettner Boulevard
San Diego, California 92101
Attention: Jim Holliman

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On , before me, , personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that executed the same in authorized capacity, and that by signature on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

____

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On , before me, , personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that executed the same in authorized capacity, and that by signature on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

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Exhibit 10.4

Loan No. 1686410

LIEN-FREE COMPLETION GUARANTY

THIS LIEN-FREE COMPLETION GUARANTY ("Guaranty") is made as of September 25, 2003, by the undersigned NEUROCRINE BIOSCIENCES, INC., a Delaware corporation ("Guarantor"), in favor of SAN DIEGO NATIONAL BANK, a national banking association ("Lender"), with reference to the following facts and circumstances.

A. Guarantor is executing this Guaranty as a material inducement to Lender to make a construction loan in the amount of up to $60,600,000.00 ("Loan") to SCIENCE PARK CENTER LLC, a California limited liability company ("Borrower").

B. The Loan shall be advanced to Borrower upon and subject to the provisions and conditions of a Construction Loan Agreement, of even date herewith, between Lender and Borrower ("Loan Agreement"), and shall be evidenced by a Promissory Note made by Borrower ("Note") and secured by a Construction Deed of Trust, Security Agreement and Fixture Filing ("Deed of Trust"), executed by PEONY ACQUISITIONS LLC, a Delaware limited liability company ("Peony") as Trustor thereunder, both of even date herewith. Initially capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Loan Agreement.

C. The Loan is to be used by Borrower for the Improvements to be constructed in accordance with the Plans upon the Property and certain other purposes provided in the Loan Agreement, and is to be secured by the Property.

D. As an essential inducement of the making of the Loan and in consideration therefor, Guarantor has agreed to execute this Guaranty. The obligations guaranteed pursuant to Section 1 below are referred to collectively herein as the "Guaranty Obligations".

E. Guarantor will obtain substantial direct and indirect benefits from the making of the Loan.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, and to induce and in consideration for the making of the Loan, Guarantor agrees as set forth below.

1. Guaranty of Lien-Free Completion.

(a) Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Lender the following: (i) that construction of the Improvements shall be undertaken and completed in a diligent, orderly and workmanlike manner and, except for minor deviations that comply with applicable laws, ordinances and regulations, substantially in accordance with the Plans and Construction Schedule and the Loan Agreement, so that the construction will be completed lien-free (meaning, no contractors', vendors', mechanics' or materialmens' liens, claims or demands for labor or materials, including stop notices), other than Permitted Encumbrances, and in accordance with all applicable laws, ordinances and

regulations and the Loan Agreement, except where the failure to so comply with applicable laws, ordinances and regulations could not reasonably be expected to have a material adverse effect; provided, however, Guarantor shall correct such failure within sixty (60) days thereafter; (ii) the discharge and satisfaction of all contractors', vendors', mechanics' or materialmens' liens and(or) claims or demands for labor or materials, including stop notices, arising in connection with the construction of the Improvements (subject to the same right to contest such liens and claims as Borrower has under the Loan Documents), so that the construction will be completed lien-free and shall be and remain free and clear of all liens, other than Permitted Encumbrances; and (iii) the construction of the Improvements shall have been completed and conducted in accordance with all applicable Environmental Laws, and the Improvements and the underlying Land shall be free and clear of Hazardous Substances in violation of Environmental Laws, and all remedial work, if any, that shall be required shall have been completed in accordance with all Environmental Laws and any written plan therefor approved by any public agencies having jurisdiction, and all costs and expenses of the foregoing shall have been paid in full, including, without limitation, any fines or penalties imposed in connection with any required remedial work and the cost of testing or monitoring resulting from any such remedial work or the existence at any time of Hazardous Substances on, under or about the Improvements and the underlying Land except in strict compliance with all applicable Environmental Laws.

(b) If for any reason Borrower abandons or fails to diligently pursue and complete to Lender's reasonable satisfaction the construction of the Improvements, fails to pay all costs of such construction, or in any other manner defaults under the Loan Documents, Guarantor unconditionally agrees that it shall, within fifteen (15) calendar days after written demand by Lender, immediately assume at its expense all responsibility for: (i) the timely and lien-free completion of the Improvements and commence performance of all obligations of Borrower under all of the Loan Documents and any modifications, renewals and extensions thereof and supplements thereto; (ii) the payment and discharge of all liens not permitted under the Loan Documents (subject to the same right to contest such liens and claims as Borrower has under the Loan Documents); and (iii) the payment of any Loan proceeds Lender is compelled by law to pay to any laborers or suppliers on the Improvements.

(c) Guarantor shall pay all costs and expenses of performing its obligations hereunder.

(d) If Guarantor does not timely perform as required by Section 1(b) above, or at any time fails to continue its performance:

(i) Lender may elect, at its option and without any obligation to do so, without further notice to Guarantor, to take any actions it believes necessary to complete the Improvements or perform Guarantor's obligations hereunder, including appointment of a receiver, making such changes to the Plans as it deems reasonably necessary to do so, but with the right to suspend or terminate such actions at any time, and no such actions by Lender will release or limit the liability of Guarantor;

(ii) Guarantor shall repay Lender upon demand all sums expended by it in undertaking to so complete the Improvements or perform Guarantor's obligations hereunder, including any sums expended in excess of the principal amount of the Loan, together with

interest at the rate set forth in the Note, whether or not the Improvements are actually completed; and

(iii) Lender shall have direct cause of action against Guarantor for all loss, costs, damage, injury and expense sustained or incurred by Lender as a consequence of any failure or refusal of Guarantor to so perform.

2. Indemnity. Guarantor shall indemnify and hold harmless Lender from and against any and all losses, damages, claims, liabilities, costs, and expenses, including, but not limited to, all costs and expenses resulting from or arising out of any misrepresentation, breach or default (collectively “Claims”) arising out of the failure of Borrower or Guarantor to perform, observe or otherwise satisfy, any or all of the Guaranteed Obligations or the provisions of this Guaranty, regardless of whether Lender has enforced or taken any steps to enforce any rights against Borrower or any other Person and regardless of any other contingency, event or condition; provided, however, Guarantor shall not be required to indemnify or hold harmless Lender from and against any Claims that arise out of Lender’s gross negligence or willful misconduct.

3. Scope and Duration of Guarantor Liability. Guarantor represents and warrants to Lender that Guarantor is the manager of Borrower, and that as such Guarantor expects to materially benefit from Lender’s extension of the Loan to Borrower and the funds made available thereby to pay for the costs and expenses of the Improvements. Accordingly, Guarantor agrees that Lender’s agreement to make the Loan to Borrower is of substantial and material benefit to Guarantor. Guarantor further agrees as follows:

(a) This is a continuing guaranty, and Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding: (i) any modification, agreement or stipulation between Borrower and Lender, or their respective successors and assigns, with respect to the Loan Documents or the obligations encompassed thereby, including, without limitation, the Guaranteed Obligations; (ii) any modification of or amendments or addenda to the Plans, the General Contract or any subcontract; (iii) Lender’s waiver of or failure to enforce any of the terms, covenants or conditions contained in the Loan Documents or in any modification thereof; (iv) any discharge or release of Borrower or any other guarantor from any liability with respect to the Guaranteed Obligations (other than on satisfaction of Borrower’s obligations with respect to the Loan and otherwise with respect to the Loan Documents); (v) any discharge, release, exchange or subordination of any real or personal property then held by Lender as security for the performance of the Guaranteed Obligations; (vi) any additional security taken for the Guaranteed Obligations, whether real or personal property; (vii) any foreclosure or other realization of any security for the Guaranteed Obligations, regardless of the effect upon Guarantor’s subrogation, contribution or reimbursement rights against Borrower or any other guarantor; and (viii) any additional loans or financial accommodations to Borrower.

(b) Guarantor’s liability under this Guaranty shall continue until all sums due under the Note and the other Loan Documents have been paid in full and until all Guaranteed Obligations to Lender have been satisfied, and shall not be reduced by virtue of any payment by

Borrower of any amount due under the Note or under any of the Loan Documents (other than payment in full, as so provided) or by Lender's recourse to any collateral or security.

(c) Guarantor warrants and represents to Lender that Guarantor now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Loan Documents or referred to therein, the value of the assets owned or to be acquired by Borrower, Borrower's financial status and its ability to pay and perform the Guaranteed Obligations owed to Lender. Guarantor further warrants and represents that Guarantor has reviewed and approved copies of the Loan Documents and is fully informed of the remedies Lender may pursue, with or without notice to Borrower, in the event of default under the Note or other Loan Documents. So long as any of the Guaranteed Obligations remains unsatisfied or owing to Lender, Guarantor shall keep fully informed as to all aspects of Borrower's financial condition and the performance of the Guaranteed Obligations.

(d) Guarantor acknowledges and agrees that Guarantor may be required to perform the Guaranteed Obligations in accordance with the terms hereof notwithstanding the fact that the Loan has fully matured, that the outstanding principal balance thereof is fully due and payable and that Borrower is in default of its obligation to pay the full amount due under the Note on the maturity thereof.

4. Nature of Guaranty. The liability of Guarantor under this Guaranty is a guaranty of payment and performance and not of collectibility, and is not conditioned or contingent upon the genuineness, validity, regularity or enforceability of the Loan Documents or other instruments relating to the creation or performance of the Guaranteed Obligations or the pursuit by Lender of any remedies which it now has or may hereafter have with respect thereto under the Loan Documents, at law, in equity or otherwise. Guarantor agrees that Guarantor shall be liable even if Borrower had no liability at the time of execution of any of the Loan Documents or thereafter ceases to be liable. Guarantor agrees that Guarantor's liability may be larger in amount and more burdensome than that of Borrower. Guarantor's liability hereunder shall not be limited or affected in any way by any impairment or any diminution or loss of value of any security or collateral for the Loan, whether caused by Hazardous Substances or otherwise, Lender's failure to perfect a security interest in such security or collateral, or any disability or other defense of Borrower or any other guarantor.

5. Waivers and Agreements.

(a) Guarantor waives to the extent permitted by law: (i) all notices (other than those expressly provided in the Loan Documents) to Guarantor, to Borrower or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, or accrual of any of the Guaranteed Obligations owed to Lender and, except to the extent set forth in Paragraph 5(d) hereof, enforcement of any right or remedy with respect thereto, and notice of any other matters relating thereto; (ii) diligence and demand of payment, presentment, protest, dishonor and notice of dishonor; (iii) any statute of limitations affecting Guarantor's liability hereunder or the enforcement thereof; and (iv) all principles or provisions of law which conflict with the terms of this Guaranty. Guarantor further agrees that Lender may enforce this Guaranty upon the occurrence of an Event of Default under

the Note or the Loan Documents (as Event of Default is defined therein), notwithstanding the existence of any dispute between Borrower and Lender with respect to the existence of the Event of Default or performance of the Guaranteed Obligations or any counterclaim, set-off or other claim which Borrower may allege against Lender with respect thereto. Moreover, Guarantor agrees that Guarantor's obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety. Guarantor agrees that Lender may enforce this Guaranty without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Borrower or any other guarantor. Guarantor waives the right to require Lender to proceed against Borrower, to proceed against any other guarantor, to foreclose any lien on any real or personal property, to exercise any right or remedy under the Loan Documents, or to pursue any other remedy or to enforce any other right.

(b) Nothing contained herein shall prevent Lender from suing on the Note or from exercising any rights available to it thereunder or under any of the Loan Documents and the exercise of any of Lender's rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor understands that the exercise by Lender of certain rights and remedies contained in the Loan Documents may affect or eliminate Guarantor's right of subrogation against Borrower and that Guarantor may therefore incur a partially or totally non-reimbursable liability hereunder; nevertheless, Guarantor authorizes and empowers Lender to exercise, in its sole discretion, any rights and remedies, or any combination thereof, which may then be available to Lender, since it is the intent and purpose of Guarantor that the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Notwithstanding any foreclosure of the lien of any deed of trust or security agreement with respect to any or all of the real or personal property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure or by an acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty. Guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by operation of California Code of Civil Procedure ("CCP")ss. 580d or otherwise. Guarantor expressly waives any defense which, if it had not given this waiver, it might otherwise have to a judgment against it following a non-judicial foreclosure sale, for any portion of the indebtedness guaranteed herein. Without limiting the generality of the foregoing, Guarantor expressly waives any and all benefits and defenses under (i) CCPss. 580a, which if it had not given this waiver, would otherwise limit its liability after a non-judicial foreclosure sale to the difference between the obligations guaranteed herein and the fair market value of the property or interest sold at such non-judicial foreclosure sale; (ii) CCPss.ss. 580b and 580d, which if it had not given this waiver, would otherwise limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after a non-judicial foreclosure sale, respectively; and (iii) CCPss. 726 which, if it had not given this waiver, among other things, would otherwise require Lender to exhaust all of its security before personal judgment may be obtained for deficiency.

(c) Guarantor agrees that Guarantor shall have no right of subrogation against Borrower, no right of subrogation against any collateral or security provided for in the Loan Documents and no right of contribution against any other guarantor unless and until all Guaranteed Obligations have been satisfied, and Lender has released, transferred or disposed

of all of its rights, title and interest in any collateral or security. To the extent the waiver of Guarantor's rights of subrogation, reimbursement and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, Guarantor further agrees that Guarantor's rights of subrogation and reimbursement against Borrower and Guarantor's rights of subrogation against any collateral or security shall be junior and subordinate to any rights Lender may have against Borrower and to all rights, title and interest Lender may have in such collateral or security, and Guarantor's rights of contribution against any other guarantor shall be junior and subordinate to any rights Lender may have against such other guarantor. Lender may use, sell or dispose of any item of collateral or security as it sees fit without regard to Guarantor's subrogation and contribution rights, and upon disposition or sale, Guarantor's rights of subrogation and contribution shall terminate. With respect to the foreclosure of any security interest in any personal property collateral then securing the Guaranteed Obligations, Lender agrees to give Guarantor five (5) days' prior written notice, in the manner set forth in Paragraph 9 hereof, of any sale or disposition of any such personal property collateral, other than collateral which is perishable, threatens to decline speedily in value, is of a type customarily sold on a recognized market, or is cash, cash equivalents, certificates of deposit or the like.

(d) Guarantor's sole right with respect to any such foreclosure of real or personal property collateral shall be to bid at such sale in accordance with applicable law. Guarantor acknowledges and agrees that Lender may also bid at any such sale and in the event such collateral is sold to Lender in whole or in partial satisfaction of the Guaranteed Obligations (or any portion thereof), Guarantor shall have no further right or interest with respect thereto. Notwithstanding anything to the contrary contained herein, no provision of this Guaranty shall be deemed to limit, decrease, or in any way to diminish any rights of set-off that Lender may have with respect to any cash, cash equivalents, certificates of deposit, letters of credit or the like which may now or hereafter be deposited with Lender by Borrower.

(e) To the extent any dispute exists at any time between Guarantor and any other guarantor as to Guarantor's right to contribution or otherwise, Guarantor agrees to indemnify, defend and hold Lender harmless from and against any loss, damage, claim, demand, cost or any other liability (including attorneys' fees and costs) Lender may suffer as a result of such dispute.

(f) So long as any Guaranteed Obligations shall be owing to Lender, Guarantor shall not, without the prior written consent of Lender, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against Borrower. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any case, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation of Borrower or by any defense which Borrower may have by reason of the order, decree or decision of any court or administrative body resulting from any such case. Lender shall have the sole right to accept or reject any plan on behalf of Guarantor proposed in such case and to take any other action which Guarantor would be entitled to take, including, without limitation, the decision to file or not file a claim. Guarantor acknowledges and agrees that any interest on the Guaranteed Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of any

such proceeding, such interest as would have accrued on any such portion of the Guaranteed Obligations if the proceedings had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of the parties that the Guaranteed Obligations should be determined without regard to any rule or law or order which may relieve Borrower of any portion of such Guaranteed Obligations. Guarantor expressly permits any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person with respect to such case to pay Lender, or allow the claim of Lender in respect of, any such interest accruing after the date on which such proceeding is commenced. Guarantor assigns to Lender Guarantor's right to receive any payments from any such trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person by way of dividend, adequate protection payment or otherwise. If all or any portion of the Guaranteed Obligations is paid or performed by Borrower, the obligations of Guarantor hereunder shall continue and remain in full force and effect in the event that all or any part of such payment(s) or performance(s) is avoided or recovered directly or indirectly from Lender as a preference, fraudulent transfer or otherwise in such case irrespective of payment in full of all obligations under the Loan Documents.

6. Financial Reporting.

(a) Guarantor warrants and represents that any financial statements of Guarantor previously delivered to Lender are true and correct in all material respects. Such statements were prepared in accordance with generally accepted accounting principles consistently applied, and fairly present the financial position of Guarantor as of the date thereof. Guarantor further warrants and represents that no material adverse change has occurred in Guarantor's financial position since the date of such statements.

(b) Guarantor shall provide Lender with financial information in a format acceptable to Lender, at least quarterly, delivered within forty-five (45) days of the end of each such quarter, or as otherwise requested by Lender. All financial statements of Guarantor delivered annually shall be delivered within ninety (90) days of the end of each such fiscal year and shall be audited and certified. Quarterly financial statements of Guarantor may be internally prepared on a consolidated basis and certified to Lender by the senior management of Guarantor. Guarantor further covenants and agrees to immediately notify Lender of any material adverse change in Guarantor's financial status.

(c) So long as the Guarantor is subject to the reporting provisions of the Securities Exchange Act, as amended (the "Exchange Act"), the timely filing (including all permissible extension periods provided under Rule 12b-25 under the Exchange Act) on the Securities and Exchange Commission's EDGAR system of the Guarantor's quarterly report on Form 10-Q for such period and annual report on Form 10-K for such period will be deemed to satisfy all of the foregoing requirements of this Section 6. Guarantor further covenants and agrees to immediately notify Lender in writing of Guarantor's filing of such reports.

7. Notices. All notices and demands relating to this Guaranty shall be in writing, and shall be deemed served upon delivery, or if mailed, upon the first to occur of receipt thereof or three (3) days after deposit thereof in the United States Postal Service, certified mail, postage

prepaid, addressed to the address set forth below. Notices of change of address may be given in the same manner.

To Guarantor:	Neurocrine Biosciences, Inc. 10555 Science Center Drive San Diego, California 92121 Attention: Paul Hawran
With a copy to:	Neurocrine Biosciences, Inc. 10555 Science Center Drive San Diego, California 92121 Attention: Margaret E. Valeur-Jensen
To Lender:	San Diego National Bank 1420 Kettner Boulevard San Diego, California 92101 Attention: Jim Holliman

8. Representations and Warranties of Guarantor. Guarantor represents and warrants to Lender as follows:

(a) No consent of any other Person, including, without limitation, any creditors of Guarantor, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any Governmental Authority is required by Guarantor in connection with this Guaranty or the execution, delivery, performance, validity or enforceability of this Guaranty and all obligations required hereunder. This Guaranty has been duly executed and delivered by Guarantor, and constitutes the legally valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms.

(b) The execution, delivery and performance of this Guaranty will not violate any provision of any existing law or regulation binding on Guarantor, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on Guarantor, or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which Guarantor is a party or by which Guarantor or any of Guarantor’s assets are bound, and will not result in, or require, the creation or imposition of any lien on any of Guarantor’s property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

9. Other Provisions.

(a) Lender may assign this Guaranty with any Loan Document, without in anyway affecting Guarantor’s liability hereunder. This Guaranty shall be binding upon Guarantor, Guarantor’s heirs, representatives, administrators, executors, successors and assigns and shall inure to the benefit of and shall be enforceable by Lender, its successors, endorsees and assigns.

(b) As used herein, the singular shall include the plural, and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

(c) In the event of any dispute or litigation regarding the enforcement or validity of this Guaranty, Guarantor shall be obligated to pay all charges, costs and expenses (including attorneys' fees) incurred by Lender, whether or not any action or proceeding is commenced regarding such dispute and whether or not such litigation is prosecuted to judgment.

(d) This Guaranty shall be governed by and construed in accordance with the laws of the State of California.

(e) No provision of this Guaranty may be changed, waived, revoked or amended without Lender's prior written consent. No failure or omission by Lender to enforce any provision or condition hereof shall be construed as a waiver by Lender of any right it may have to thereafter enforce said provision or condition, and to pursue all rights and remedies with respect thereto. Every provision of this Guaranty is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

(f) This Guaranty may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same guaranty with the same effect as if all parties had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty and re-attached to any other counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages.

(g) This Guaranty embodies the entire agreement among the parties hereto with respect to the matters set forth herein, and supersedes all prior agreements among the parties with respect to the matters set forth herein. No course of prior dealing among the parties, no usage of trade, and no parol or extrinsic evidence of any nature shall be used to supplement, modify or vary any of the terms hereof. There are no conditions to the full effectiveness of this Guaranty. No failure or delay on the part of Lender to exercise any power, right or privilege under this Guaranty shall impair any such power, right or privilege, or be construed to be a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(h) This Guaranty is in addition to all other guarantees of Guarantor and any other guarantors of Borrower's obligations to Lender.

(i) The rights and remedies of Lender hereunder are cumulative and not exclusive.

(j) GUARANTOR ACKNOWLEDGES THAT IT HAS BEEN AFFORDED THE OPPORTUNITY TO READ THIS DOCUMENT CAREFULLY AND TO REVIEW IT WITH AN ATTORNEY OF GUARANTOR'S CHOICE BEFORE SIGNING IT.

GUARANTOR ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND EFFECT OF THIS DOCUMENT BEFORE SIGNING IT.

(k) This Guaranty and the Guarantor's performance of its obligations hereunder are secured by that certain Security Agreement (the "Security Agreement"), of even date herewith, executed by Guarantor in favor of Lender. Reference is made to the Security Agreement for a specific description of the security given to Lender by Guarantor thereunder.

(l) Borrower is obligated to acquire the Property from Peony on or before November 26, 2003. Notwithstanding Borrower's acquisition of the Property and the assumption by Borrower of certain obligations of Peony under certain Loan Documents evidencing the Loan, all of the Guarantor's obligations hereunder will continue to remain in full force and effect and for the benefit of Lender.

NEUROCRINE BIOSCIENCES, INC.,
a Delaware corporation

By: /s/ Margaret Valeur-Jensen

Name: Margaret Valeur-Jensen

Its: Senior Vice President, Gen. Counsel & Secretary

By: ______________________

Name: ______________________

Its: ______________________

Exhibit 10.5

Loan No. 1686410

PROMISSORY NOTE

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS
FOR A VARIABLE INTEREST RATE

$60,600,000.00
San Diego, California
Date: September 25, 2003

For value received, the undersigned ("Borrower") promises to pay to the order of SAN DIEGO NATIONAL BANK ("Lender") at 1420 Kettner Boulevard, San Diego, California 92101, or at such other place as the holder hereof ("Holder") may from time to time designate in writing, in lawful money of the United States, the principal sum of up to Sixty Million Six Hundred Thousand and No/100 Dollars ($60,600,000.00) or so much thereof as may be advanced, with interest at the rate, and due and payable, as follows:

ARTICLE 1 — DEFINITIONS

Terms with initial capital letters used in this Note shall have the following meanings, whether used in the singular or the plural:

1.1 "Base Rate": The annual rate of seventy-five (75) basis points per annum in excess of the Base Rate Index, as it may change from time to time; provided, however, in no event shall the Base Rate fall below 5.00% during the term of this Loan.

1.2 "Base Rate Index": The annual rate of interest equal to the "Prime Rate" as quoted under the "Money Rates" column of the Wall Street Journal, as it may change from time to time, or such other rate as is substituted therefor as hereafter set forth. Changes in the Base Rate Index shall become effective as of the date of the change. The Base Rate Index is not necessarily the lowest rate charged by Lender on its loans, and Borrower understands that Lender may make loans based on other rates as well. The Base Rate Index is currently 4.00%.

1.2.1 If publication of the Wall Street Journal or quotation of the Prime Rate therein is discontinued, then Holder may, in its reasonable discretion, select another source for ascertaining the Prime Rate. If Holder determines, in its reasonable discretion, that the rate of interest that otherwise would be the Base Rate Index under this Note is no longer established, is unverifiable or cannot be ascertained by adequate and reasonable means, or is no longer calculated in substantially the same manner or upon the same economic basis, or that calculation of interest with respect to such rate would violate or is made impractical due to any existing or future law, rule regulation, directive or treaty, then Holder may designate, in its reasonable discretion, a substitute reference rate of interest as a new Base Rate Index and(or) may change the differential between the Base Rate and the Base Rate Index (a "Spread Adjustment"). The new Base Rate Index so designated by Holder shall be a floating rate of interest, and shall be verifiable, ascertainable by adequate and reasonable means, established in a manner not under Holder's direct control, and, to the extent reasonably possible, calculated in substantially the same manner and upon the same economic basis as the most recent Base Rate Index, taking into account any Spread Adjustment made.

1.3 “Call and Put Option”: The Call and Put Option Agreement dated May 30, 2003 between Peony and Borrower.

1.3 “Business Day”: Any day, other than a Saturday or Sunday, on which national banks in San Diego, California are not authorized or required by governing law or regulation to be closed.

1.5 “Deed of Trust”: The Construction Deed of Trust, Security Agreement and Fixture Filing executed by Peony Acquisitions LLC, a Delaware limited liability company (“Peony”), in favor of Lender of even date herewith; it being acknowledged, that certain other instruments and documents, including deeds of trust, have been executed and delivered pursuant to the Loan Agreement and secure this Note.

1.6 “Leasehold Deed of Trust”: The Leasehold Deed of Trust, Security Agreement and Fixture Filing executed by Neurocrine International LLC, a Delaware limited liability company (“NI”), in favor of Lender of even date herewith; it being acknowledged that certain other instruments and documents, including deeds of trust, have been executed and delivered pursuant to the Loan Agreement and secure this Note.

1.7 “LIBOR Period”: A period of one (1) month which commences on the twenty-sixth (26th) day of the applicable calendar month, commencing no earlier than October 26, 2003, subject to prior notice and ending on the twenty-fifth (25th) day of the following calendar month. Borrower reserves the right to apply to Lender for a different date upon which to have the LIBOR period commence; Lender may act or not act upon such application in its sole discretion.

1.7.1 If Lender changes the applicable commencement date of the LIBOR Period, as set forth above, in its sole discretion, and such change would cause the last day of such LIBOR period to occur in the next following calendar month, the last day of such LIBOR period shall occur on the next preceding Business Day in the preceding calendar month.

1.7.2 Notwithstanding the foregoing, in no event shall any LIBOR period be extended beyond the Maturity Date.

1.8 “LIBOR Rate”: The annual rate of three hundred fifty (350) basis points per annum in excess of the LIBOR Rate Index; provided, however, in no event shall the LIBOR Rate fall below 5.00% during the term of this Loan.

1.9 “LIBOR Rate Index”: For any LIBOR Period, the “London Interbank Offered Rate (LIBOR)” for a term equal in length to the term of the designated LIBOR Period as quoted under the “Money Rates” column of the Wall Street Journal on the first day of the LIBOR Period (or if the Wall Street Journal is not published on that day or the London Interbank Offered Rate (LIBOR) for such LIBOR Period is not quoted therein on that day, then as quoted on the next preceding Business Day on which the Wall Street Journal is published and the London Interbank Offered Rate (LIBOR) for such LIBOR Period is quoted therein), rounded to three decimal places, all as determined by Holder. The published LIBOR rates include a specified effective date, but the effective date shall be disregarded for purposes of this Note, and LIBOR Periods shall commence and terminate only as provided in this Note. If the Wall Street Journal is no longer published or the “London Interbank Offered Rate (LIBOR)” shall no longer be quoted therein, another publication, report or source selected by Holder in its reasonable discretion containing such information shall be used.

1.10 “Loan”: The loan evidenced by this Note, to be made pursuant to the Loan Agreement.

1.11 “Loan Agreement”: The Loan Agreement between Lender and Borrower of even date herewith, as the same may be amended, modified or supplemented from time to time.

1.12 “Maturity Date”: September 25, 2005, subject to extension as provided in Section 2.4.

1.13 “Note”: This Promissory Note.

1.14 “Property”: As defined in Section 3.1 below.

1.15 “Subleasehold Deed of Trust”: Subleasehold Deed of Trust, Security Agreement and Fixture Filing executed by Peony in favor of Lender of even date herewith; it being acknowledged that certain other instruments and documents, including deeds of trust, have been executed and delivered pursuant to the Loan Agreement and secure this Note.

ARTICLE 2 — INTEREST AND PAYMENTS

2.1 Rate of Interest. The principal balance outstanding from time to time shall bear interest from and after the date of each advance (subject to Section 3.7 below), determined as follows:

2.1.1 Base Rate. During any period in which the LIBOR Rate is not applicable to amounts owing, as provided in Section 2.1.2 below, the principal balance outstanding from time to time shall bear interest at the Base Rate.

2.1.2 LIBOR Rate.

(a) Election of LIBOR Rate. Provided that there has not occurred an “Event of Default” as defined herein, Borrower may at any time and from time to time irrevocably elect, by written notice received by not later than 11:00 a.m. on the second (2nd) Business Day prior to the date on which the LIBOR period would commence pursuant to such election, and not earlier than the fourth (4th) Business Day prior to the date on which the LIBOR period would commence pursuant to such election, application of the LIBOR Rate for the LIBOR period, subject to the following:

(1) The first advance under the Loan shall bear interest initially at the Base Rate. No such election may be made if the applicable LIBOR period would end after the Maturity Date. No election may be made if, as a result, there would be more than one (1) LIBOR period in effect at any one time.

(2) Each such election shall irrevocably specify in writing:

(A) that Borrower elects application of the LIBOR rate; and

(B) the date on which the applicable LIBOR period shall commence, which shall be a Business Day.

(3) Such election shall apply to all amounts then outstanding and any additional amounts advanced prior to or during the LIBOR period.

(4) The LIBOR Rate shall apply only to the extent that Borrower has made proper elections thereof as provided in this Section 2.1.2(a), and only for the LIBOR periods commenced by each such election, and except to that extent the Base Rate shall automatically apply as provided in Section 2.1.1 above.

(b) Application of LIBOR Rate. Upon the making of a valid election as provided in Section 2.1.2(a) above, this Note shall bear interest at the LIBOR Rate for the applicable LIBOR period.

(c) Suspension of Interest Rate. Holder may suspend the availability of the LIBOR Rate and the entire principal balance outstanding from time to time shall immediately upon such suspension bear interest at the Base Rate, if Holder determines, in its reasonable discretion, that the rate of interest that otherwise would be the LIBOR Rate Index under this Note is no longer established, is unverifiable or cannot be ascertained by adequate and reasonable means, or is no longer calculated in substantially the same manner or upon the same economic basis, or that calculation of interest with respect to such rate would violate or is made impractical due to any existing or future law, rule, regulation, directive or treaty.

2.2 Interest. Interest shall be calculated on the basis of a 360-day year multiplied by the actual number of days that principal is outstanding.

2.3 Installment Payments.

2.3.1 Interest Only. Commencing on the twenty-fifth (25th) calendar day of each month commencing October 25, 2003 (“Start Date”), and continuing thereafter on the same day of each calendar month until the Maturity Date, all accrued interest for the previous calendar month, or portion thereof, shall be due and payable in monthly interest-only installments.

2.3.2 Interest and Principal. On the Maturity Date, the entire unpaid principal balance and all accrued interest shall be due and payable, subject to Section 2.4 below.

2.4 Extension of Maturity Date. The Maturity Date may be extended (and such later date shall then be the “Maturity Date” for purposes of this Note) upon and subject to the provisions and conditions set forth in Section 3.7 of the Loan Agreement (which terms and conditions are incorporated herein by reference). From and after the extension of the Maturity Date of this Note in accordance with Section 3.7 of the Loan Agreement (if so extended), interest shall be payable upon the same provisions and conditions set forth in Section 2.3.1 above, and the entire principal balance hereof and all accrued interest shall be due and payable on the Maturity Date, as so extended upon the same provisions and conditions set forth in Section 2.3.2 above.

ARTICLE 3 — ADDITIONAL TERMS AND CONDITIONS

3.1 Loan Agreement; Security. This Note is secured, without limitation, by the Deed of Trust, which encumbers certain real property described in such Deed of Trust and improvements located or to be located thereon, and certain personal property (collectively, the “Property”). This Note is secured, without limitation, by the Leasehold Deed of Trust, which encumbers NI’s interests in certain real property described in such Deed of Trust and improvements located or to be located thereon, and in certain personal property (collectively, the “Leasehold Property”). This Note is also secured, without limitation, by the Subleasehold Deed of Trust, which encumbers Peony’s subleasehold interests in certain real property described in such Subleasehold Deed of Trust and improvements located or to be located thereon, and in certain personal property (collectively, the “Subleasehold Property”). Advances of the principal balance of this Note shall be made upon and subject to the provisions and conditions of the Loan Agreement. It is acknowledged that the Property is not the only security for the performance of this Note, and is intended solely for purposes hereof, to refer to only that real and personal property encumbered by the Deed of Trust.

3.2 Application of Payments. All payments received shall be applied first to charges other than interest and principal, if any, owing hereunder, then to accrued interest, then to principal, except that, after the occurrence and during the continuation of any default under this Note, all amounts received shall be applied in such order as Holder, in its sole discretion, may elect.

3.3 No Waiver. The acceptance by Holder of any payment under this Note after the date that such payment is due shall not constitute a waiver of the right to require prompt payment when due of future or succeeding payments or to declare a default as herein provided for any failure to so pay. The acceptance by Holder of the payment of a portion of any installment at any time that such installment is due and payable in its entirety shall neither cure nor excuse the default caused by the failure to pay the whole of such installment and shall not constitute a waiver of Holder's right to require full payment when due of all future or succeeding installments.

3.4 Prepayments. Borrower shall have the right to prepay all or any part of the principal balance of this Note at any time without charge.

3.5 Late Payment Charge. Borrower acknowledges that late payment to Holder of any sums due hereunder will cause Holder to incur costs not contemplated hereunder, the exact amount of which will be impracticable or extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment, payment or any other sum due from Borrower shall not be received by Holder or Holder's designee within ten (10) calendar days after it is due, Borrower shall then pay to Holder a late payment charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Holder will incur by reason of late payment. This provision shall not, however, be construed as extending the time for payment of any amount hereunder, and acceptance of such late charge by Holder shall in no event constitute a waiver of Borrower's default with respect to such overdue amount nor prevent Holder from exercising any of the other rights and remedies with respect to such default.

3.6 Default. The following shall constitute defaults under this Note:

3.6.1 Borrower's failure to pay when due any sum payable under this Note within ten (10) days after the due date thereof;

3.6.2 Borrower's failure to perform any of its non-monetary obligations under any covenant or agreement set forth in this Note, if such failure is not cured within thirty (30) days after written notice from Holder (or such longer period as is reasonably determined by Holder to be necessary for completion of the cure, so long as Borrower begins promptly and thereafter diligently continues to cure the failure).

3.6.3 any "Event of Default" under the Loan Agreement.

3.7 Acceleration Rights; Interest After Acceleration or Maturity. Upon the occurrence of a default hereunder, Holder may, at its election, declare the entire balance of principal and interest thereon immediately due and payable, together with all costs of collection, including reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the Property. At such time as this Note becomes due in full, whether by acceleration (upon default or otherwise), by the occurrence of the Maturity Date or otherwise, if Borrower fails to pay all amounts due, the unpaid principal balance, accrued interest and costs incurred shall thereafter bear interest until paid at a rate equal to eighteen percent (18%) per annum.

3.8 Default in Payment of Interest. Interest not paid when due shall then be added to the principal (which shall not cure the default in payment), and shall thereafter bear like interest.

3.9 Acceleration on Sale or Transfer of Property.

3.9.1 Borrower understands that in making the loan evidenced by the Note, Holder is relying to a material extent upon the business expertise and net worth of Borrower and Neurocrine (defined below) and upon the continuing interest which Borrower has in the Property. Accordingly, except as expressly provided herein to the contrary, in the event that Peony, or after Peony conveys the Property to Borrower, Borrower, without the prior written consent of Holder, directly or indirectly, voluntarily or involuntarily, sells, assigns, transfers, disposes of or agrees to sell, assign, transfer or dispose of all or any portion of or any interest in the Property whether by outright sale, deed, installment sale contract, land contract, contract for deed, ground lease or any other leases that is not that certain lease by and between Neurocrine Biosciences, Inc. ("Neurocrine"), as tenant, and Borrower, as landlord, and that is not permitted by the Loan Agreement, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of an interest in the Property, or in the event that any member of Borrower sells, assigns, transfers or disposes of any such member's interest in Borrower (except as permitted in the Loan Agreement), then the same shall be deemed to increase the risk of Holder, and Holder may then, or at any time thereafter, declare all principal, accrued and unpaid interest and all other charges and fees under the Note immediately due and payable, and may exercise all rights and remedies provided in the Loan Documents. Pursuant to that certain Call and Put Option Agreement, dated May 30, 2003, Borrower has an option to acquire the Property from Peony Acquisitions LLC, a Delaware limited liability company ("Peony"). Borrower shall be obligated by Holder to acquire the Property from Peony on or before November 26, 2003, and any failure to satisfy such obligation shall be an immediate default under the Loan Documents, including, without limitation, the Deed of Trust. Upon the acquisition of the Property, the Deed of Trust shall be assigned and assumed by Borrower from Peony in accordance with the specific provisions set forth in the Loan Agreement, which are hereby incorporated herein by this reference. Holder acknowledges and agrees that neither Borrower's exercise of its option under the Call and Put Option Agreement nor Borrower's acquisition of the Property from Peony nor Peony's conveyance of the Property to Borrower shall be deemed to be a sale or transfer under this Section 3.9 or Section 5.1 of the Deed of Trust.

3.9.2 For purposes of this Section, Peony and Borrower shall not sell or transfer any ownership interest in Peony or Borrower during the term of the Loan evidenced by the Loan Documents (except as permitted in the Loan Agreement), and (i) the terms “sell” and “transfer” shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, transfers made to a reconstituted limited liability company, transfers by any limited liability company (at any tier) to the individual members or vice versa, transfers by any corporation (at any tier) to its shareholders or vice versa, any corporate merger or consolidation; and (ii) the term “transferee” shall mean a purchaser, assignee, grantee or subsequent owner of all or any part of the Property or of any interest in Peony or Borrower. Holder’s rights pursuant to Section 3.9.1 above may be exercised at any time after the occurrence of any such event, and the acceptance of one or more payments under the Loan Documents from any person or entity thereafter shall not constitute a waiver of Holder’s rights. Holder’s approval of any sale, assignment, transfer, pledge or disposition or failure to exercise said rights with respect thereto shall not be construed as a waiver of the provisions hereof with regard to any subsequent transaction.

3.9.3 Holder may condition its consent to a sale or transfer for which consent is reserved hereunder upon the fulfillment of certain requirements, including, but not limited to, the following (collectively, “Conditions of Transfer”): (i) that the proposed transferee meet Holder’s then-existing credit and other standards with respect to similar loans; (ii) that the transferee specifically assume personal liability for the outstanding balance of the secured indebtedness and the obligations to be performed under the Deed of Trust; (iii) that an assumption fee be paid to Holder at the time of the transfer; (iv) that the interest rate payable under the Note be increased; (v) that a new policy title insurance in favor of Holder be issued; (vi) that new financing statements be filed; (vii) that the proposed transferee agree to restrictions on further transfers; (viii) that endorsements to existing insurance policies or new insurance policies be obtained; (ix) that Neurocrine reaffirms all of its existing guaranties and indemnities given in connection with the Loan evidenced by the Loan Documents; (x) that the proceeds of the sale or transfer are applied in conformity with Holder’s instructions, given in Holder’s sole and absolute discretion; (xi) that all construction of the Improvements (as defined in the Loan Agreement) on the Property have been completed; (xii) that the lease by and between Neurocrine, as tenant, and Borrower, as landlord, has been executed and is in full force and effect; and (xiii) that all fees of Holder’s legal counsel have been paid. Holder shall in no event be obligated to consent to any transfer of less than the entire Property, or to any transfer in any form, including, but not limited to, a sale and leaseback, which has the effect of creating additional expenses to or charges against the Property.

3.10 Acceleration on Insolvency of Peony. In the event (i) Peony fails to pay its debts generally as they come due or files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; (ii) an involuntary petition is filed against Peony under any bankruptcy or similar statute and such petition is not set aside or withdrawn or is still in effect within thirty (30) days from the date of such filing (or such longer period as is reasonably necessary, provided Peony promptly commences, and diligently and continuously pursues thereafter, its efforts to have the petition set aside or withdrawn); (iii) a custodian, receiver or trustee (or other similar official) is appointed to take possession, custody or control of any of the properties of Peony; (iv) the Property becomes subject to the jurisdiction of a Federal Bankruptcy Court or successor to that court, or any similar state court; (v) Peony makes a general assignment for the benefit of Peony's creditors; or (vi) any portion of Peony's assets is attached, executed upon or judicially seized in any manner, and such seizure is not discharged within thirty (30) days, Holder at its option and to the extent permitted by applicable law may, without prior notice, declare all sums secured by the Deed of Trust, irrespective of their stated due date(s), immediately due and payable and may exercise all rights and remedies provided in the Deed of Trust.

3.11 Acceleration on Sale or Transfer of Property — Neurocrine International LLC.

3.11.1 Borrower understands that in making the loan evidenced by the Note, Holder is relying to a material extent upon the business expertise and net worth of Borrower and Neurocrine and upon the continuing interest which NI has in the Leasehold Property. Accordingly, except as expressly provided herein to the contrary and except for that certain Ground Lease, dated as of May 30, 2003, executed by and between NI as landlord thereunder, and Peony, as tenant thereunder (the "Sublease"), and without any other exception, in the event that NI, without the prior written consent of Holder, directly or indirectly, voluntarily or involuntarily, assigns, or sublets or agrees to assign or sublet all or any portion of or any interest in the Leasehold Property whether by ground lease or any other leases that is not a lease-option contract, or by assignment or sublease of any beneficial interest in or to any land trust holding a leasehold interest in and to the Leasehold Property, or by any other method of conveyance of an interest in the Leasehold Property, or in the event that any member of NI sells, assigns, transfers or disposes of any such member's interest in NI (except as permitted in the Loan Agreement), then the same shall be deemed to increase the risk of Holder, and Holder may then, or at any time thereafter, declare all principal, accrued and unpaid interest and all other charges and fees under the Note immediately due and payable, and may exercise all rights and remedies provided in the Loan Documents. Pursuant to that certain Call and Put Option Agreement, dated May 30, 2003, Borrower has an option to acquire the Property from Peony. Borrower shall be obligated to acquire the Property from Peony on or before November 26, 2003 and any failure to satisfy such obligation shall be an immediate default under the Loan Documents, including, without limitation, the Leasehold Deed of Trust. Upon the acquisition of the Property, the Leasehold Deed of Trust shall continue in full force and effect in accordance with the specific provisions set forth in the Loan Agreement, which are hereby incorporated herein by this reference. Holder acknowledges and agrees that Borrower's exercise of its option under the Call and Put Option Agreement shall not be deemed to be a sale or transfer under Section 5.1 of the Leasehold Deed of Trust.

3.11.2 For purposes of this Section, NI and Borrower shall not sell or transfer any ownership interest in NI or Borrower during the term of the Loan evidenced by the Loan Documents (except as permitted in the Loan Agreement), and (i) the terms “sell” and “transfer” shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, transfers made to a reconstituted limited liability company, transfers by any limited liability company (at any tier) to the individual members or vice versa, transfers by any corporation (at any tier) to its shareholders or vice versa, any corporate merger or consolidation; and (ii) the term “transferee” shall mean a purchaser, assignee, grantee or subsequent owner of all or any part of the Leasehold Property or of any interest in NI. Holder’s rights pursuant to Section 3.11.1 above may be exercised at any time after the occurrence of any such event, and the acceptance of one or more payments under the Loan Documents from any person or entity thereafter shall not constitute a waiver of Holder’s rights. Holder’s approval of any sale, assignment, transfer, pledge or disposition or failure to exercise said rights with respect thereto shall not be construed as a waiver of the provisions hereof with regard to any subsequent transaction.

3.11.3 Holder may condition its consent to a sale or transfer for which consent is required hereunder upon the fulfillment of certain requirements in Holder’s sole and absolute discretion.

3.12 Acceleration on Insolvency of NI. In the event (i) NI fails to pay its debts generally as they come due or files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; (ii) an involuntary petition is filed against NI under any bankruptcy or similar statute and such petition is not set aside or withdrawn or is still in effect within thirty (30) days from the date of such filing (or such longer period as is reasonably necessary, provided NI promptly commences, and diligently and continuously pursues thereafter, its efforts to have the petition set aside or withdrawn); (iii) a custodian, receiver or trustee (or other similar official) is appointed to take possession, custody or control of any of the properties of NI; or (iv) the Leasehold Property becomes subject to the jurisdiction of a Federal Bankruptcy Court or successor to that court, or any similar state court; (v) NI makes a general assignment for the benefit of NI’s creditors; or (vi) any portion of NI’s assets is attached, executed upon or judicially seized in any manner, and such seizure is not discharged within thirty (30) days, Holder at its option and to the extent permitted by applicable law may, without prior notice, declare all sums secured by the Leasehold Deed of Trust, irrespective of their stated due date(s), immediately due and payable and may exercise all rights and remedies provided in the Leasehold Deed of Trust.

3.13 Acceleration on Sale or Transfer of Property — Peony Ground Lease.

3.13.1 Borrower understands that in making the loan evidenced by the Note, Holder is relying to a material extent upon the business expertise and net worth of Borrower and Neurocrine and upon the continuing interest which Peony has in the Subleasehold Property. Accordingly, except as expressly provided herein or in the Loan Agreement to the contrary, in the event that Peony, without the prior written consent of Holder, directly or indirectly, voluntarily or involuntarily, assigns or sublets or agrees to assign or sublet all or any portion of or any interest in the Subleasehold Property whether by ground lease or any other leases that is not that certain lease by and between Neurocrine, as tenant, and Borrower, as landlord, and that is not permitted by the Loan Agreement, a lease-option contract, or by assignment or sublease of any beneficial interest in or to any land trust holding a sublease interest in and to the Subleasehold Property, or by any other method of conveyance of an interest in the Subleasehold Property, or in the event that any member of Peony sells, assigns, transfers or disposes of any such member's interest in Trustor after the Subleasehold Deed of Trust is assumed by Borrower and Borrower becomes the trustor hereunder (except as permitted in the Loan Agreement), then the same shall be deemed to increase the risk of Holder, and Holder may then, or at any time thereafter, declare all principal, accrued and unpaid interest and all other charges and fees under the Note immediately due and payable, and may exercise all rights and remedies provided in the Loan Documents. Pursuant to that certain Call and Put Option Agreement, dated May 30, 2003, Borrower has an option to acquire the Property from Peony. Borrower shall acquire the Subleasehold Property from Peony. Upon the acquisition of the Subleasehold Property, the Subleasehold Deed of Trust continue in full force and effect in accordance with the specific provisions set forth in the Loan Agreement, which are hereby incorporated herein by this reference. Holder acknowledges and agrees that Borrower's exercise of its option under the Call and Put Option Agreement, the exercise or the deemed exercise of Peony's put option to transfer the Subleasehold Property under the Call and Put Option Agreement, the exercise or the deemed exercise of Peony's put option to transfer the Subleasehold Property under the Call and Put Option Agreement or Borrower's acquisition of the Subleasehold Property, and Peony's conveyance of the Subleasehold Property to Holder shall not be deemed to be a sale or transfer under this Section 3.13 or Section 5.1(a) of the Subleasehold Deed of Trust. From and after Peony conveys its interests in the Subleasehold Property to Borrower and Borrower assumes the obligations of Peony under the Subleasehold Deed of Trust, whether pursuant to the terms of the Call and Put Option Agreement or otherwise, whether pursuant to the terms of the Call and Put Option Agreement or otherwise, the term Peony as used in Sections 3.13 and 3.14 shall mean and refer to Borrower, and Peony shall be automatically deemed released from any and all of all obligations under the Subleasehold Deed of Trust.

3.13.2 For purposes of this Section, Peony and Borrower shall not sell or transfer any ownership interest in Peony or Borrower during the term of the Loan evidenced by the Loan Documents (except as permitted in the Loan Agreement or the Call and Put Option Agreement), and (i) the terms “sell” and “transfer” shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, transfers made to a reconstituted limited liability company, transfers by any limited liability company (at any tier) to the individual members or vice versa, transfers by any corporation (at any tier) to its shareholders or vice versa, any corporate merger or consolidation; and (ii) the term “transferee” shall mean purchaser, assignee, grantee or subsequent owner of all or any part of the Subleasehold Property or of any interest in Peony. Holder’s rights pursuant to Section 3.13.1 above may be exercised at any time after the occurrence of any such event, and the acceptance of one or more payments under the Loan Documents from any person or entity thereafter shall not constitute a waiver of Holder’s rights. Holder’s approval of any sale, assignment, transfer, pledge or disposition or failure to exercise said rights with respect thereto shall not be construed as a waiver of the provisions hereof with regard to any subsequent transaction.

3.13.3 Holder may condition its consent to a sale or transfer for which consent is required hereunder upon the fulfillment of certain requirements in Holder’s sole and absolute discretion.

3.14 Acceleration on Insolvency of Peony. In the event (i) Peony fails to pay its debts generally as they come due or files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; (ii) an involuntary petition is filed against Peony under any bankruptcy or similar statute and such petition is not set aside or withdrawn or is still in effect within thirty (30) days from the date of such filing (or such longer period as is reasonably necessary, provided Peony promptly commences, and diligently and continuously pursues thereafter, its efforts to have the petition set aside or withdrawn); (iii) a custodian, receiver or trustee (or other similar official) is appointed to take possession, custody or control of any of the properties of Peony; (iv) the Subleasehold Property becomes subject to the jurisdiction of a Federal Bankruptcy Court or successor to that court, or any similar state court; (v) Peony makes a general assignment for the benefit of Peony’s creditors; or (vi) any portion of Peony’s assets is attached, executed upon or judicially seized in any manner, and such seizure is not discharged within thirty (30) days, Holder at its option and to the extent permitted by applicable law may, without prior notice, declare all sums secured by the Subleasehold Deed of Trust, irrespective of their stated due date(s), immediately due and payable and may exercise all rights and remedies provided in the Subleasehold Deed of Trust.

3.15 Attorneys’ Fees and Costs. In the event Holder takes any action to enforce this Note or any of its terms, either through legal proceedings or otherwise, Holder shall be reimbursed immediately by Borrower for attorneys’ fees (including fees for Holder’s in-house attorneys) and all other costs and expenses so incurred. Borrower shall also immediately reimburse Holder for all attorneys’ fees and costs incurred in connection with the representation of Holder in any bankruptcy, insolvency, reorganization or other debtor relief or similar proceeding of or relating to Borrower, any guarantor, or the Property.

3.16 Waivers. The makers, endorsers, guarantors and sureties of this Note hereby waive diligence, demand, presentment, notice of non-payment or dishonor, protest and notice of protest, and expressly agree that the time for performance of any obligation under this Note may be extended from time to time, consent to the release of any party liable hereon or herefor, consent to the acceptance or release of security for this Note, including other types of security, all without in any way affecting their liability, and waive the right to plead any and all statutes of limitations as a defense to any demand on this Note, or any guaranty thereof, or to any agreement to pay the same, to the full extent permissible by law.

3.17 Governing Law. This Note shall be governed by and construed under the internal laws of the State of California, except to the extent that federal law applies.

3.18 Severability. Every provision hereof is intended to be several. If any provision of this Note is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions hereof, which shall remain binding and enforceable.

3.19 Limitation Upon Interest. All agreements between the Borrower and Holder, now existing or hereafter arising, are hereby expressly limited so that in no event whatsoever shall the amount paid, or agreed to be paid, to Holder hereof for the use, forbearance or detention of money to be loaned hereunder or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof exceeds the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Holder hereof shall ever receive as interest under this Note or otherwise an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing hereunder (without charge for prepayment) and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal, such excess shall be refunded to Borrower.

3.20 Headings. Headings herein are used for convenience of reference only and do not define or limit the scope of provisions of this Note.

3.21 Joint and Several Liability. The liability of multiple makers of this Note is joint and several.

3.22 WAIVER OF RIGHT OF TRIAL BY JURY. EACH OF BORROWER AND HOLDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE (INCLUDING BY WAY OF JURY TRIAL) IN RESOLVING ANY DISPUTE OR LITIGATION (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND HOLDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE, THE LOAN (AS DEFINED IN THE LOAN AGREEMENT), THE LOAN DOCUMENTS (AS DEFINED IN THE LOAN AGREEMENT) OR ACTIONS OF BORROWER OR HOLDER RELATING TO THE LOAN AND/OR THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT. THIS PROVISION AND THE WAIVER SET FORTH HEREIN ARE MATERIAL INDUCEMENTS TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN AND IN THE LOAN DOCUMENTS.

BORROWER:

SCIENCE PARK CENTER LLC,
a California limited liability company

By: Neurocrine Biosciences, Inc.,
a Delaware corporation
Its: Manager

By: /s/ Paul W. Hawran
Name: Paul W. Hawran
Its: Executive Vice President & CFO

By: ______________________
Name: ______________________
Its: ______________________

EXHIBIT 10.6

1997 Edition - Electronic Format

AIA DOCUMENT A111 - 1997

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AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR
where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the Nineteenth day of September in the year Two Thousand Three
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

PEONY ACQUISITIONS, LLC
a Delaware limited liability company
2036 Washington Street
Hanover, MA 02339

and the Contractor:
(Name, address and other information)

LEDCOR PETTY CONSTRUCTION, L.P.
9466 Black Mountain Road, Suite 200
San Diego, CA 92126

The Project is:
(Name and location)

NEUROCRINE BIOSCIENCES
12770, 12780 and 12790 El Camino Real
San Diego, CA 92130

The Architect is:
(Name, address and other information)

DOWLER-GRUMAN ARCHITECTS
445 West Ash Street
San Diego, CA 92101

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern. These documents shall be individually listed at the time the Guaranteed Maximum Price (GMP) is established and incorporated by Change Order.

ARTICLE 2 THE WORK OF THIS CONTRACT

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OWNER - CONTRACTOR AGREEMENT

The American Institute of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

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This document has been approved and endorsed by The Associated General Contractors of America.

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others

2.1 The "Work" consists of construction of Phase I: Two buildings totaling 200,000 SF on 13.4 acres with all related sitework. Building 1 totals 4-stories consisting of 3-stories of administration, executive offices, cafeteria and an auditorium over a 1-story parking garage. Building 2 totals 5-stories consisting of 3-stories of biotech research and development laboratories over a 2-story parking garage.

2.2 The Contractor shall provide critical path scheduling, preliminary budgets value engineering, and review of construction issues throughout the pre-construction phase as part of its basic services. This cost of this service shall be included in the Contractor's General Conditions - Reference Attachment A and is part of the GMP.

2.3 HVAC/PLUMBING: Weather Engineering has been selected on a negotiated basis to provide HVAC/Plumbing systems work and related design for the Project. They shall provide a guaranteed maximum subcontract for their portion of the Work and related design to the Contractor.

2.3.1 After a subcontract with Weather Engineering is executed, which outlines the terms, conditions and scope of their work, a Change Order between the Owner and Contractor will be executed that mirrors the terms, conditions, cost and scope of work included in the subcontract.

2.3.2 Prior to the execution of a Subcontract between Weather Engineering and the Contractor, the Owner shall have the opportunity to participate in the negotiations of that Subcontract. The Subcontract shall not be executed by Contractor without the express written consent of the Owner and Owner's knowledge and consent of the terms and conditions contained therein. Owner acknowledges that it has been involved with Subcontractor and its engineers during the design process and has assisted in the development and review of the design criteria.

2.3.3. If terms and conditions of the Subcontract between Weather Engineering and the Contractor contradict those of the Contract between the Owner and Contractor the terms and conditions of the Subcontract shall prevail in interpreting the Owner and Contractor Agreement in all matters related to the Subcontract Work, the Subcontract, and Subcontractors performance thereunder.

2.4 ELECTRICAL: Neal Electric will be pre-selected on a negotiated basis to provide the electrical system work and related design for the Project. They shall provide a guaranteed maximum subcontract for their portion of the Work and related design to the Contractor.

2.4.1 After a subcontract with Neal Electric is executed, which outlines the terms, conditions and scope of their work, a Change Order between the Owner and Contractor will be executed that mirrors the terms, conditions, cost and scope of work included in the subcontract.

2.4.2 Prior to the execution of a Subcontract between Neal Electric and the Contractor, the Owner shall have the opportunity to participate in the negotiations of that Subcontract. The Subcontract shall not be executed by Contractor without the express written consent of the Owner and Owner's knowledge and consent of the

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OWNER - CONTRACTOR AGREEMENT

The American Institute of Architects

1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

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terms and conditions contained therein. Owner acknowledges that it has been involved with Subcontractor and its engineers during the design process and has assisted in the development and review of the design.

2.4.3 If terms and conditions of the Subcontract between Neal Electric and the Contractor contradict those of the Contract between the Owner and Contractor the terms and conditions of the Subcontract shall prevail in interpreting the Owner and Contractor Agreement in all matters related to the Subcontract Work, the Subcontract, and Subcontractors performance thereunder.

2.5 The Contractor shall provide to the Owner three (3) copies of a complete project closeout manual which shall describe all critical components of the Project, as well as as-built documents of all systems and underground utilities, air balance reports, installation documents, warranties, and operations and maintenance manuals.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

3.1 The Owner acknowledges that the services to be provided by the Contractor under this Agreement, with the exception of Mechanical and Electrical Work, shall not constitute the Contractor as an Architect or Engineer nor impose on the Contractor any obligation to assume or perform the professional responsibilities, duties, services and activities for which the Owner has contracted with the Architect or others: nor shall the Owner impose on the Contractor any liability with respect thereto, except as expressly provided herein.

3.2 The Contractor shall not be responsible or liable in connection with the design of the Work, with the exception of Mechanical and Electrical Work, nor for the failure. errors or omissions of the Architect, or others hired by the Architect or Owner. The Contractor, in performing its duties, shall exercise a standard of care that is customary and appropriate for an experienced general contractor that has contracted for the construction of a project that is similar to the Project ("Appropriate Care"). The Contractor shall review, and use Appropriate Care in reviewing, the Drawings and Specifications, and shall provide written notice to the Owner if the Contractor becomes aware of any failure, errors or omissions, but does not relieve the Architect or others from any responsibilities for services contained in their agreements between themselves and the Owner. The Contractor shall not incur any liability for nonperformance of such services by others hired by or directed by Owner.

3.3 The Contractor shall perform the Work hereunder as an independent contractor, retaining complete control over its personnel and operations conforming to all statutory requirements with respect to its employees, and providing all appropriate employee benefits. Neither the Contractor nor its employees shall be, in any sense, the Owner's employees or agents, or have any authority to bind the Owner in any way. During the progress of the Work the Contractor shall consult frequently with the

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Owner's designated representative in order to coordinate the specific Work being done with the Owner's overall requirements.

3.4 The Contractor agrees that the Owner may assign all of its rights and obligations under this Agreement to any successor owner or occupant of the property where the Project is located, and upon such assignment and the assumption by such assignee of Owner's obligations hereunder. the Owner hereunder shall be released from all of its obligations hereunder.

3.5 The Contractor understands and agrees that the Owner has appointed Neuorcine Biosciences, Inc. (the "Construction Manager") as its Construction Manager in connection with the Project. Construction Manager shall have full authority to act for the Owner in connection with the Project, and the Contractor shall be entitled to rely on all notices, communications, information and documentation provided by the Construction Manager as and to the extent the Contractor could so rely if such notices, communications, information or documentation were provided by the Owner.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

4.1.1 The date of commencement shall be June 6. 2003.

4.1.2. The Construction Schedule shall be in a detailed precedence-style critical path method (CPM) satisfactory to the Owner on paper and in electronic format and shall also (1) provide a graphic representation of all major activities and events, including links between activities, that will occur during performance of the Work: (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the Construction Schedule shall be part of the Contract Documents. If not accepted, the Contractor promptly shall review the Construction Schedule in accordance with the reasonable recommendations of the Owner and resubmitted for acceptance. The Contractor shall monitor the progress of the work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted Construction Schedule shall be updated to reflect actual conditions as set forth in Subparagraph 3.10.1 of the General Condition or if requested by the Owner. In the event any such progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum, unless any such adjustment is agreed to in writing by the Owner and authorize pursuant to Change Order.

4.1.3 The Work to be performed under this Agreement shall be performed in increments as described in Paragraph 5.2 of this Agreement. The Work on each increment shall not be commenced until permits required by the City of San Diego

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(the "City") for the increments have been obtained. Within five (5) days after the Contractor's receipt of the Owner's written authorization and the required permit(s). the Contractor shall commence the Work authorized by the Owner.

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

4.2 The Contract Time shall be measured from the date of commencement.

4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

4.3.1 The dates of Substantial Completion shall be determined in accordance with a Construction Schedule mutually agreed to by the Owner and Contractor and stipulated by Change Order when the GMP is established. Owner and Contractor agree that the Substantial Completion dates shall be no later than the following:

Building 1: June 1, 2004
Building 2: August 28, 2004

The foregoing dates are subject to adjustment if the following criteria are not met:

Building 1: Plans must be substantially complete and owner must release contractor to order all long lead items no later than October 10, 2003 Tenant Improvement Permit must be obtained no later than November 10, 2003.

Building 2: Plans must be substantially complete and owner must release contractor to order all long lead items no later than November 10, 2003.
Tenant Improvement Permit must be obtained no later than December 10, 2003.

4.3.2 Included in the construction time and Guaranteed Maximum Price are zero (0) work days which are anticipated to be lost due to inclement weather. The Contractor will advise the Owner monthly as to the status of the delays claimed to be lost due to inclement weather. If the accumulated number of lost days exceeds the allotment of zero (0) days, the Contractor shall have the right to submit a claim for additional time or additional direct out-of-pocket General Conditions costs, or both, in accordance with the applicable provisions of the General Conditions Paragraph 4.3.

4.4 The Owner and the Contractor acknowledge and agree that the Owner will suffer substantial damages as a result of delays in completion of construction. In the event of a delay in the completion of construction, the Owner and the Contractor agree that it would be impractical and extremely difficult to estimate the economic and other damages that Owner may suffer. Therefore, the Owner and the contractor agree that a reasonable estimate of the damages the owner may suffer solely as a result of such delay is and shall be an amount equal to the liquidated damages amount, and the Contractor shall be liable to the Owner for the liquidated damages amount as set forth above.

4.5 Liquidated Damages: If the Work is not substantially completed within thirty (30)days after the dates specified in Paragraph 4.3 hereunder for Buildings 1 and 2, respectively. subject to excusable delays as provided for in this contract, the Owner shall be entitled to receive as liquidated damages for such default the sum of $6,000.00 for each day beyond the contract time that the Work is not substantially completed for Building 1 and the sum of $4,000.00 for each day beyond the contract time that the Work is not substantially completed for Building 2. Contractor and Owner agree that it would be extremely

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impractical and difficult to estimate the amount of damages that Owner might suffer in the event of the Contractor's default under Paragraph 4.3. The parties hereby agree that the foregoing sums represent fair and reasonable estimates of said damages.

4.5.1 Contractor may pay liquidated damages from contingency funds or any cost savings. Contractor shall use its best efforts to recover liquidated damages from its subcontractors.

4.5.2 In no case shall the total Liquidated Damages Amount payable by Contractor exceed fifty percent (50%) of the Contractor's Fee.

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure lo complete on time, or for bonus payments for early completion of the Work.)

ARTICLE 5 BASIS FOR PAYMENT

5.1 CONTRACT SUM

5.1.1 The Owner shall pay the Contractor for the Contractor's performance of the work and all other obligations of Contractor hereunder with respect to the Work, as Owner's maximum cost, the least of the following amounts:

(a) The Cost of the Work as defined in Article 7, including Contractor's General Conditions Cost. (Reference Attachment A) plus the Contractor's Fee.

(b) The sum set forth in those Change Orders to be executed by the Owner and Contractor from time to time during the course of the Work, which establish the Guaranteed Maximum Price (GMP). and all other obligations of Contractor hereunder with respect to the Work.

5.1.1.1 For changes in the Work the Contractor's Fee shall be three percent (3%) times the sum of the cost of the work related to each change, including cost of any applicable General Conditions and insurance.

5.1.2 The Contractor's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

The Contractor's Fee shall be three percent (3%) times the cost of the Work. excluding the cost of liability insurance, subject to adjustment for changes in the Work.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1
(Insert specific provisions if the Contractor is to participate in any savings.)

5.2.1.1 At the time this Agreement is entered into, a Guaranteed Maximum Price (GMP) has not been finalized because final drawings and specifications have not been

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completed. The parties intend to establish one GMP which shall constitute a maximum price for that portion of the Work consisting of the Shell/Site Improvements ("Shell/Site GMP") and a second GMP which shall constitute a maximum price for that portion of the Work consisting of the Tenant Improvements ("TI GMP"). Each GMP shall include the applicable portion of the Contractor's Fee and General Conditions. It is further anticipated that the Owner may authorize the Contractor to proceed incrementally with the Work based on the Contractor's receipt of documents from the Architect, pricing, and trade bids acceptable to the Owner. In such case, a Change Order shall be executed consistent with the cost and scope of the incremental work.

5.2.1.2 After both parties have signed this Agreement, Owner shall cause drawings and specifications ("Plans") for the Project to be prepared by the Architect containing sufficient detail to allow the Project to be bid by Contractor.

5.2.1.3 Within 30 days after receipt of the Plans, Contractor shall obtain bids from subcontractors and provide Owner with a proposed construction schedule and a preliminary cost breakdown of the proposed GMP, with reasonably detailed line items, including the Construction Contingency, Contractor's Fee and Contractor's General Conditions. The cost breakdown will be divided into line items for information only; any guarantee applies only to the total amount of the GMP and Contractor's General Conditions, not to individual line items, subtrade or other specific element of the work or cost breakdown.

5.2.1.4 Within 15 days after receipt of the proposed GMP and construction schedule, Owner shall either approve or disapprove of same, in which later case Owner and Contractor shall meet and confer within 3 days after the contractor' receipt of the notice of disapproval, Owner may require Contractor to re-bid selected major subcontracts (i.e., subcontracts for which the total estimate exceeds $50,000) with designated subcontractors reasonably acceptable to Contractor, in which event Contractor shall provide Owner with a revised GMP and construction schedule within 15 days after Owner's request.

5.2.1.5 If the GMP has not been agreed upon within 90 days after the Contractor has submitted the proposed GMP to the Owner, and work has commenced at the project site, the project shall continue on a Cost of the Work Plus a Fee basis.

5.2.1.5.1 At any time, with mutual consent of the Owner and Contractor, the Contract may be converted, in part or in full, to a Fixed Lump Sum.

5.2.1.6 Upon mutual approval of the GMP, Owner and Contractor shall sign a change order to this Agreement establishing the GMP, attaching the line item cost breakdown (for information), and identifying the Plans and other Contract Documents as referenced in Article 15.

5.2.1.7 The GMP will contain a "construction contingency" equal to two percent (2%) of the estimated cost of the Work, supported by Subcontractor bids to the extent possible, but not including any subsequent change orders. It is understood and agreed to by the Contractor and the Owner that the "construction contingency" has been included for sole use by Contractor to pay any costs (as described in Article 7 "Costs to be Reimbursed") incurred to complete the scope of work as defined by the contract documents which were used to establish the GMP and not subsequent documents. Such "construction contingency" will be deemed the fixed amount available for the

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Contractor's use to cover costs intended to be included in the Work, but not reasonably foreseeable by the Contractor at the time of bidding, including, without limitations, Change Orders issued due to refinements of details of design within the scope and standards of quality and quantities shown in Final Drawings and Specifications for the Work (as opposed to changes in the scope of the Work), Contractor shall not seek any increase in the GMP (a) on account of any labor dispute within Contractor's control involving Contractor or Subcontractors arising during the period the Work is to be performed, (b) by reason of the breach, fault, neglect, bankruptcy, insolvency, or any failure of performance not excused hereunder, by Contractor or any Subcontractor, (c) for costs which are intended to be included in the "construction contingency" or (d) as a result of the existence of any job site condition which should reasonably have been discovered or foreseen by Contractor through the exercise of reasonable diligence.

5.2.1.7.1 The Construction Contingency will be used to pay for added General Conditions costs due to "normal" weather delays. However, any other costs due to weather delays will require a change order. For purposes of the foregoing, "normal" shall be defined as the average number of rainy days (rain exceeding 1/4" per day) during the last 50 years in the City of San Diego during the period of time directly correlating to the delay period. By way of example, if the project is delayed by rain for ten days during the month of May and the average number of rainy days correlating to the period of delay is seven, the Contractor shall be entitled to General Conditions compensation for three of the ten days of delay.

5.2.1.8 The "Construction Contingency" shall not be used for changes and/or additions to the scope of work, as outlined in the contract documents that were used to establish the GMP, or to pay for costs of items specifically excluded from the GMP. These items will be covered by separate change order and will have no effect on the contingency.

5.2.1.9 If any subsequent document, which was not included in the Contract Documents used to establish the GMP, is issued and contains clarifications or evolutionary information which creates a cost impact in excess of $2,000 per occurrence shall be deemed to be a change in scope of work, and shall not be covered or paid for by contingency funds, in whole or in part. The construction contingency is not to be used to cover costs related to "evolution" of the contract documents that were used to establish the GMP.

5.2.1.10 Construction contingency funds shall not be used to pay for costs related to changes or clarifications of the work due to the architect's or other's errors or omissions or changes and additions required by building departments, fire departments or other governing agencies. Such costs will be covered by separate change order.

5.2.1.11 The Guaranteed Maximum Price shall be calculated as the sum of the following items:

(a) the General Conditions Amount (as adjusted in accordance with this agreement);

(b) the sum of the fixed lump sum prices for all subcontracts approved by the Owner;

(c) estimated amounts and/or allowance amounts for cost of work included in the Contract Documents but not included in Subcontracts;

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(d) the Contractor's Contingency of 2% of the amounts specified in (a) and (b) and (c);

(e) Contractor's Liability Insurance in the amount of 1% of the amounts specified in (a) and (b) and (c) and (d);

(f) Contractor's fee for the amounts specified in (a) and (b) and (c) and (d).

The GMP shall be subject to adjustment as set forth herein.

5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

To be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order.

5.2.3 Unit prices, if any, are as follows:

To be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order.

5.2.4 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Any additional allowances will be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order.

5.2.4.1 Any allowances included in this Contract shall include the estimated cost of material, equipment, labor and any other costs required to complete the work for which the allowance was established. When the actual cost of any allowance item is determined the contract amount will be adjusted by Change Order for the difference in actual cost versus the allowance amount.

5.2.4.2 The GMP shall include an allowance of .25% (.0025) times the total cost of the work for anticipated cost of warranty work, to the extent cost of same is not included in subcontracts, to be performed after final completion and before the end of the one year warranty period. This subsection 5.2.4.2 shall not limit Contractor's liability for warranty claims.

5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows: To be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order.

5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor may provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. Cost of such further development will be included in the GMP only if clearly and specifically identified and priced by Contractor in the Change Order that establishes the GMP.

5.2.7 During the course of preparation of the Final Drawings and Specifications, the Owner will cause the Architect to prepare and deliver to the Contractor additional and

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revised drawings and specifications ("Supplemental Documents") which shall supplement, particularize, refine and detail the Schematic Information as necessary to furnish the Contractor with a set of Final Drawings and Specifications for the Work. The Contractor shall assist the Owner and the Architect in the development of Final Drawings and Specifications by reviewing such Supplemental Documents and providing estimates regarding the impact of such Supplemental Documents on the time of construction, the cost of construction and functional performance. The Contractor shall promptly advise the Owner and Architect if. in the opinion of. the Contractor, such Supplemental Documents, modify the scope of the Work as shown on the Schematic Design and the Schematic Estimate, including reasonable detail to permit the Owner to evaluate such opinion. The Owner. Contractor and Architect shall meet at least weekly during the course of preparing the Final Drawings and Specifications. The Contractor shall report on its review of Supplemental Documents at such meetings, and specific recommendations shall be documented as part of the meeting minutes. As Supplemental Documents are reviewed and approved, the scope of the Work shall be modified and supplemented to include such Supplemental Documents. The parties intend that this process will provide timely information to the Owner to permit the Owner to direct the course of design development in order to ensure that the scope of the Work set forth in the Schematic Design is not changed to either affect GMP or to delay Substantial Completion of the Work without the express consent of the Owner.

5.2.8 Within three (3) weeks after the Final Drawings and Specifications have been approved and the building permit for the Work has been obtained, the Owner and Contractor shall determine the GMP and document such GMP in a written supplement to this Agreement.

5.2.9 No work shall be commenced by the Contractor or its Subcontractors without the Owner's written authorization.

ARTICLE 6 CHANGES IN THE WORK

6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201-1997.

6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5,7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Agreement, unless the Owner has furnished the Contractor with prior written approval of the Form and substance of the subcontract, in which case such adjustments shall be calculated in accordance with the terms and conditions of that subcontract.

6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Subparagraph 5.1.2 of this Agreement.

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6.4 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

Wherever this Agreement or a related document approved of in writing by the Owner states that the Contractor shall perform any work or incur any expense, it shall be understood to mean, in the absence of specific language to the contrary in this Agreement, that the costs incurred by the Contractor in the proper performance thereof shall be included in the Cost of the Work payable by the Owner.

7.1.1 Costs due to delays beyond the Contractor's control, as defined in Article 8, shall be treated as increases in the Cost of the Work and the GMP shall be increased accordingly.

7.1.2 All costs and fees associated with altering of public utilities, protection and repairs of adjoining property, and rental property for storage of materials to be incorporated in the Work.

7.2 LABOR COSTS

7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel engaged in direct support of the project stationed at the site or off-site.
(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

7.2.2.1 The following fixed composite rates will apply as the agreed upon cost to be reimbursed for all laborers and carpenters provided by Contractor.

Hourly rate for laborers shall be $26.00 per hour.
Hourly rate for carpenters shall be $38.00 per hour.

Overtime rates (time-and-a-half) shall apply to hours worked in excess of eight hours per day or forty hours per week and shall be:

Over-time cost for laborers shall be $36.00 per hour.
Over-time cost for carpenters shall be $53.00 per hour.

Double-time rates shall be applied to hours worked in excess of twelve hours per day or over eight hours on the seventh day of the week or on legal holidays and shall be:

Double-time cost for laborers shall be $46.00 per hour.
Double-time cost for carpenters shall be $68.00 per hour.

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The foregoing rates include all labor burden costs (fringe benefits, payroll taxes, vacation pay, unemployment tax, fica, workers's compensation insurance, etc.) as described in Paragraph 7.2.4.

The foregoing rates apply only to laborers and carpenters provided by Contractor and not to any type of workers provided by subcontractors or others.

7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.2.1 through 7.2.3. The aggregate of these costs shall be calculated and applied at the rate of forty-one percent (41%) times the cost of salaries or wages.

7.2.5 GENERAL CONDITIONS - FIXED AMOUNT

Contractors cost of General Conditions shall be included in the Guaranteed Maximum Price in the fixed amount indicated in Attachment A General Conditions. General Conditions items included in this fixed amount shall include only those items specifically noted, and only to the extent noted, in Attachment A General Conditions. Cost of the items shall be included in the Guaranteed Maximum Price amount as a single fixed lump sum amount. The General Condition cost outlined in Attachment A are based on a 52 week schedule. If the actual project duration is greater or less than 52 weeks the General Conditions and the Guaranteed Maximum Price (GMP) shall be adjusted up or down proportionately.

7.3 SUBCONTRACT COSTS

7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

7.4.2 Costs of materials described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site

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and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. The Contractor shall provide temporary utilities for construction purposes, and the cost of such utilities shall be included in the Cost of the Work. At such time that permanent utilities to the building are activated, the Owner shall assume responsibility and pay all costs related to the utility consumption, connection and usage.

7.5.3 Costs of removal and disposal of debris from the site.

7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office including costs of reproduction of drawings, specifications, and other documents necessary for and directly attributable to the execution of the Work, and utility consumption costs, including, but not limited to water, steam, gas, oil, electricity, winterizing, and temporary toilets, which are (i) properly and actually devoted to the work and (ii) reasonably verifiable by the Owner.

7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

7.6 MISCELLANEOUS COSTS

7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

7.6.1.1. Cost of Contractor's Liability Insurance shall be calculated and cost applied at the rate of 1% (.01) times the cost of the work other than insurance. This cost is not a part of the Contractor's Fee or General Conditions, but will be included in the Guaranteed Maximum Price (GMP) when established.

7.6.1.2 Owner and Contractor agree that cost of insurance outlined in 7.6.1.1. is sufficient only through August 31, 2003. At that time Contractor's current insurance policy requires renewal. Owner and Contractor understand that there will probably be a significant increase in the cost of Contractor's insurance. Upon Contractor's substantiation of the cost increase, Owner agrees to issue a change order to the contract for the increased amount.

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by

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Subparagraph 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Subparagraph 7.7.3.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents unless Contractor knew there was an infringement and fails to notify the Owner in a timely manner; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

7.6.6 Data processing costs related to the Work.

7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers provided that any absence of collectible insurance is not due to the Contractor's breach of a contract for insurance.

7.7.4 It is expressly agreed and understood that whenever work is performed or provided by the Contractor pursuant to this Agreement or by reason of any Court Order or by reason of any governmental agency or authority exercising jurisdiction over the Work which requires that the Contractor make any payment, or incur any expense or perform any service then such payment, expense and the performance of such service shall be included in the Cost of the Work to be reimbursed by the Owner to the Contractor save and except and to such extent as may be a result of a breach of this Agreement by the Contractor and save and except and to such extent as may be a result of the gross negligence or willful misconduct of the Contractor and save

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and except and to such extent as may be expressed in specific and express language to the contrary.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except personnel which are included in Contractor's General Conditions.

8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Except as provided in Subparagraph 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

8.1.6 Any cost not specifically and expressly described in Article 7.

8.1.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

8.1.8 Costs which could be included in General Conditions for the Project in excess of the Fixed General Conditions Amount.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (i) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured. The Contractor shall not obtain for its own benefit any discounts, rebates, or refunds in connection with the Work prior to providing the Owner with seven (7) days' prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate, or refund on behalf of the Owner in accordance with the requirements of this Paragraph 9.1.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner or Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. Except as otherwise approved by the Owner, each subcontract shall be awarded after the Contractor obtains at least three (3) bids. The Owner reserves the right to independently bid any Work which the Contractor intends to "self perform" with the exception of work included in Contractor's Fixed General Conditions, general clean-up and safety provisions. If contractor intends or desires to "self perform" other elements of the work exceeding $50,000.00 in value, Contractor shall be required to obtain Owner's prior written consent. Any work performed by the Contractors affiliate shall be deemed self performed.

10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Owner or Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

10.4 To secure the performance of the Work under this Agreement, Contractor, hereby grants a security interest in each of the Subcontracts in favor of Owner. Contractor hereby authorizes Owner to file one or more financing or continuation statements, and amendments thereto, relative to all of the Subcontracts without the signature of Contractor where permitted by law.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep and shall require time and materials basis Subcontractors and Suppliers to keep, full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants and Project Lender shall be afforded prompt access to, and shall be permitted to audit and copy, the Contractor's and time and materials basis Subcontractor's and Supplier records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor and time and materials basis Subcontractor's and Supplier shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. The foregoing shall not apply to Contractor's General Conditions or other costs that have been included in the Contract on a fixed lump sum basis.

ARTICLE 12 PAYMENTS

12.1 PROGRESS PAYMENTS

12.1.1 Based upon Applications for Payment submitted to the Owner or Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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12.1.2 The Contractor shall, on or before the twenty-fifth (25th) day of each month, meet with the Owner's Representative and Architect (and/or other parties designated in writing by the Owner) to review and approve an itemized draft prepared by the Contractor indicating the total estimated value of the Work completed through the last day of the current calendar month, including the value of all material and equipment suitably stored at the site or other approved locations, and including such items of information and documentation, including invoices, canceled checks, lien waivers and other evidence as the Owner or Lender may require. Such draft will set forth the individual percentages of completion of each part of the Work including a pro-rate share of the Contractor's Fee and applicable retention. The approved draft will then be formalized into a written "Application for Payment" signed by the Contractor in a form acceptable to the Owner and Lender, and will be submitted to the Owner for processing. Applications for Payment shall be made in accordance with Paragraph 9.3 of the General Conditions and payment shall be made in accordance with Paragraph 9.6 of the General Conditions.

12.1.3 The Application for Payment shall be submitted to the Owner's Representative, and, if required by the Lender, to the Architect for certification, on or before the last day of the month covered by the Application for Payment. The Owner's Representative shall promptly review the pre-approved Application for Payment and forward it to the Owner or Lender for payment. The amount approved in the Application for Payment shall be payable by the Owner on or before the twenty-fifth (25th) day of the month following the month covered by the Application for Payment.

12.1.4 With each Application for Payment, the Contractor shall make available payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Each application for payment shall be accompanied by Conditional Lien Releases Upon Progress Payments (referred to as" # 1 releases") from subcontractors and vendors, regardless of tier, who have properly filed California Preliminary Notices for the period applicable to the application for payment. Prior to receipt of payment. Contractor shall submit to the Owner Unconditional Lien Releases Upon Progress Payments (referred to as " # 2 releases") from subcontractors and vendors, regardless of tier, who have properly filed California Preliminary Notices for the prior payment application period for which Contractor has been paid. Owner shall not withhold payment to Contractor if the aggregate sum of the required # 2 releases outstanding, or not yet submitted, is less than fifty percent of the total retention withheld to date by the Owner.

12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of

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values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (i) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;

.2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 add the Contractor's Fee, less retainage of ten percent (10%). subject to provisions of 12.1.8. The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 subtract the aggregate of previous payments made by the Owner;

.5 During the course of construction, each Application for Payment shall be subject to a retention of ten percent (10%): however, after the Work is fifty percent (50%) complete, and for so long as the Contractor is not in default hereunder, no additional retention shall be required (after which time the retention shall be and remain approximately five percent (5%) of the total Contract sum.) In addition to the foregoing, in the event the Contractor retains more than ten percent (10%) from disbursements to be made to any Subcontractor, the application for payment from the Owner shall be subject to a retention in an equal amount.

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.6 Retention will not be held on that portion of payment applications related to Contractor's Fee. General Conditions or Liability Insurance.

12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not more than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

12.1.8.1 Some Subcontractors may request special terms of payment which will be presented to the Owner for consideration and approval by the Owner. When approved, a Change Order will be issued to indicate the Subcontractors involved and the agreed upon terms. In such instance. Owner shall pay Contractor consistent with subcontractors terms for that portion of the work performed by the Subcontractor.

12.1.9 In taking action on the Contractor's Applications for Payment, the Owner or Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner or Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 12.1.4 or other supporting data; that the Owner or Architect has made exhaustive or continuous on-site inspections or that the Owner or Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

12.2 FINAL PAYMENT

12.2.1 Thirty-five (35) Days after the later of the date (the "Actual Substantial Completion Date") that is the Substantial Completion of Building 1 or Substantial Completion of Building 2 as defined in Section 4.1 hereof, any Unpaid balance with exception of Owner's right to withhold 150% of the Owner's fairly estimated cost to complete any incomplete or punchlist work, plus the remaining retention will be paid to the Contractor; provided that such payment shall not be due and payable until the Owner has received the following documents, all in form and substance satisfactory to the Owner:

(a) a duly executed certification by the Contractor identifying all Subcontractors with whom the Contractor has entered into subcontracts, and the amount owed to each Subcontractor: and

(b) duly executed Releases of Mechanics' and Materialmen's Liens from the Contractor and all Subcontractors establishing payment or conditioned upon satisfaction of payment from the unpaid balance.

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OWNER - CONTRACTOR AGREEMENT

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12.2.1.1 In addition to the actions required for final payment set forth in Paragraph 9.10 of the General Conditions, on or before thirty (30) days after the later of the actual Substantial Completion Date, execution of final Change Orders or Construction Change Directives, completion of punch list items, or settlement of any claims, disputes, or litigation, the Contractor shall submit a billing statement showing, in such form and detail as the Owner shall reasonably require, the aggregate of all reimbursable costs paid or then due on account of the Cost of the Work. If the aggregate amount is greater than the total previous payments, the Owner will pay the balance due within five (5) days of receiving the billing statement. If the aggregate amount is less than the total of previous payments, the amount due to the Owner will be remitted with the final statement. Additionally, the Contractor guarantees to deliver to Owner a "lien free" project evidenced by final unconditional releases from all subcontractors used on the project.

12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after The actual Substantial Completion Date or constructive occupancy, of both buildings whichever occurs first.

12.2.3 The Owner's accountants will review and report in writing on the Contractors final accounting within 30 days after delivery of the final accounting to the Owner or Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Subparagraph 12.2.1 have been met, the Owner will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Contractor a final Payment or notify the Contractor in writing of the reasons for withholding payment as provided in Subparagraph 9.5.1 of the AIA Document A201-1997. The time periods stated in this Subparagraph 12.2.3 supersede those stated in Subparagraph 9.4.1 of the AIA Document A201-1997.

12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be more or less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Owner or Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Owner's Accountants Reports Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount due as indicated by the Owner's Accountants Reports.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective nonconforming, or warranty Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount

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the Contractor would be entitled to receive under Paragraph 13.2 below, except that the Contractor's Fee shall be calculated based only on the cost work that has been performed or suitable stored by the Contractor.

13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

13.2.3 Subtract the aggregate of previous payments made by the Owner.

13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 and Paragraph 6.4 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

14.3 The Owner's representative is:
(Name, address and other information)

Eric Spoor

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14.4 The Contractor's representative is:
(Name, address and other information.)

Dave Petty and Dan Dickey

14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

14.6 Other provisions:

14.6.1 If either party commences a proceeding or action against the other to enforce any of the terms of the Contract Documents or because of the breach by either party of any of the terms of the Contract Documents, the losing or defaulting party shall pay to the prevailing party the actual costs and expenses incurred in connection with the prosecution or defense of such proceeding or action and any appeals in connection therewith, including actual accountants' and attorney's fees. Any arbitration award or final judgment or order entered in any such proceedings or action shall contain a specific provision providing for the recovery of all costs and expenses of suit, including, without limitation, actual attorneys' fees and costs and expenses incurred in connection with: (i) enforcing, perfecting and executing such judgment; (ii) post-judgment motions; (iii) contempt proceedings; (iv) garnishment, levy, and debtor and third-party examinations; (v) discovery; and (vi) bankruptcy litigation. The foregoing shall be subject to the conditions and limitations stipulated in Paragraph 14.6.1.1.

14.6.1.1 Any party filing a complaint or cross complaint to enforce the terms or obligations under this Agreement shall be required, at the time of filing said complaint or cross-complaint, to serve on the other party of this Agreement a Demand for Payment, clearly stating, in a detailed and itemized format, all damages, exclusive of attorney and expert fees, including those sought under Paragraph 14.6.1 claimed under said complaint or cross-complaint, which if accepted by the other party, shall act as a full and compete settlement of the action brought by said party. Failure by any party to timely serve the Demand for Payment with its complaint or cross- complaint shall act as a complete and final waiver of its right to any attorney's fees and costs recoverable under Paragraph 14.6.1. If the Demand for Payment requirement has been timely met, then the amount of attorney's fees and costs recoverable under Paragraph 14.6.1 shall be equal to the percentage of damages awarded by the jury, or court, in relation to the amount stated in the Demand for Payment. By way of example, if the Demand for Payment is in the amount of $100.000.00 and the amount of damages awarded the verdict or decision is $50.000.00, then that prevailing party shall be entitled to a recovery of 50% of its reasonable attorney's fees and costs as post-trail costs under Paragraph 14.6.1.

14.6.2 The Contractor shall provide to the Owner three (3) copies of a complete project closeout manual which shall describe all critical components of the Project, as well as as-built documents of all systems and underground utilities, air balance reports, installation documents, warranties, and operations and maintenance manuals.

14.6.3 Service of Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be (i) personally delivered, in which event they shall be deemed received on the date of delivery, or (ii) sent by certified mail, postage prepaid, return receipt requested, or (iii) by a professional courier company which

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provides a receipt evidencing delivery, in which event they shall be deemed received on the date of delivery as evidenced by the receipt or (iv) by facsimile or e-mail when supported by evidence of delivery.

14.6.4 Interest. In the event that any payments are not made by the Owner to the Contractor when due in accordance with this Agreement, and provided that the Contractor has made its Application for Payment in accordance with Article 12 of this Agreement, said late payments shall bear interest from the date the payment was due until paid at the rate of prime (as reported by Moneyline Telerate and published in the S.D. Daily Transcript) + four percent (4%) per annum. The fact that the Contractor is charging interest in accordance with this provision shall not constitute waiver by the Contractor of any other rights or remedies provided for herein by reason of the Owner's default in making such payments, including specifically, but not limited to, the Contractor's right to terminate this Contract for nonpayment.

14.6.5 Destruction of the Work by Fire, Elements, Etc.

(a) In the event the Work herein is wholly or partially damaged or destroyed by war, fire, storm, lighting, flood, earthquake, settlement or defective soils, expansion or contraction, cracking or deflection, tidal wave, surface or subsurface water, mob violence, vandalism or other casualty before the final completion of the Work, the Contractor, upon written instruction from the Owner, shall proceed to replace and/or repair the Work in accordance with the plans. In this event, the provisions of this Agreement shall remain in full force and effect. The GMP stated in Article 5 shall be increased by the total cost of removing and/or replacing all damaged and/or destroyed Work. The time for completion shall be extended, and the Contractor's Fee and General Conditions shall be increased.

(b) In the event of substantial damage or destruction to the Work by any cause, the Owner may, upon giving written notice to the Contractor, elect to terminate this Agreement. If the Owner elects to terminate this Agreement, the Owner shall pay the Contractor for all of the Work completed to that date and all obligations incurred by the Contractor in connection with the Work and the related Contractor's Fee.

(c) Owner will obtain, prior to the commencement of the Work: flood, earthquake, fire and extended coverage insurance, including "all risk" insurance and such other additional insurance as it may desire, to insure those casualties enumerated in Paragraph (a) upon the Work and upon all materials intended to become a part of the Work, whether on-site temporarily and suitably stored elsewhere, or in transit. The Owner shall be responsible for payment of any deductible amount required under the terms of such insurance, except when the loss is due to Contractors gross negligence, willful misconduct, or breach of contract, in which case Contractor shall be responsible for payment of the deductible, not to exceed $5,000.00 per occurrence. The Owner shall provide for Contractor to be named as additional insured on these policies.

14.6.6 Records and Audits.

(a) The Contractor shall maintain true and correct sets of records in connection with the Work and all transactions related thereto in accordance with customary construction accounting procedures and shall retain all such records for at least twenty-four (24) months after completion of the Work authorized under this Agreement.

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(b) If the Contractor's compensation under this Agreement is determined in whole or in part on a reimbursement of costs basis, the costs to be reimbursed shall be only those reasonably necessary to perform the Work in an efficient manner in accordance with the time schedule required. The Owner may, from time to time and at any time after the date of this Agreement until twenty-four (24) months after the completion of the Work, make an audit of all records of the Contractor in connection with all reimbursable costs. Such audit may also cover the Contractor's procedures and controls with respect to the costs to be reimbursed. Upon completion of such audit, the Owner shall pay Contractor any compensation due Contractor hereunder as shown by the audit. Any amount by which the total payments by Owner to the Contractor exceed the amount due the Contractor as shown by the audit shall be returned to the Owner. Items not covered by reimbursement such as fixed percentages or fixed lump sums shall not be subject to audit under this paragraph.

(c) The Contractor shall assist the Owner in making the above audits.

(d) The Contractor shall require, and shall require Neal Electric and Weather Engineering to require, in all subcontracts in connection with the Work, the agreement of the parties to each of the provisions of this Paragraph 14.6.9.

14.6.7 Ownership and Confidentiality

All designs, technical information, reports, studies and other work product developed under this Agreement shall be the property of the Owner and may be used by the Owner in any manner it may find appropriate in the future, provided however, that if the Owner should so use such information and work product for purposes other than in connection with construction, maintenance, and repair of the improvements and other facilities or other Work contemplated under this Agreement without the Contractor's knowledge and written approval, the Owner will release the Contractor from any liability therefor and will hold the Contractor harmless from and indemnify it against any claims made by third parties as a result of such use. Tracings of drawings and originals of material prepared hereunder shall be delivered to the Owner upon its request or upon completion of termination of the Work. Also, any reference or other material the Owner supplies to the Contractor for performance of the Work hereunder shall be returned to the Owner upon request or upon completion or termination of the Work thereon. The Contractor and all Subcontractors shall keep confidential and information required from the Owner's employees or from inspection of the Owner's property relating to the Owner's designs, business plans, business opportunities, financial or other confidential information.

14.6.8 Site Safety Policy

The Contractor shall maintain a policy and enforcement procedures to prevent the Contractor's and its Subcontractors' employees, agents and affiliates from using, introducing or being under the influence of controlled substances (as hereinafter defined) or possessing any weapon or firearm on the site ("Site Safety Policy"). "Controlled substances" specifically include, but are not limited to alcohol, opiates; hallucinogens, including marijuana and cocaine, PCP; and prescription drugs which are not obtained and used under a prescription lawfully issued to the person possessing them; and any other substance included in the Federal Controlled Substances Act or its regulations. As used herein, "under the influence of" alcohol is defined as having a blood alcohol concentration (BAC) of 0.04% or above. The Contractor's enforcement procedures shall, at a minimum, remove from the site any of the Contractor's or its Subcontractors' employees or agents found to be in violation of the Contractor's Site Safety Policy.

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ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

To be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order.

15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

As modified and attached hereto dated September 19, 2003.

15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages

To be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order

15.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 15.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages

To be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order,

15.1.5 The Drawings are as follows, and are dated unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

To be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order.

15.1.6 The Addenda, if any, are as follows:

Number	Date	Pages

To be listed at the time the Guaranteed Maximum Price (GMP) is established, and incorporated by Change Order.

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

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ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

16.1 Subject to 16.1.1., Contractor shall not be responsible for provision or costs of any bonds related to this project.

16.1.1. Upon Owner's request, Contractor agrees to furnish, at Owner's expense, a construction performance bond or bonds in an aggregate penal sum determined by owner up to the GMP. Such construction performance bonds shall serve as financial security for the faithful performance and payment of Contractor's obligations under this Agreement or for the performance and payment of one or more Subcontractors' obligations under their respective subcontracts, as determined by Owner. Each such construction performance bond shall be in a form satisfactory to Owner and shall be issued by a surety company that; (1) is approved by Owner's lender. (2) has a rating of "A" in the latest revision of the A.M. Best Insurance Report; (3) is listed in the United States Treasury Department's Circular 570. "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies:" and (4) holding a certificate of authority to transact surety business in the State of California issued by the Director of the Department of Insurance. The GMP shall be increased by the reasonable costs and expenses related to obtaining each such construction performance bond.

16.2. Reference General Conditions Attachment A - Contractor's Insurance, for clarification of limits of liability insurance.

Ledcor Petty Construction. L.P. - California License No. 818635-B

Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the registrar of the Board whose address is:

Contractors State License Board
9835 Goeth Road
Sacramento, CA 95826

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

PEONY ACQUISITIONS LLC By : -s- Peony Acquisitions Inc. Manager & Sale Member	-s- Mike Fisher
OWNER (Signature)	CONTRACTOR (Signature)
By : -s- Edward R. Zaval Edward R. Zaval Sr. V.P.	MILK FISHER, SENIOR VICE PRESIDENT
(Printed name and title)	(Printed name and title)

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OWNER - CONTRACTOR AGREEMENT

The American Institute of Architects
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ATTACHMENT 'A'
TO AGREEMENT BETWEEN OWNER AND CONTRACTOR

PROJECT: PHASE 1- NEUROCRINE BIOSCIENCES

General Conditions
09/19/03

LEDCOR PETTY CONSTRUCTION
9466 BLACK MOUNTAIN ROAD. #200
SAN DIEGO, CA 92126-4500

TASK	DESCRIPTION	QUANTITY	UNIT	LABOR UNIT	BURDEN 41%	MAT'L UNIT	LABOR TOTAL	BURDEN TOTAL	MAT'L TOTAL
GC-110	PROJECT MANAGER	52	WK	$1,800.00	$ 738.00	$ 125.00	$ 93,600	$ 38,376	$ 6,500
GC-111	PROJECT EXECUTIVE	20	WK	$2,000.00	$ 820.00	$ 125.00	$ 40,000	$ 16,400	$ 2,500
GC-112	PRE-CONSTRUCTION SERVICES	20	WK	$2,500.00	$1,025.00	$ 500,00	$ 50,000	$ 20,500	$ 10,000
GC-120	SUPERINTENDENT	52	WK	$1,700.00	$ 697.00	$ 125.00	$ 88,400	$ 36,244	$ 6,500
GC-121	SUPERINTENDENT	52	WK	$1,700.00	$ 697.00	$ 125.00	$ 88,400	$ 36,244	$ 6,500
GC-122	SUPERINTENDENT	30	WK	$1,700.00	$ 697.00	$ 125.00	$ 51,000	$ 20,910	$ 3,750
GC-123	SUPERINTENDENT	30	WK	$1,700.00	$ 697.00	$ 125.00	$ 51,000	$ 20,910	$ 3,750
GC-130	PROJECT ENGINEER	47	WK	$1,300.00	$ 533.00	$ 125.00	$ 61,100	$ 25,051	$ 5,875
GC-140	PROJECT COORDINATOR	47	WK	$ 900.00	$ 369.00		$ 42,300	$ 17,343	
GC-150	COMPUTER SERVICES	12	MO			$ 600.00			$ 7,200
GC-200	MOVE-IN & MOVE-OUT	1	LS			$6,000.00			$ 6,000
GC-330	TELEPHONE	12	MO			$2,500.00			$ 30,000
GC-360	JOB OFFICE RENT	12	MO			$1,500.00			$ 18,000
GC-361	JOB OFFICE RENT - CONFERENCE	12	MO			$ 700.00			$ 8,400
GC-370	JOB OFFICE SUPPLIES & EQUIP,	12	MO		$1,750.00	$2,700.00		$ 21,000	$ 32,400
GC-720	PHOTOGRAPHS/PUBLIC RELATIONS	1	LS			$2,500.00			$ 2,500
01-010	TEMPORARY ELECTRICAL		MO			JOB COST			
01-020	DRINKING WATER - office	12	MO			$ 200.00			$ 2,400
01-030	TOOLS-EXPENDABLE		MO			JOB COST			
01-100	TEMPORARY TOILETS	12	MO			$1,600.00			$ 19,200
01-110	BARRICADES/TEMP. PROTECTION		LS			JOB COST			
01-120	SECURITY SERVICES		WK			JOB COST			
01-135	BLUEPRINTS & REPRODUCTION		LS			EXCL			
01-140	TESTING & INSPECTION		LS			EXCL			
01-160	CONSTRUCTION CLEANUP		LS			JOB COST			
01-170	TRASH REMOVAL/DUMPSTER		LS			JOB COST			
01-185	STORAGE CONTAINERS		MO			JOB COST			
01-190	SAFETY SUPPLIES & INSPECTION		MO			JOB COST			
80-400	PERFORMANCE BOND		LS			EXCL			
	SUBTOTALS						$565,800	$252,978	$171,475
	GENERAL REQUIREMENTS TOTAL								$990,253

MONTHS: 12
WEEKS: 52
COST/WEEK: $19,043

COST/MONTH: $82,521

DEFINITIONS
IN FEE: COST OF THIS ITEM IS INCLUDED IN OUR FEE STRUCTURE
EXCL: COST OF THIS ITEM IS EXCLUDED FROM GENERAL CONDITIONS
JOB COST: COST OF THIS, IF REQUIRED, WILL BE PART OF JOB COST WHEN DETERMINABLE

1997 Edition - Electronic Format

AIA Document A201 - 1997

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General Conditions of the Contract for Construction between Peony Acquisitions, LLC and Ledcor Petty Construction, L.P., dated September 19, 2003.

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ARTICLE l GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (i) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (i) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The cost of any work which was performed or caused to be performed by Contractor prior to the execution of this Agreement shall be deemed to be included in this Agreement.

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1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents will include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents or reasonably inferable therefrom. Reasonably inferable shall not be interpreted to impose on Contractor the responsibility for costs of work related to errors and/or omissions of others. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all. All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by the Architect and Owner.

1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those which are (i) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.4 INTERPRETATION

1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fad that a modifier or an

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article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be signed by the Owner and Contractor.

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Execution of the Agreement by the Contractor is a representation that the preliminary design information prepared by the Architect and the preliminary estimate prepared by Contractor attached to the Agreement as Schedule are sufficient to have enabled the Contractor: (1) to estimate the cost of the Shell/Site Improvements and the cost of the Tenant Improvements described therein (which collectively comprise the Work): and (2) to enter into the Agreement with the understanding that the Schematic Design and the Schedule Estimate are sufficient to enable the Contractor to determine its ability to construct the Shell/Site Improvements for a Guaranteed Maximum price which does not exceed the range of costs specified in the Agreement on or before the Substantial Completion Deadline established in the Agreement, except to the extent that changes in the scope of the Shell/Site Improvements set forth on the Schematic Design and the Schematic Estimate result, in the aggregate, in increased costs. Promptly after the Contractor's receipt of supplemental design documents during the course of the preparation of the Final Drawings and Specifications, with respect to the Shell/Land Improvements and the Tenant Improvements, the Contractor shall provide prompt notice to the Owner and the Architect regarding the impact of such supplemental design documents on construction cost and construction time, and whether, in Contractor's opinion, such supplemental design documents modify the scope of the work. Owner may direct the Architect to make modifications to the design documents in order to meet or maintain the Project budget.

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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The Drawings. Specifications, and other similar or related documents and copies thereof furnished to the Contractor and its Subcontractors will be furnished solely for the purpose of performing the Work and are, and shall remain, the property of the Owner. All copies of such documents, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, upon Completion of the Work. The Drawings. Specifications, and other similar or related documents furnished to the Contractor are for its use solely with respect to this Project and the Owner will retain all common law, statutory, and other reserved rights, in addition to the copyright (including, without limitation, the right to create derivative works therefrom). Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's rights.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1

2.2.2 The Owner shall secure and pay for permits and fees for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The furnishing of these surveys and the legal description of the Site shall not relieve the

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Contractor from its duties under the Contract Documents. The Owner's investigations of subsurface characteristics or conditions of the areas where the Work is to be performed is provided for use by the Architect and the Contractor. However, the Owner does not warrant the sufficiency or accuracy of the investigations thus made, the records thereof, or of any interpretations set forth therein or made by the Owner or Architect in its use thereof, and the Owner makes no warranty or guaranty, either express or implied, that the conditions indicated by such investigations are accurate or representative of those existing on the Site or adjacent area, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. Contractor shall use its best professional efforts to perform the Work in such a manner so as to avoid damaging any and all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables. In the event unanticipated subsurface site conditions are discovered after the date of the Agreement which require changes in the Work, the parties shall follow the procedure for Change Orders described in Article 7 of these General Conditions.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work by the Substantial Completion Deadline or permits performance of the Work to stop for a period of fifteen (15) days for any reason other than force majeure events as set forth in Paragraph 4.2 of the Agreement or Owner-caused delay, or fails to remove and discharge (within ten (10) days any lien filed upon the Owner's property by anyone claiming by, through, or under the Contractor, or disregards the instructions of the Architect or Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven (7) day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under Subparagraph 2.3.1 hereof, the Owner may after such seven-day period give the Contractor

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a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior review by the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall, using appropriate care, carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect may require. Architect and Engineers are preparing all plans, specifications and drawings for the Work. As the various portions of the final plans, specifications and drawings are completed for the Work, and properly issued to Contractor, the same shall be considered a Contract Document. Contractor shall, unless otherwise specified, comply with manufacturer's latest printed instructions, if any, for materials, supply, storage and installation methods and shall notify Owner in writing of any conflict between these specifications and the manufacturer's instructions. Owner will designate which document is to be followed.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect or Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect and Owner.

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3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect or Owner in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect or Owner.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Architect or Owner and shall not proceed with that portion of the Work without further written instructions from the Architect or Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage. Contractor shall perform the Work in accordance with the Contract Documents, and shall cause the Work to be performed by duly qualified and licensed personnel of Contractor. Contractor hereby accepts the relationship of trust and confidence established by the Agreement and covenants with the Owner to cooperate with the architects, engineers, and consultants retained by Owner and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times and adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. Except as expressly authorized herein, the Contractor has no right or authority of any kind to act as the representative of or agent of Owner. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make the Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between the Owner and Contractor. Any direction or instruction by the Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect the Contractors's independent contractor status as described herein.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors. The Contractor shall be responsible for labor peace on the Site and shall at all times use its best efforts and Judgment as an experienced contractor to, adopt and implement policies and practices designed to avoid work stoppages,

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slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, resting devices, construction equipment and machinery, water, heat, utilities, transportation, warehousing, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor may make substitutions only with the consent of the Architect or Owner, after evaluation by the Architect or Owner and in accordance with a Change Order.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The consumption, use or possession of alcoholic beverages or illegal drug substances at the Site is strictly forbidden. Contractor agrees that it shall immediately remove from the Site any worker (employee of Contractor or any of the Subcontractors) found to be under-the-influence or In possession of alcoholic beverages or illegal drugs while on the Site and shall deny further access to the Site to such worker.

3.4.4 This Agreement and all subcontracts must be performed in full compliance with all legally required equal employment opportunity/affirmative action requirements and all amendments thereto, and any applicable federal, state and local regulations, rules and orders issued thereunder, including, without limitation: Title VII of the Civil Rights Act of 1964: Executive Order No. 11141: Executive Order No. 11246 as amended by Executive Order 11375: Sections (1) and (3) of Executive Order 11625. relating to the promotion of Minority Business Enterprises, and the implementing rules and regulations of the General Services Administration: the Americans with Disabilities Act: the Vietnam Era Veterans' Readjustment Assistance Act of 1974: the Fair Labor Standards Act: and the Rehabilitation Act of 1973. all of which (including the contract clauses required and regulations promulgated thereunder) are incorporated herein by reference.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, that the Work will conform to the requirements of the Contract Documents and that performance of the Work will be consistent with the standards customarily achieved by an experienced and professional organization performing similar work. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment

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3.5.2 Notwithstanding anything to the contrary in the Agreement Between Owner and Contractor and these General Conditions, the Contractor shall warrant for a period of not less than one (1) year from the date of recording of the notice of completion of the Work that the building shall be watertight and leak-proof at every point and in every area, except where leaks can be attributed to damage to the building by external forces beyond Contractor's control. The Contractor shall, immediately upon notification by the Owner of water penetration, determine the source of water penetration, and at its own expense, do any work necessary to make the building watertight. The Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of the water penetration, to return the building to its original condition.

3.5.3 The Contractor acknowledges that the Owner may freely assign all warranties and guarantees from the Contractor and any Subcontractors and materialmen, including the warranty set forth in subparagraph 3.5.1. The Owner and Owner's assignees shall have the benefit of, on a non-exclusive basis, any and all warranties and guarantees with respect to the design, materials, construction and workmanship of the Work, together with all other rights and claims the Owner may have against the Contractor, Subcontractors and materialmen or from applicable insurance policies.

3.6 TAXES

3.6.1 As part of the contract sum Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to

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employ persons or entities to whom the Contractor has reasonable objection. Any employee of Contractor or its Subcontractors deemed by Owner, in its sole and reasonable judgment, to be objectionable, shall be removed from the Site immediately upon Owner's request and must be promptly replaced by Contractor at no extra expense to Owner.

3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances;

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's review a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Owner shall have the right to order Contractor to work its personnel and/or the personnel of Subcontractors overtime in the event Owner reasonably determines that Contractor has not completed so much of the Work as should be completed by such time according to the Owner-approved construction schedule. Such overtime work shall continue until such time as the Work has progressed so that it complies with the stage of completion required by the Owner-approved Construction Schedule. The additional cost of such overtime work ' shall be included in the GMP.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

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3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect or Owner without action. Where required, samples shall be submitted by and at the expense of Contractor. Such submittals shall be made not less than thirty (30) calendar days prior to the time that the materials represented by such samples are needed for incorporation into any Work or incorporation into any aspect of the Work requiring manufacture, fabrication, etc. prior to such materials being incorporated into the Work. Samples shall be subject to Owner's review and materials represented by such samples shall not be manufactured, delivered to the Site or incorporated into any Work without such review. Each sample must bear a label showing Owner's name, name of the item, manufacturer's name, and reference to the appropriate drawing, technical specification section and paragraph number, all as applicable.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

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3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal. and (1) the Architect or Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 Identification signboards and notices for safety or instruction as permitted on the Site only after approval of Owner for format, location and quantity, except those required by OSHA, local, state and federal regulations.

3.13.3 Contractor must provide proper and adequate drainage for its construction, storage, parking and fabrication areas, including the necessary piping for disposal to ditches or sewers. Temporary drainage facilities must be removed upon completion of the Work unless Owner directs to have the facilities left in place. Contractor must furnish and place any necessary surfacing material to avoid loss of time due to muddy conditions.

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3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. Contractor shall establish the location and extent of service lines in the area of the Work, including calling local utilities prior to any digging and immediately notify Owner of Contractor's findings, confirming such findings in writing, before commencing Work, Contractor must take all precautions to ensure that there are no unknown service lines; where Work involves breaking into or connecting to existing services, carry out Work at times directed by Owner; and record locations, including elevations, of maintained rerouted and abandoned service lines.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.16.2 All materials and equipment furnished and Work performed must be properly inspected by Contractor at its expense, and shall, at all times, also be subject to further inspection by Owner or its authorized representatives, which representatives shall be afforded full and free access to places of business of Contractor and its Subcontractors and suppliers for such further inspection. Contractor shall provide safe and adequate facilities, Drawings, documents and samples as requested, and provide assistance, access and cooperation, including stoppage of Work, to perform such examination as may be necessary to determine compliance with the requirements of the Contract Documents. Any Work covered prior to any inspection or test by Owner which was required to have been witnessed by Owner by either Contract Documents or by Owner's prior written notice, shall be uncovered and replaced at the expense of Contractor. Failure of Owner to make such further inspection to discover defective design, materials, or workmanship shall not relieve Contractor of its obligations to reject or require the correction of defective Work in accordance with the provisions of the Contract Documents.

3.16.3 If any Work is determined by Owner to be defective or not in conformance with the Contract Documents. Contractor shall be notified in writing and shall, at Contractor's expense, immediately remove and replace or correct such defective Work. If Owner prefers to accept Work that is not in conformity with the requirements

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of the Contract Documents. Owner may do so instead of requiring its removal, replacement or correction, in which case the Contract sum shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made, and if so, Contractor shall immediately pay to Owner the amount of such adjustment.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has knowledge that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect or Owner.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Development Manager, Project Lender and their agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the o Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

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4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide assistance in the administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to recommend that the Owner reject Work that does not conform in the Architect's opinion to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to recommend inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect or Owner will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4. All Change Orders, Construction Directives, and field directives shall require the approval of the Owner in writing to be binding on the Owner.

4.2.9 The Architect or Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will review and make recommendations regarding matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement or request is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13

In reviewing the quality and progress of the Work and submittals received from the Contractor, the Architect is acting solely for the convenience of the Owner. Neither the Owner nor Architect has any responsibility to assist the Contractor in the supervision or performance of the Work. Unless otherwise expressly agreed in

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writing by the Owner in each instance, no approval as to any matter by the Owner or Architect shall in any way relieve the Contractor from its responsibility for the performance of the Work in strict accordance with the Contract Documents, except to the extent such approval is incorporated into a Change Order approved by Owner.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect or Owner and the other party. For clarification of the foregoing, constructive notification by the claimant of the possibility of a claim to the other party, shall constitute initiation of the claim in satisfaction of the 21 day time limitation.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect or Owner as determined by the Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect or Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect or Owner shall so notify the Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect or Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial review, subject to further proceedings pursuant to Paragraph 4.4. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (i) prior inspections, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor bad the opportunity to make or should have performed in connection with the Project.

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4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6. The Claim Notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by the Owner and Architect. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive, as the case may be.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 Claims for Additional Time

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim may include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions had an adverse effect on the scheduled construction.

4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10

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shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

In no event shall either party be liable to the other for special, indirect or consequential damages, including damages for economic loss, such as business interruption or loss of profits, however the same may be caused, including, without limitation, the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of the other party.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Decision of Architect or Owner. Claims, including those alleging an error or omission by the Architect shall be referred initially to the Architect or Owner for decision. An initial decision by the Architect, or Owner shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect or Owner with no decision having been rendered by the Owner or Architect. The Architect will not decide disputes between the Contractor and persons or entities or the Owner.

4.4.2 The Architect or Owner will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect or Owner is unable to resolve the Claim if the Architect or Owner lacks sufficient information to evaluate the merits of the Claim or if the Architect or Owner concludes that, in the Architect's or Owner's sole discretion, it would be inappropriate for the Owner or Architect to resolve the Claim.

4.4.2.1 The Owner or Architect shall provide the Contractor with written response and explanation in support of their selected action to each claim.

4.4.3 In evaluating Claims, the Architect or Owner may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect or Owner in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

4.4.4 If the Architect or Owner requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect or Owner when the response or supporting data will be furnished or advise the Architect or Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect or Owner will either reject or approve the Claim in whole or in part.

4.4.5 The Architect or Owner will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect or Owner shall be final and binding on the parties but subject to litigation.

4.4.6 When a written decision of the Architect or Owner states that (1) the decision is final but subject to litigation and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to

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commence litigation within said 30 days' period shall result in the Architect's or Owner's decision becoming final and binding upon the Owner and Contractor. If the Architect or Owner renders a decision after litigation has commenced, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect or Owner, by mediation or by arbitration.

4.5 MEDIATION

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4.6 ARBITRATION

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ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect or Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

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5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, for including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

.3 All subcontract agreements and purchase orders shall provide that they are freely assignable by the Contractor to Owner and any Lender, and every subcontract shall be written to provide that Owner shall be a third- part beneficiary of the guarantee of materials and workmanship, and free assignability thereof by Owner. It is further agreed and understood that such right of assignment is part of the consideration to the Owner for

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entering into the Agreement with the Contractor and may not be withdrawn prior to Final Completion.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation, and to schedule its work, and to cause Contractor to schedule the Work, in such a manner as will minimize the interference between Owner's Work and Contractor's Work, and Contractor shall cooperate with the persons performing such concurrent activities at the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Other until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10,11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner or Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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6.2.3 The Owner shall be reimbursed by the Contractor for reasonable costs incurred by the Owner which are payable to a separate contractor because of Contractor caused delays, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner and, Contractor, a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Owner or Architect. When submitting a Change Order, the Contractor shall include and set forth in clear and precise detail breakdown of labor and materials for all trades involved and the estimated impact on the construction schedule. The Contractor shall furnish spread sheets from which the breakdowns were prepared, plus spread sheets if requested of any Subcontractors.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument signed by the Owner and Contractor stating their agreement upon all of the following:

.1 change in the Work;

.2 the amount of the adjustment, if any, in the Contract Sum; and

.3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

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7.3.1 A Construction Change Directive is a written order prepared by the Architect or Owner and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, an unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Contract Documents or subsequently agreed upon;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect or Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, Contractor's Fee in the amount set forth in Section 5.1.2.1 of this Agreement. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

.1 costs of labor to the extent directly attributable to the change, including ' social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

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.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field or office personnel to the extent directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner or Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree with the recommendations made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective < immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

7.4.2. The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract sum or extension of the Substantial Completion Deadline and not inconsistent with the intent of the Contract Documents. Such changes shall be administered in accordance with the procedures set forth in Paragraph 7.3 hereof, except that a Construction Change Directive issued to the Contractor pursuant to this Subparagraph 7.4.2 may or may not be signed by the Architect.

ARTICLE 8 TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The dale of commencement of the Work is the date established in the Agreement.

8.1.3 The dale of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

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8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1

8.3.1.1 If Substantial Completion of the Work is delayed (as demonstrated by the critical path of the Schedule) for any cause beyond the Contractor's control with the exercise of appropriate care and not attributable to any error, omission, neglect or delay of Contractor or Subcontractor, including, but not limited to, any act, neglect, delay or default of the Owner or Architect, or any employee or representative of either of them, or by any separate contractor employed by the Owner, or by any act of the City or other governmental authority not attributable to any error, omission, neglect or delay by the Contractor or any Subcontractor, or by any changes or additions to the Work, or by injunction or by government restrictions or regulations, or by any delay caused by common carrier on land or water not reasonably foreseeable by the Contractor, or by shortages of labor or materials not reasonably foreseeable by the Contractor, or by damage or delay which may arise through or by fire, explosion, lightning, earthquake, cyclone, inclement weather, flood, insurrection or war, or by the abandonment of the Work by strikes, boycotts, or by lockouts engaged thereon through no fault of the Contractor or any Subcontractor, or any other causes beyond the Contractor's control, then the Contractor shall not be held responsible or accountable for such delay and the Contractor shall have the right to submit a claim for additional time or additional direct costs, including General Condition Costs, or both, in accordance with the applicable provisions of General Conditions paragraph 4.3.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

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8.3.3 Extension of time provided for the completion of the Work and changes in the Contract sum as permitted by Change Order under the Contract Documents shall be the Contractor's sole remedy for delay (except for the Contractor's right to terminate the Agreement pursuant to the provisions of Article 14 hereof), unless the same shall have been caused by acts constituting intentional interference by the Owner with the Contractor's performance of the Work and such acts of the Owner continue after the Contractor's notice to the Owner of such interference. The Owner's exercise of any of its rights under the Agreement, including, without limitation, its rights under Article 7 of these General Conditions to implement Change Orders, regardless of the extent or number Of such Changes, or the Owner's exercise of any of its remedies of suspension of the Work, or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with the Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner or Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy This schedule, unless objected to, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the schedule of values.

9.3.1.1 As provided in Subparagraph 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and

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shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.2.1 Reference Attachment B - Stored Materials

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, but only to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

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4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

5. damage to the Owner or another contractor;

6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

7. persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. If any condition of default under the Contract Documents (including, but not limited to, those defaults set forth in Clauses 9.5.1.1 through 9.5.1.7) remains uncured as of the date of any Certificate of Payment, the Owner may withhold from the payment on that Certificate of Payment the amount the Owner reasonably believes is appropriate to protect the Owner from risk that arrises from such default until the default condition is cured. The Owner shall not be deemed in default of the Contract by reason of withholding payment while any of such defaults remain uncured.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of

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trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not for reasons other than a default on the Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.7, pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.8 SUBSTANTIAL COMPLETION

9.8.1 The work shall be considered "substantial complete" at such time as:

.1 It may be occupied by Owner and used for its intended purpose, without any material impairment or interference in Owner's use thereof for its designated purposes resulting from the portions of the Work which are not fully completed or from Contractor's performance of such work as is necessary to complete the Work;

.2 A Certificate of Occupancy (or its equivalent under applicable laws) and all other necessary governmental approvals have been issued by the appropriate governmental authority for the occupancy and use of the completed work for its intended purposes;

.3 Mechanical completion has been attained and the Work may be occupied by Owner and used for its intended purpose, including the start-up and commissioning of all equipment and mechanical, electrical and process systems; and

.4 A comprehensive list of items to be completed or corrected (the "Punch List") has been prepared by Owner or Architect and submitted, to Contractor; provided, however, that Owner's preparation of any such Punch List shall not prevent it from adding additional items to the Punch List or modifying existing Punch List items as Owner further inspects, tests, or attempts to operate its business at the Site. The "Punch List" shall be completed within ten days after request for same by Contractor.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work IN accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or

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correct such item upon notification by the Owner or Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner or Architect to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is substantially complete, the Owner or Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the_ Owner or Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Contractor shall notify Owner in writing when Contractor considers all Work, including, but not limited to, the Punch List, to be complete and ready for Owner's acceptance. Owner (and, if it so elects, its consultants, architects, and engineers) shall conduct such final inspections and tests as necessary to satisfy Owner that the ' Work conforms to all of the requirements of the Contract Documents. If, in Owner's opinion, the Work, or any part thereof, fails to conform to the requirements of the Contract Documents. Owner shall notify Contractor in writing, adding any such non - conforming Work to the Punch List. Immediately upon notification, Contractor must

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take such corrective action necessary to bring the Work, or any part thereof, into conformance with the Contract Documents. Failure by Contractor to do so shall give Owner the right to terminate this Agreement for default under the provisions of this Agreement.

9.10.2. The Work will be considered to have achieved "Final Completion" at such time as:

.1 All items on the Punch List have been completed to the satisfaction of Owner and Contractor is in possession of Owner's written notice of acceptance of the Work, which written notice shall be deemed to have been given if Owner fails to respond to Contractor's written notification that all Punch List items have been completed within ten (10) days of Owner's receipt of such notification;"

.2 The Work has been completed to such an extent that a proper "Notice of Completion" (or any similar document under applicable law, custom, and practice sufficient to establish an outside date for the filing of any mechanic's or materialmen's liens against the Site) may be filed with the appropriate governmental authority:

.3 All "as-built" Drawings, warranties, guarantees, training, operations, maintenance and repair manuals, spare parts lists and suppliers, "as-built" material lists, spare materials and any other submissions required by the Contract Documents have been received and approved by Owner:

.4 All quality assurance documentation with respect to commissioning and testing of the completed Work has been provided to and reviewed by Owner, and the quality assurance issues have been resolved to the satisfaction of Owner:

.5 This Agreement has been fully performed by Contractor, except for Contractor's responsibility to correct defective or nonconforming Work of which Owner has not yet notified Contractor of Contractor's obligation to correct the same. All equipment and facilities necessary for the full, safe and continuously reliable operation of the completed Work have been properly constructed, installed, insulated and protected where required for such operation and correctly adjusted: and

.6 A final progress payment request and a final accounting for the Contract Sum and all required supporting documentation have been submitted by Contractor and reviewed by Owner's accountants, and all other conditions to final payment set forth in the Contract Documents have been satisfied.

9.10.3 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner or Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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9.10.4 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, and has not recorded a claim of mechanic's lien against the Project. Contractor may furnish a bond satisfactory to Owner to indemnify Owner against such unrecorded claim of Subcontractor. If a Subcontractor has recorded a claim of mechanic's lien against the project and refuses to furnish a release or wavier required by Owner, Contractor may furnish a bond under the provisions of California Code 3143 to release the Project from the effect of such lien. In either event, once Contractor furnishes the bond no payments shall be withheld from Contractor as a result of the Subcontractor's claim or lien.

9.10.5 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner or Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.6

9.10.7 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall initiate and maintain such permits and programs as may be necessary to comply with requirements set forth by the Occupational Safety and Health Administration (OSHA) and any other local, state, commonwealth and federal regulations. A Copy of all such permits shall be provided to Owner prior to commencement of Work at the Site. If OSHA permits are not required to perform Work, a letter shall be submitted to Owner prior to commencement of Work at the Site, stating that no permits are required.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

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10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance encountered on the Site and reasonably reported to Owner by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby reasonably incurred by Contractor.

10.6 EMERGENCIES

10.6.1 In an emergency affecting safety of persons or properly, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth in Attachment A -

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Contractors Insurance which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.2

The Contractor shall, for the protection and benefit of the Owner, the Indemnitees and the Contractor and as part of Contractor's efforts to satisfy the obligations set forth in Paragraph 11.1.1, purchase and maintain in full force and effect, at all times, during the performance of the Work under the Agreement, or for such duration as required, policies of issuance in the form and substance reasonably acceptable to the Owner, which afford the coverages set forth in Attachment "A" to the Agreement. All such insurance shall be written on an occurrence basis and shall be written by a carrier or carriers acceptable to owner and meeting the general requirements set forth in Attachment "A" to the Agreement.

11.1.3

Certificates of insurance evidencing the required coverages, with limits not less than those specified in Attachment "A" to the Agreement, shall be delivered to the Owner in accordance with the requirements set forth in Attachment "A" to the Agreement. The coverage afforded pursuant to this Article 11.1 shall be primary to any valid and collectible insurance carried separately by the Owner or any of the Indemnitees.

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11.1.4 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Paragraph 11.1, Owner may, but shall not be obligated to upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to reimbursement for such expense from the Contractor, including without limitation withholding the cost of such insurance from any amount due the Contractor under the Agreement.

11.1.5 The Contractor's insurance requirements set forth in Attachment "A" to the Agreement are incorporated into and shall supplement the insurance obligations of this Article 11 and, to the extent that any of the insurance requirements of Article 11 are in conflict therewith, the requirements in Attachment "A" shall supersede the requirements set forth in this Article 11.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner will not require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1.

11.4 PROPERTY INSURANCE

11.4.1 The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The Contractor shall be named as additional insured on these policies and shall provide a minimum of 30 days notice of cancellation or material change.

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11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

11.4.1.5 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (i) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other properly insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraphs 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.5

11.5.1

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11.5.2

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Owner or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner or Architect, be uncovered for the Owner or Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which neither the Owner nor Architect has not specifically requested to examine prior to its being covered, the Owner or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within-one year after the dale of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents (including the warranty set forth in Section 3.5.3, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

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12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Subparagraph 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Owner has specifically contracted for the services of Contractor and, therefore, Contractor may not assign or delegate Contractor's obligations under this Agreement, either in whole or in part, without the prior written consent of Owner, which may be granted or withheld in the sole and absolute discretion of Owner. Any attempt by Contractor to assign or delegate this Agreement, in whole or in part, without Owner's prior written consent, shall be voidable at the option of Owner. Owner may assign this Agreement at any time without the prior consent of Contractor. Notwithstanding the foregoing provisions of this Section, Contractor hereby agrees to promptly execute any and all documents which may be reasonably requested by any lender respecting the assignment of this Agreement or Owner's rights and obligations thereunder, in whole or in part, and Contractor shall be bound thereby.

13.2.2 The Owner may, with consent of the Contractor collaterally, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents only if the lender forecloses on its collateral assignment or surety interests. The Contractor shall execute all consents reasonably required to facilitate such assignment.

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13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail, or facsimile machine, or e-mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Owner shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Contractor, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals upon receipt of written request. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Owner or Architect will, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner or Architect of when and where tests and inspections are to be made so that the Owner or Architect may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner or Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

.3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.8 Owner shall furnish Contractor information, including, but not limited to, plans, drawings, prints and/or specifications for Contractor to use as required in the proper performance of Contractor's Work. Any information furnished to or learned by Contractor in performance of its Work relating to Owner's processes, techniques, methods, ideas, discoveries, developments, records, contract terms, or financial condition including without limitation, the aforementioned plans, drawings, prints, and/or specifications, shall be deemed "Confidential Information." Contractor agrees to retain, and shall require any of its affiliated companies, employees, subcontractors, Contractor's Subcontractors and any other parties entering into agreements with Contractor with respect to the Work to retain, in strict confidence and not permit to be disclosed to others any Confidential Information or any works derived from such information. Contractor's confidentiality obligations shall not extend to information: (a) which is a part of the any obligations under this Section: (b) which Contractor can show through its written records was in its possession prior to disclosure to Contractor by Owner: (c) which is Information: or (d) which was disclosed to Contractor by a third party who is not under an obligation to Owner to hold it in confidence, with the understanding that this exclusion shall only allow use of such disclosed information in the pursuit and performance of projects with such third party. In the event Contractor becomes legally compelled to disclose any Confidential Information, it shall provide Owner with notice thereof so Owner is provided an opportunity to obtain a protective order or other appropriate remedy, and obtain reliable assurance that such information shall be accorded confidential treatment. Contractor shall treat the

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obligations set forth in this Section as continuing obligations that survive the completion or termination of performance under this Agreement for a period of five (5) years and shall take all necessary steps to ensure compliance with this provision by Contractor's Subcontractors and employees. Contractor agrees to return all such Confidential Information, including, but not limited to, all originals and copies (if any) of plans, drawings, prints, and/or specifications, whether supplied by owner or developed for Owner, immediately upon request by Owner or upon completion of Contractors performance hereunder, except that Contractor shall be entitled to retain one copy of all documents for its private records.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub- subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate ' for Payment within the time stated in the Contract Documents; or

.4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

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.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

.5 persistently disregards the instructions of the Architect, Owner's Representative or the Owner (when such instructions are based on the requirements of the Contract Documents);

.6 is adjudged a bankrupt or insolvent, or make a general assignment for the benefit of the Contractor's creditors, or a trustee or receiver is appointed for the Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws; or

.7 otherwise does not fully comply with the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

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.2 that an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed or suitably stored, and costs incurred by reason of such termination, along with overhead and profit on the Cost of the Work executed or suitably stored.

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ATTACHMENT A - CONTRACTOR'S INSURANCE

TO GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

SEPTEMBER 19, 2003

1. Required Coverage. The Contractor shall maintain in effect, at all times during the performance of the Work under the Agreement, not less than the following coverage and limits of insurance which shall be maintained under forms of policies satisfactory to the Owner.

1.1 Worker's Compensation and Employer's Liability Insurance. Worker's Compensation insurance shall be provided as required by any applicable law or regulation, covering all employees to the Contractor. Employer's Liability insurance shall be provided with liability limits of not less than $1,000,0000.

1.2 General Liability Insurance. The Contractor shall carry Commercial General Liability insurance covering operations by or on behalf of the Contractor, providing insurance for bodily injury including death and property damage and including coverage for:

1. Premises and operations;
2. Products liability and products completed operations
3. Broad form contractual liability insuring the obligations assumed by the Contractor in this Agreement;
4. Broad from property damage (including completed operations);
5. Explosion, collapse and under ground hazards (X.C.U.); (if applicable)
6. Personal injury liability;
7. Owner's and Contractor's protective liability.

The Contractor shall provide an Occurrence form of Commercial General Liability policy, and the limits of liability shall be not less than:

$5,000,000 each occurrence (combined single limit for bodily injury and property damage)
$5,000,000 for personal injury liability
$5,000,000 aggregate for products-completed operations
$5,000,000 general aggregate

The owner shall be named as additional insured under each commercial liability insurance policy.

1.3 Automobile Liability Insurance. The Contractor shall carry commercial automobile owned, hired and non-owned automobiles. The limits of liability shall be not less than $1,000,000 combined single limit each accident for bodily injury and property damage.

2. Certificates. Certificates of Insurance, as evidence of the insurance required by This Agreement shall be delivered by the Contractor to the Owner and to each additional insured before any work is commenced. The Certificates of Insurance shall provide that there will be no cancellation to the Owner and each additional insured without 30 days written notice.

3. Insurance Requirements for Subcontractors. The Contractor shall insure that each Subcontractor performing any portion of the Work, regardless of the tier of the subcontract, shall procure and maintain the insurance coverage's required pursuant to Section 1 above in like form applicable to the Contractor as set forth therein (except that the limits set forth in Section 1 may be reduced to not less than $1,000,000), shall provide the Certificates of Insurance required pursuant to Section 2, and shall satisfy the requirements of Section 3 relating to additional insured.

4. Professional Liability Exposures. The Owner acknowledges that the Contractor will not provide Professional Errors and Omissions Insurance as the Contractor in his role of Contractor if not acting as an Architect or Engineer. Professional Liability Insurance in forms and amounts acceptable to the Contractor shall be carried if the Contractor is to provide design services to the Project. Evidence of coverage in the form of a Certificate of Insurance shall be provided to the Contractor prior to the start of work.

5. Property Insurance. If the Owner has not provided acceptable evidence of property insurance coverage required herein at the start of Work, then the Contractor may obtain such coverage and the cost therefore shall become a cost reimbursable item.

6. General Requirements. General liability and umbrella policies of insurance required hereunder shall be written by companies authorized to do business in California and rate A-VII or better in Best's Insurance Guide.

   All policies of insurance obtained by Contractor shall be primary and non-contributing and shall contain a waiver of subrogation in favor of the Owner.

ATTACHMENT B - STORED MATERIALS

TO GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

SEPTEMBER 19, 2003

In addition, payment for materials and equipment stored on or of the site shall be conditioned on Owner's lender approving disbursements for such stored materials and equipment. Owner's load documents may include a provision to the following effect: "Lender shall have the right to specifically approve or disapprove, in its absolute judgment, all Disbursements for Stored Materials. Owner's approval shall not be unreasonably withheld. For the purpose of this Section, "Stored Materials" shall mean materials purchased or to be purchased by Borrower or the General Contractor or any subcontractor at the date of a request for Disbursement but not yet installed or incorporated into the Project. Without limiting Lender's approval rights as set forth above in this Section, Lender will not approve disbursements for Stored Materials until Borrower supplies to Lender: (a) evidence satisfactory to Lender that the Stored Materials are or shall be included in the coverage of the insurance policies required by the Loan Documents; (b) evidence satisfactory to Lender from the seller of fabricator of the Stored Materials certifying that upon payment, ownership thereof will vest in Borrower free of any liens or claims of third parties; and (c) (i) evidence satisfactory to Lender that the Stored Materials are or shall be satisfactory stored on the Project to protect against theft or damage, or (ii) if the Stored Materials are not stored or shall not be stored on the project, then (A) evidence satisfactory to Lender that the Stored Materials are or shall be stored in a bonded warehouse or storage yard approved by Lender, and that the warehouse yard has been notified that Lender has a security interest in the subject Stored Materials, and (B) Lender shall have or will have received from Borrower the original warehouse receipt. With Lender's prior written approval, Stored Materials for which funds have been disbursed by Lender hereunder may be stored in the yard or warehouse of the seller or fabricator, subject to satisfaction of conditions (a) and (b) in this Paragraph, and provided further that Lender receives satisfactory evidence that the Stored Materials are protected against theft and damage, have been suitably identified as belonging to Borrower for use in the Project and that such seller has been notified of the security interest of Lender therein."

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT
TO SECITON 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gary A. Lyons, President and Chief Executive Officer of Neurocrine Biosciences, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Neurocrine Biosciences, Inc.;

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

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

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

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

   b) 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

   c) 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 the internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   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 controls over financial reporting.

Dated: November 7, 2003

/s/ Gary A. Lyons

Gary A. Lyons

President and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT
TO SECITON 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Paul W. Hawran, Executive Vice President and Chief Financial Officer of Neurocrine Biosciences, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Neurocrine Biosciences, Inc.;

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

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

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

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

   b) 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

   c) 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 the internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

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 controls over financial reporting.

Dated: November 7, 2003

/s/ Paul W. Hawran

Paul W. Hawran
Executive Vice President and
Chief Financial Officer

EXHIBIT 32

CERTIFICATIONS OF
CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Neurocrine Biosciences, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Gary A. Lyons, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d), of the Securities Exchange Act of 1934; and

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

November 7, 2003

By: /s/ Gary A. Lyons
Name: Gary A. Lyons
Title: President and Chief Executive Officer

In connection with the Quarterly Report of Neurocrine Biosciences, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Paul W. Hawran, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(3) The Report fully complies with the requirements of Section 13(a) or 15(d), of the Securities Exchange Act of 1934; and

(4) That information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 7, 2003

By: /s/ Paul W. Hawran
Name: Paul W. Hawran
Title: Executive Vice President and Chief Financial Officer